

Ram Karan Mal Vs. State

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Court : Allahabad

Decided On : Jan-23-1989

Reported in : 1990CriLJ846

Judge : V.P. Mathur and ;M.M. Lal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149 and 302

Appeal No. : Criminal Appeal Nos. 1587 to 1589 and 1679 of 1978

Appellant : Ram Karan Mal

Respondent : State

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : A.D. Giri, Adv.

Disposition : Appeal allowed

Judgement :

M.M. Lal, J.

1. These four criminal appeals have been filed against an order and judgment dated 31-5-1978 passed by Sri M. P. Tripathi, II Additional Distt. and Sessions Judge, Deoria by which he has convicted Dhruv Tewari Under Sections 148 and 302/149, I.P.C. and has sentenced him to undergo 3 years' R.I. and life

imprisonment thereunder respectively, and has also convicted Ram Karan Mal, Diwakar Mani and Umesh Misra under Sections 147 and 302/149, I.P.C. and has sentenced each of them to undergo 2 years' R.I. and imprisonment for life thereunder respectively.

2. There was some dispute in respect of a house between one Hardwar Gupta, his son Dhyan Chand and family members on one side and Sheo Ram Mani accused on the other on account of which there were strained relations between Dhyan Chand and Sheo Ram Mani accused. Sheo Shanker deceased was on friendly term with the said Dhyan Chand. Ram Karan Mal and Dhruv Tewari etc. were in the opposite camp.

3. On 7th November, 1976 at about noon time Sheo Shanker deceased and Dhyan Chand had assaulted Ram Karan Mal appellant in the town of Deoria and with respect to the same a report had been lodged at P. S. Kotwali on the same day. Due to the said incident Ram Karan Mal and other accused persons, who were his friends, were much annoyed and aggrieved with Sheo Shanker deceased and they wanted to take revenge for the same.

4. According to the case of the prosecution on 7-11-1976 at about 7.30 p.m. Sheo Shanker deceased and his two brothers P.W. 2 Raj Bahadur and P.W. 4 Rama Shankar were sitting in their tea shop, situate in the compound of Cane Union Office in the premises of Deoria Sugar Mills. Whereas Sheo Shanker was making 'Rotis' his other two brothers were taking meals. At that time Dhruv Tewari, Ram Karan Mal, Sheo Shanker Mani, Upendra and Udaibhan, armed with knives, and Diwakar Mani, Umesh Misra, Girish Singh, Bhupendra Upadhyaa and 3-4 unknown persons, armed with 'Lathis', came there, Ram Karan Mal appellant abused Sheo Shanker deceased and shouted that because he had assaulted him during the day time, hence he would not now spare his life. Ram Karan Mal rushed towards Sheo Shanker in order to catch him. However, Sheo Shanker deceased ran away and entered in the nearby residential quarter of Ram Adhar Lal Srivastava P.W. 6. Ram Karan Mal and his companions chased him and they also entered the said quarter of Ram Adhar Lal Srivastava, and started beating him and causing injuries with knives and 'Lathis'. In the meanwhile P.W. 2 Raj Bahadur,

P.W. 4 Rama Shanker and some other witnesses had reached there. The assailants then went away.

5. After the aforesaid incident Raj Bahadur and Rama Shanker immediately took his brother, i.e. Sheo Shanker, to the District Hospital, Deoria where he was declared dead. In the hospital itself P.W. 2 Raj Bahadur wrote a report of the incident which was taken to the P. S. Kotwali, District Deoria by P.W. 4 Rama Shanker, where it was handed over on the same day at 8.45 p.m.

6. In support of its case the prosecution examined P.W. 2 Raj Bahadur informant, P.W. 4 Rama Shanker, P.W. 5 Puranamasi and P.W. 6 Ram Adhar Lal Srivastava in order to give an eye-witness account of the incident. Whereas P.W. 6 Ram Adhar Lal Srivastava turned out to be hostile, learned trial Court has not believed and relied upon P.W. 5 Puranamasi. P.W. 3 Ram Hausala Pande was Head Moharrir at P. S. Kotwali, District Deoria. He deposed that on 7-11-1976 at 8.45 p.m. Rama Shanker had come to him to hand over the written report of the incident on which this case was registered. P.W. 8 Raghunanadan Misra S.I. had gone to District Hospital Deoria on 8-11-1976 to take the dead body of Sheo Shanker in possession. He had also prepared the inquest report. P.W. 7 constable Sheo Nath Chaubey had taken the dead body of Sheo Shanker for post-mortem examination. The investigation of this case was made by Sri D. P. Singh, the then S.O. P.S. Kotwali, Deoria. He had recorded the statements of Rama Shanker and Raj Bahadur at the police station. He then went to the place of occurrence, where he made local inspection. There he also recorded the statement of Ram Adhar Lal Srivastava. He found blood in the courtyard of the house of Ram Adhar Lal Srivastava and took samples of blood-stained and unstained earth.

7. The post-mortem examination of the dead body of Sheo Shanker was conducted by P.W. 1 Dr. T.P. Sharma, the then. Medical Officer, District Hospital Deoria on 8-11-1976 at 3 p.m. He found the following ante-mortem injuries on the dead body of Sheo Shanker:--

1. Incised wound 2 cm x 1 cm x bone on the right cheek bone.

2. Incised wound 4 cm x 3 cm x scalp on the left side head, 3.5 cm behind left ear.

3. Incised wound 2.5 cm x 5 cm x through and through left ear pinna.
4. Incised wound 3 cm x 1 cm x skin just below left ear.
5. Abrasion 0.25 cm on the front of chest in lower sternal region.
6. Incised wound 3 cm x 0.5 cm x 0.5 cm on the left shoulder top.
7. Abrasion 0.25 cm x 0.25 cm right side abdomen, 10 cm away from umbilicus.
8. Penetrating wound 2.25 cm x 1 cm x chest cavity deep right side back, 3 cm away from midline back at the level of medial angle of scapula.
9. Penetrating wound 2.5 cm x 1 cm x chest, 1 cm below injury No. 8.
10. 5 abrasions each ranging between .5 cm to .25 cm x 0.1 cm on the back of right hand.
11. Punctured wound 2 cm x .25 cm left side abdomen just above the posterior part going into the posterior abdominal wall.
12. Incised wound 1.75 cm x .5 cm skin, in the chin.
13. Incised wound 1 cm x .5 cm .25 cm in front of injury No. 11 margin of all the wounds is sharp, clean cut and inverted.

8. On internal examination, pleura and right lung were found punctured under injuries Nos. 8 and 9. One litre blood was found in the right pleural cavity. There was 4 oz. pasty feed material in the stomach. Small intestines contained faecal matter and gas and the large intestine contained faecal matter. Gall bladder was partially empty.

9. According to the doctor the death of Sheo Shankar was due to shock and haemorrhage as a result of aforesaid injuries.

10. The appellants in their statements denied the case of the prosecution and further stated that they had been falsely implicated due to enmity. In defence the accused persons examined D.W. 1 constable Hirdyanand Pande to depose that

on 8-12-1976 he was handed over a copy of an order passed by Chief Judicial Magistrate on the back of an application given by Dhruv Tewari in which he had claimed his identification. It may be noted that Dhruv Tewari was not put up for identification by the Investigating Agency.

11. Learned Sessions Judge acquitted Sheo Shankar Mani and Upendra after giving them benefit of doubt. He, however, believed the case set up and the evidence produced by the prosecution against the four appellants and has accordingly convicted and sentenced them as aforesaid. Aggrieved by the same the appellants have filed these four appeals.

12. We have heard learned counsel for the appellants and the State and have perused the record carefully. '

13. The main thrust of the arguments advanced by the learned counsel for the appellants is that the medical evidence completely ruled out the version given by the eyewitnesses in this case. The submission made by the learned counsel for the appellants is that when as many as 7/8 assailants, i.e. Diwakar Mani, Umesh Misra, Girish Singh, Bhupendra Upadhyay, and 3-4 unknown persons, were armed with 'Lathis and they were said to have beaten and caused injuries to Sheo Shanker with the same, then the latter would have received very many contusions etc. but the medical evidence does not reveal any such injury caused by a blunt weapon like 'Lathi'. The said argument has got merit and substance.

14. P.W. 2 Raj Bahadur has stated in his evidence that all the assailants had beaten his brother Sheo Shanker with 'Lathis' and knives. He further deposed that Sheo Shanker was surrounded by the assailants from all the four sides and was beaten and that as a result of the injuries caused by knives and 'Lathis' Sheo Shanker had fallen on the ground. P.W. 4 Rama Shanker has also deposed that the assailants had beaten Sheo Shanker. P.W. 5 Puranmasi has specifically stated that all the assailants, who were carrying 'Lathis', had beaten Sheo Shanker with the 'Lathis' which had hit him. It is thus a clear case of the prosecution that 7-8 assailants, who were carrying 'Lathis', had caused injuries to Sheo Shanker with the same. The assailants had chased Sheo Shanker from his teashop to the nearby quarter of Ram Adhar Lal Srivastava and their attack was said to be pre-

planned. In the said circumstances they would have plied 'Lathis' on Sheo Shanker with force and the same would have at least caused very many contusions to Sheo Shanker. However, medical evidence does, not show even a single contusion having been sustained by Sheo Shanker. The injuries suffered by Sheo Shanker have already been reproduced. It may be seen from the same that Sheo Shanker had been caused ten incised/ penetrating wounds, which may have been caused by knives. Besides the said incised and penetrating wounds only injuries suffered by Sheo Shanker were minor and superficial abrasion, i.e. injuries Nos. 5, 7 and 19. The dimension of the said abrasions were too small and superficial to be measured and to be taken notice of. It may be observed that the abrasions referred in injury No. 10 were as small 0.5 cm to .25 cm x 0.1 cm on the back of right hand. The other abrasions were 0.25 cm x 0.2 cm and 0.25 cm x 0.25 cm. No doubt abrasion can be caused by friction yet the blows given by 'Lathis' by 7-8 assailants in the aforesaid manner and circumstances would not have simply caused such abrasions to the exclusion of any other injury like contusion. In our view the absence of contusions completely rules out the version given by the eyewitnesses that as many as 7-8 assailants, after surrounding Sheo Shankar, had hit him with 'Lathis' and had caused injuries to him with the same. The testimony of eye-witnesses is always preferable to medical evidence unless the medical evidence completely rules out the version given by the eye-witnesses. In this case we find that the medical evidence, i.e. total absence of contusion etc. on the body of Sheo Shanker, completely rules out, the version given by the eye-witnesses that Sheo Shanker was hit and caused injuries by 'Lathis' in the aforesaid manner. Therefore, we find it difficult to believe and place reliance upon the eye-witnesses examined by the prosecution in this case.

15. The prosecution has examined four eye-witnesses. Out of them P.W. 6 Ram Adhar Lal Srivastava turned out to be hostile and did not support the case of the prosecution against the appellants. He was cross-examined by the prosecution. P.W. 5 Puranmasi was rightly disbelieved by the learned trial Court. Not only he was a chance witness but at one stage of his cross-examination clearly admitted that he did not know the name of the village or any of the accused persons. When this was so his evidence was rightly discarded by the Sessions Judge.

16. The only remaining two witnesses are P.W. 2 Raj Bahadur and P.W. 4 Rama Shanker. They are the real brothers of Sheo Shanker deceased. With respect to the same we have already observed that the version given by the said witnesses is contrary to the medical evidence. The medical evidence totally belies the version given by them that as many as 7-8 assailants armed with 'Lathis' had caused injuries to Sheo Shanker with 'Lathis'. Therefore, we are not prepared to place reliance upon them.

17. Learned counsel for the appellants has further argued before us that the investigation in this case has not been fair. In this context he has urged that the eye-witnesses cited in this case did not know the accused persons from before and that even then they were not put up for identification especially when Dhruv Tewari had submitted an application praying that he should be identified by the witnesses because the witnesses did not know him from before. It may be observed that Chief Judicial Magistrate, before whom Dhruv Tewari had submitted an application for identification, had passed an order that he had no jurisdiction to pass an order during the stage of investigation and that it was for the Investigation Agency to get the accused identified. D.W. 1 Hirdyanand Pande was examined to depose that he had taken the said order to P.S. Kotwali and had noted the same in the G.D. on 8-12-1976. It may be noted that the said application of Dhruv Tewari was not without basis specially when we find that P.W. 5 Puranmasi clearly admitted at one stage of his cross-examination that he did not know the names of any of the accused persons from before.

18. Learned counsel for the appellants has urged before us that when Girish Singh, Bhupendra Upadhyaya and Udaibhan were specifically named as assailants in this case and the Investigating Officer did not submit any charge-sheet against them, then either the case of the prosecution was false or the investigation in this case was not fair. This argument as well has found merit.

19. Learned counsel for the appellants has also urged before us that in this case when the incident was alleged to have been seen by some other witnesses and some of these witnesses had not been examined then it was not safe to rely upon P.W. 2 Raj Bahadur and P.W. 4 Rama Shanker specially when after the acquittal

of Sheo Shanker Mani and Upendra it has been found that the evidence of the said two witnesses with regard to these two persons was not true. He has further submitted that both Shiv Shanker Mani and Upendra were armed with knives and were said to have caused injuries to Sheo Shanker with the same that is when the case of the prosecution against them had not been found to be true then on the basis of the very same evidence the appellants cannot be held guilty. The said argument is not without substance.

20. Learned counsel for the appellants has urged before us that P.W. 2 Raj Bahadur and P.W. 4 Rama Shanker cannot be said to be wholly reliable witnesses because they had named one Girish Singh as well as an assailant but P.W. 9, D.P. Singh, I.O. has admitted in his evidence that after inquiry he had found that no such person of the name of Girish Singh was in existence. We find force in the said argument as well specially when the said evidence of the I.O. was not challenged.

21. In view of the aforesaid discussion, and for the reasons stated, we are of the opinion that the case of the prosecution against the four appellants was also not free from reasonable doubt.

22. Accordingly Criminal Appeals Nos. 1587/78, 1588/78, 1589/78 and 1679 of 1978 are allowed and the conviction and sentence of Dhruv Tewari under Sections 148 and 302/149, I.P.C. and the convictions and sentences of Ram Karan Mal, Diwakar Mani and Umesh Misra appellants under Sections 147 and 302/149, I.P.C. are hereby set aside. They are held not guilty of the said offences and are acquitted of the same. They are on bail. They need not surrender to their bail bonds, which hereby stand discharged.