

Barkat Ullah Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-24-2004

Reported in : 2004CriLJ4482

Judge : Vishnu Sahai and ;G.K. Gupta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 304

Appeal No. : Crl. Appeal No. 326 of 1981

Appellant : Barkat Ullah

Respondent : State of U.P.

Advocate for Def. : Umesh Verma, Addl. PP

Advocate for Pet/Ap. : B.K. Nigam, ;Mrudul Rakesh and ;Krishna Mohan, Advs.

Judgement :

Vishnu Sahai, J.

1. This appeal has been preferred by Barkat Ullah against the judgment and order dated 30-4-1981, passed by the Sessions Judge, Sultanpur, in Sessions Trial No. 41 of 1981, whereby he has been convicted and sentenced to undergo imprisonment for life for the offence punishable under Section 302 I. P. C.

2. Shortly stated, the prosecution case runs as under :--

At the time of the incident, informant-deceased Ram Dularey and appellant Barkat Ullah were residing in village Gosai Ki Maria (Musai Ki Mathia) in Kasthuni West within the limits of Police Station Musafirkhana, District Sultanpur.

There was enmity between appellant Ram Dularey on one hand and Khalil alias Khaliq, the daughter of whose brother was married to the appellant on the other. In the litigation, which was pending between them at the time of the incident, the appellant used to do pairvi on behalf of Khalil alias Khaliq.

On 4-2-1980, at about 1.00 P. M., when Ram Dularey was returning from Musafirkhana and had reached the Kachhi Road also known as Patnawali Road, the appellant came all of a sudden; started abusing him; and told him that he would kill him. Hearing this, Ram Pratap PW 3, Ganga Deen PW4 and some others came. In the meantime, the appellant inflicted a solitary knife blow on Ram Dularey's stomach, which resulted in intestines protruding out. Thereafter, the appellant ran away. Although Ram Pratap and others made an endeavour to apprehend him but they failed.

Thereafter, Ram Dularey proceeded to Police Station Musafirkhana, district Sultanpur and lodged his oral F.I.R.

3. The evidence of Head Constable Rajendra Prasad Yadav P. W. 5 shows that on 4-2-1980, he was posted at Police Station Musafirkhana, District Sultanpur. On the said date, at 2.15 p.m., informant Ram Dularey came to the police station and lodged his oral F. I. R. (Ext. Ka 5). on the basis of which, he registered a case in the General Diary.

4. The evidence of S. I. Lal Chand Dubey P. W. 8 shows that the F.I.R. was lodged in his presence and thereafter, he recorded the statement of informant Ram Dularey under Section 161 Cr P C (Ext. Ka 17) and then sent him for medical examination.

5. The evidence of Dr. Taafique Ahmad P.W. 2 shows that on 4-2-1980, at 2.50 p.m., he medically examined Ram Dularey and found on his person a solitary punctured wound 10 cm. x 2 cm. x stomach deep on the right side which has

resulted in intestines protruding out. His evidence shows that in his presence and on his direction, the Head Clerk of the Dispensary recorded the dying declaration of Ram Dularey. Whatever Ram Dularey said he (Dr. Taufique Ahmad) dictated to the Head Clerk who recorded it and after the statement was recorded it was read out to Ram Dularey, who then affixed his thumb impression on it. Since the condition of Ram Dularey was precarious, he stitched the said injury and sent Ram Dularey for treatment to District Hospital, Sultanpur.

It is pertinent to mention that while Ram Dularey was being taken to District Hospital, Sultanpur, he succumbed to his injury.

6. The autopsy on the corpse of deceased-Ram Dularey was conducted on 5-2-1980 at 4.00 p.m. by Dr. A. C. Joshi P.W. 1, who found on it, the ante-mortem injuries enumerated hereinafter :--

1. A transverse stitched wound 8 cm. long on right side of abdomen at 8 cm. distance towards right side of umbilicus.

2. Abrasion 2 cm. x 1 cm. over joint of left leg at 7 cm. distance above left ankle.

On internal examination, Dr. Joshi found a tear in the small intestine and semi-digested food material in the stomach.

The cause of death spelt out in the autopsy report was shock and haemorrhage as a result of ante-mortem injuries.

It is pertinent to mention that in his statement in the trial Court, Dr. Joshi reiterated the said cause of death and also stated therein that injury No. 1 could be caused by a knife and injury No. 2 by fall. He also stated that the deceased could have died sometimes between 2.30-4.00 p.m. on 4-2-1980.

7. The investigation was conducted in the usual manner by S.I. Lal Chand Dubey P.W. 8. After sending Ram Dularey for medical examination, he recorded the statements of Ram Pratap P.W. 3, Ganga Deen P.W. 4 and some others. Thereafter, the same night (night of 4-2-1980), at 9.00 p.m., he seized the knife from the person of the appellant under a recovery memo. After completing the

investigation, he submitted the charge-sheet against the appellant.

8. The case was committed to the Court of Sessions in the usual manner, where the appellant was charged for the offence punishable under Section 302, I.P.C. He pleaded not guilty to the charge and claimed to be tried. His defence was of denial.

During trial, in all, the prosecution examined eight witnesses. Two of them namely, Ram Pratap P.W. 3 and Ganga Deen P.W. 4 were examined as eye-witnesses.

Apart from ocular testimony, the prosecution has also led evidence in the form of three dying declarations made by the deceased.; one in the form of F.I.R. lodged by him; one in the form of his statement recorded under Section 161, Cr. P.C.; and one in the form of his statement recorded by Head Clerk of Primary Health Centre, Musafirkhana, Sultanpur, on the dictation of Dr. Taufique Ahmad P.W. 2.

In defence, two witnesses namely Ahtay Ram Ahmad and Badloo D.W. 1 and D.W. 2, respectively, were examined.

The learned trial Judge believed both categories of evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated in paragraph 1.

Hence, this appeal.

9. We have heard learned counsel for the parties and perused the entire record. Mr. B. K. Nigam, learned counsel for the appellant did not assail the conviction of the appellant on merits and only canvassed before us a solitary submission namely, that the learned trial Judge erred in convicting the appellant for the offence punishable under Section 302, I.P.C. and instead should have convicted him for the offence punishable under Section 304(11), I.P.C.

10. We have considered the submission canvassed by Mr. B. K. Nigam and find merit in it. In our judgment, learned counsel for the appellant rightly thought that discretion was the better part of valour and did not challenge the conviction of the appellant on merits because we find that to fix the involvement of the appellant in the crime, prosecution has adduced evidence of a dual nature namely, the ocular

account furnished by Ram Pratap P.W. 3 and Ganga Deen P.W. 4 and three dying declarations of deceased-Ram Dularey; one in the form of F.I.R. lodged by him; one in the form of his statement recorded under Section 161, Cr. P.C.; and one in the form of his statement recorded by Head Clerk of Primary Health Centre Musafir-khana, Sultanpur, on the dictation of Dr. Taufique Ahmad, P.W. 2.

11. We have gone through the statements of Ram Pratap P.W. 3 and Ganga Deen P.W. 4 and also the three dying declarations made by deceased-Ram Dularey and we find therein it has been candidly mentioned that while Ram Dularey was returning from Musafirkhana market and had reached the Kachhi Road also known as Patnawali Road, the appellant emerged and said that he (Ram Dularey) thought that he was adopt in the art of litigation and after challenging that he would not spare him inflicted a solitary knife blow on his person. We find that the medical evidence, which has been furnished by Dr. Taufique Ahamad P.W. 2 and Dr. A. C. Joshi P.W. 1, who medically examined Ram Dularey in his lifetime and performed his autopsy respectively supports the ocular account and the three dying declarations which are to the effect that the appellant assaulted Ram Dularey with a knife. It is pertinent to mention that the knife was seized during investigation and shown to the said doctors and they stated that the injuries suffered by Ram Dularey could be caused by it.

12. We now take up the submission of Mr. B. K. Nigam that no offence punishable under Section 302, I.P.C. is made out against the appellant and only one that is punishable under Section 304(11), I.P.C. is made out against him. As mentioned earlier, we find merit on it. Ganga Deen P.W. 4 in his examination-in-chief has admitted that an altercation and exchange of abuses took place between deceased-Ram Dularey and the appellant and it was only thereafter that the appellant inflicted a solitary knife blow on the person of Ram Dularey. In our judgment, this circumstance and the fact that the appellant did not repeat the knife blow clearly shows that he did not have any design to commit the murder of the deceased. It is significant to mention that the autopsy surgeon Dr. A. C. Joshi P.W. 1, in his deposition has not stated that the ante-mortem injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death. In our view, in the circumstances, in which the appellant inflicted a solitary knife blow on

the person of the deceased, it cannot be said that his act would fall within any of the four clauses of Section 300, I.P.C, the breach of which is punishable under Section 302, I.P.C. In our judgment, it would be reasonable to infer that when the appellant inflicted a solitary knife blow on the stomach of the deceased, he committed an act with the knowledge that his death could be caused as a result thereof, in terms of Clause thirdly of Section 299, I.P.C. the breach of which is punishable under Section 304(II), I.P.C.

13. This leaves us with only one question namely, that of sentence. From a perusal of statement of the appellant recorded under Section 313, Cr. P.C., it transpires that he was aged slightly less than 19 years at the time of the incident. We say this because the incident took place on 4-2-1980 and the statement of the appellant under Section 313, Cr. P.C. was recorded on 20-4-1981 and in the said statement he has furnished his age as about 20 years. This means that the appellant was slightly less than 19 years at the time of incident. The Supreme Court in the oft-quoted case of Raisul v. State of U.P., AIR 1977 SC 1822 : (1977 Cri LJ 1555) has held that the estimate of age given by an accused in his statement under Section 313, Cr. P.C. should be accepted as correct. In our perception, considering the circumstance that the appellant was aged less than 19 years at the time of incident and bearing in mind the fact that he only inflicted a solitary knife blow on the person of the deceased, a sentence of seven years R.I. would meet the ends of justice.

14. In the result, this appeal is partly allowed. Although we acquit the appellant-Barkat Ullah for the offence punishable under Section 302, I.P.C. and set aside the sentence of imprisonment for life imposed on him thereunder, we find him guilty for the offence punishable under Section 304(II), I.P.C. and sentence him to undergo seven years' R.I.

The appellant is on bail and shall be taken into custody forthwith to serve out his sentence.