

**Rameshwar Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Feb-10-1986

**Reported in :** 1987CriLJ442

**Judge :** B.N. Katju and; S.I. Jafri, JJ.

**Appellant :** Rameshwar

**Respondent :** State of U.P.

**Judgement :**

ORDER

**S.I. Jafri, J.**

1. Rameshwar has filed this appeal against his conviction Under Section 302, I.P.C., and sentence of life imprisonment awarded by Sri Surya Prasad, 2nd Additional Sessions Judge, Banda, by his order and judgment dated 30-10-1976.

2. Briefly stated the prosecution case is that the deceased Tedha and the appellant Rameshwar belonged to village Chipli, Police Station Kotwali, District Banda. It is alleged by the prosecution that on 4-12-1975 at about 8 a.m. the deceased accompanied by his wife Smt. Paragiya went to his Ghoor outside the village Abadi and there ensued an altercation between the deceased and the appellant Rameshwar in connection with the Ghoor. The deceased charged Rameshwar appellant that he had encroached upon some portion of his Ghoor on

one hand and on the other hand, Rameshwar accused the deceased to have intruded into some portion of his Ghoor. The altercation between the deceased and the appellant continued for some time and ultimately the appellant Rameshwar started belaboring the deceased Tedha by means of Lathi. Tedha the deceased on sustaining Lathi's injuries, fell down on the ground and became unconscious. After the occurrence was over, Smt. Paragiya took the deceased to her house.

3. An oral report of the occurrence was lodged at Police Station Kotwali Banda at 12-35 p.m. on 6-12-75, by Smt. Paragiya and on the basis of her report, a Chik report was prepared by Mohammad Mustafa Head Constable. A case was also registered Under Section 308, IPC against the appellant. In the report, it was stated by Smt. Paragiya that she could not come to the Police Station earlier, as nobody in the village had come forward to lend help to her and that it was after the help extended by Pandit Ram Manohar and Bachcha that she could come to the police station today with her husband on a bullock cart. After the registration of the case, the deceased Tedha was sent to the District Hospital Banda for treatment. Doctor Y. K. Joshi, examined the deceased on 6-2-1975 at 4.10 p.m. and found the following injuries on his person.

1. Lacerated wound 2.5 cm X 1.5 cm X bone deep on the left frontal region anterior and posteriorly situated 5 cms above from left eyebrow middle.
  2. Lacerated wound 3 cms X 1 cm X bone deep on the left parietal region anterior posteriorly situated 7 cms above from left ear.
  3. Contused swelling of the left temporal region 5 cms X cms over the left Zygomate and anterior end of left ear. Bluish colour around the left eye.
  4. Contusion 5 cms X 4 cms over the dorsum of left hand.
  5. Contusion 5 cms X 6 cms over the dorsum surface of right hand.
4. The injuries were reported to have been caused by blunt weapon, duration about two days.

5. The deceased was admitted in the district hospital and at the time of admission at 4 p.m., he was deeply unconscious as is clear from the perusal of bed head ticket Ex. Ka. 11. The deceased succumbed to his injuries at 5.15 P.M. on 7-12-1975.

6. After the preparation of the inquest on the dead body, autopsy was conducted by Doctor K. K. Pillai, P.W. 3, at 3.20 p.m. on 8-11-1976. The Doctor found the following anti-mortem injuries on his person.

1. Lacerated wound 2.25 cms X 1.25 cms X bone deep on the left side front of scalp 5 cms above left eyebrow. The adjoining area is swollen up.

2. Lacerated wound 3 cms X 1 cm X bone deep on the left parietal region placed longitudinally 7 cms above left ear.

3. Contused swelling 7 cms on the left temporal region of the scalp and adjoining area of the face.

4. Contused swelling 5 cms X 4 cms on the dorsum of left hand with fracture of 5th Metacarpal bone and proximal phalanx of the little finger.

5. Contused swelling 4 cms X 4 cms on the dorsum of right hand with fracture of 5th metacarpal bone.

7. On internal examination, there was fracture of left parietal bone extending on the anterior cranial fossa and fracture of the frontal bone extended on to the right half of the skull. Blood clots were present over the membranes. Brain was found congested and contused on the left occipital pole (lobe).

8. According to the opinion of the Doctor, the cause of death was due to coma resulting from antemortem injuries.

9. Upon the death of the deceased, the case Under Section 308, I.P.C. was converted to Section 304, I.P.C, at Police Station Kotwali Banda. Rampat Mishra, P.W. 6, took up the investigation of the case and went to the hospital on 7-12-1975 where he recorded the statement of Smt. Paragiya. The said statement of Smt. Paragiya was recorded by the Investigating Officer before the death of the

deceased. According to the statement of the Investigating Officer P.W. 6, he visited the hospital and he wanted to record the statement of the deceased but he was not in a position to speak and that was the reason that he could not take down the statement of the deceased. He further deposed that on 8-12-1975, he conducted inquest on the dead body of the deceased and sent the same for post-mortem examination. On 10-12-1975, he went to the village Chili, where he made enquiries and prepared site plan Ex. Ka. 9. After concluding the investigation, he submitted charge-sheet against the appellant Rameshwar in the court.

10. The appellant pleaded not guilty to the charge and attributed his false implication due to enmity with Bachcha who had got the report lodged against him. In his defence, the accused Rameshwar stated that the deceased Tedha was assaulted in front of the door of Dashratha Kahar as the deceased used to visit the house of Dashrath. Sepahiya and Raghuraj are brothers of Dashrath. He also stated that deceased's wife Smt. Paragiya had taken the deceased to her maternal house in village Kureli and the deceased was administered treatment there and the people had persuaded her to make report against him at the police station, otherwise Sepahiya and Raghuraj would go to report the matter. Consequently, she had taken the deceased Tedha at the instance of Bachcha and she had reported against him at the Police Station.

11. In support of its case, the prosecution examined eight witnesses in all and out of them Smt. Paragiya P.W. 1 was examined as sole eye-witness of the occurrence. Randhir Singh P.W. 2 was also examined as circumstantial witness but he did not support the prosecution version as such he was treated hostile.

12. In this case, the conviction of the appellants, Rameshwar, rests on the testimony of Smt. Paragiya P.W. 1 alone. She is the wife of Tedha deceased. She deposed that at the time when her husband was belaboured, she was sitting at her Ghoor and her husband was also sitting nearby. The appellant Rameshwar was also sitting at a stone's throw distance. At that time, Rameshwar appellant objected to throwing of rubbish in the Ghoor. She and her deceased husband replied that they had been dumping rubbish there since long. Thereupon, Rameshwar appellant landed lathi blows on the head, hands and legs of the

deceased and on sustaining the injuries, her husband fell down and became unconscious. After the occurrence, she brought her husband to her house. She also deposed that she pleaded with each and every person of the village to take her husband to Banda but none had come forward to help her. Next day, Bachcha Ahir came to her house and on her request, he had accompanied her and her husband up to Nibhora which is situated at the outskirts of Banda City. She also deposed that from Nibhora, she had taken her husband to Police Station Kotwali by means of a Thiliya and there, she made a report of the occurrence. She further stated that, thereafter, she went to the Hospital along with her husband where her husband was admitted and treated but on the next day of his admission, he breathed his last in the hospital.

13. Smt. Paragiya has fully stood the test of gruelling cross-examination. On the other hand, we find that the defence has failed to point out any material infirmity in her testimony. Even no enmity has been suggested to her to furnish her any motive for false implication of the appellant. Her statement ' that the occurrence took place during the day at about 3 a.m. has not been assailed by the defence. It has also not been assailed that she was not present with her husband when her husband was attacked.

13A. The learned Counsel for the appellant submitted that it will not be safe to base conviction of the appellant on the sole testimony of Smt. Paragiya, the wife of the deceased, without any corroboration by any other evidence. It is noteworthy that Smt. Paragiya did not name any witness except her in the First Information Report as a witness of the occurrence. This circumstance clearly goes to show that the First information Report is a truthful version of the occurrence as given out by Smt. Paragiya. Under the law, plurality of evidence is not at all required for bringing home the guilt to the accused. It is the quality of the witness and not the plurality of the witnesses which signifies in appraising the evidence.

14. It was also submitted by the learned Counsel for the appellant that no blood was found by the Investigating Officer at the scene of occurrence. It is significant to note that the Sub-Inspector had visited the scene of occurrence for the first time on 10-12-1975, i.e. after a lapse of about four days of the occurrence and,

therefore, by that time, the possibility that the blood was washed away or disappeared from the place of the occurrence, cannot be ruled out. It was next contended by the learned Counsel for the appellant that there was inordinate delay in lodging the First Information Report. We have devoted our anxious thought to this aspect of the matter and we are fully satisfied that Smt. Paragiya had fully succeeded in explaining the delay in lodging the First Information Report. She was a helpless destitute and a rustic lady of village and none from the village had come forward to extend her a helping hand otherwise the deceased must have been brought to the dispensary or hospital for proper and timely treatment. Moreover, the defence has failed to furnish her any motive for falsely nominating the appellant in the report lodged by her at the Police Station. It was suggested to her that the appellant was falsely implicated in the case on account of Bachcha Ahir and Pandit Ram Manohar. This suggestion was not at all substantiated by the defence. Under the circumstance, we hold that Smt. Paragiya had given but a truthful account of the occurrence in which her husband Tedha had been assaulted by the appellant Rameshwar and on account of the injuries sustained, the deceased Tedha had died subsequently in the district Hospital Banda on 7-12-1975 at about 5.15 p. m. As observed earlier, the evidence of Smt. Paragiya inspires confidence and it is just and proper to place implicit reliance on her testimony in support of the prosecution case.

15. The learned Counsel for the appellant contended that the offence committed by the appellant would not travel beyond the ambit of Section 304 (Part II), I.P.C. The learned Counsel drew our attention to a case reported in 1936 All LJ 333 Perana v. Emperor wherein it was observed that the use of Lathi is certainly dangerous but it is not so dangerous that one would suppose that anybody would in the ordinary course think that death is the probable cause of the use of a lathi. In this case, there are three lathi injuries on the head of the deceased resulting in fracture of his parietal bones. It was submitted by the learned Counsel for the appellant that the assault on the deceased according to the prosecution case itself, was all of a sudden and it was not pre-meditated. There was no enmity between the appellant and deceased. The quarrel took place upon removing of Ghoor (Rubbish Heap) and it is also not specified that the appellant had reached there armed with Lathi. We, therefore, hold that the occurrence took place at the

spur of moment on a petty matter and the resulting injuries on the head of the deceased were not intended. Under the circumstance, the offence did not go beyond the ambit of Section 304, Part II, I.P.C. The conviction of the appellant Under Section 302, I.P.C, and sentence of life imprisonment awarded by the trial court are, therefore, set aside and instead the appellant is convicted Under Section 304, Part II, I.P.C, and he is sentenced to undergo five years' R.I.

16. In the result, the appeal is partly allowed. The conviction of the appellant Under Section 302, I.P.C, and sentence of life imprisonment are set aside. The appellant is convicted Under Section 304, Part II, I.P.C and is sentenced to undergo five years' R.I. The appellant is on bail. He shall be taken into custody forthwith to serve out the sentence.

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