

Ramesh Vs. the State

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Court : Allahabad

Decided On : Aug-05-2003

Reported in : 2004CriLJ1540

Judge : Vishnu Sahai and ;A. Mateen, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 324

Appeal No. : Criminal Appeal No. 564 of 1980

Appellant : Ramesh

Respondent : The State

Advocate for Def. : Rakesh Srivastava, Adv.

Advocate for Pet/Ap. : Prem Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Vishnu Sahai, J.

1.Though this appeal, appellant Ramesh challenges the judgment and order dated 23-7-1980 passed by the I-Additional Sessions Judge, Bahraich in Sessions Trial No. 128 of 1978, whereby he has been convicted and sentenced in the manner stated hereinafter :--

(i) under Section 302/34, IPC to imprisonment for life; and

(ii) under Section 324/34, IPC to imprisonment for two year's R. I.

The sentences of the appellant on both the counts were ordered to run concurrently.

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

The informant Siddeshwar Singh (PW-1) is a resident of Payagpur, district Bahraich. Sometimes before the incident, two incidents of beating took place inside Chitrashala Cinema in district Bahraich. In one of them, which took place in January/February, 1978, at 3-4 p.m., Chhutkan alias Shailesh Kumar, appellant Ramesh and unknown associates of theirs assaulted some persons within the premises of Chitrasala Cinema. In connection with the incident, the police arrested accused Chhutkan. At that time, deceased Gayasuddin and Balaram Singh were present. When the police was arresting Chhutkan, he gave a threat that after being released on bail, he would kill Gayasuddin and Balaram Singh.

On the date and time of the incident i.e. on 12-6-1978, at 3.00 a.m.. the informant was employed as an Assistant Manager in Chitrashala Talkies, district Bahraich. At the said time, appellant Ramesh Kumar along with co-accused Chhutkan alias Shailesh and Munnar, all armed with knives, with a view to kill Balaram Singh, Manager of Chitrashala Talkies and Gayasuddin entered inside the quarter of the latter. At that time, Balarm Singh was not there. They started assaulting Gayasuddin with knives. Hearing the cries, the informant, Om Prakash, Jitendra Singh, Arun Kumar Singh (P.W. 2) and Nizam P.W. 3 who were sleeping in the premises of Chitrashala talkies came. Thereupon, the appellant and others also belaboured them with knives. The appellant, after being given some beating, was apprehended on the spot with a knife, while Chhutkan alias Shailendra and Munnar ran away. This incident was seen by the informant and others in electric light.

Thereafter, the informant sent Om Prakash and Gayasuddin (both of them were precariously injured) along with Jitendra Singh, Nizam and Arun Kumar, who were

also injured, through Rajendra Kumar to District Hospital, Bahraich and he along with Hirdai Ram, Arjun Singh and the appellant, along with the knife, which he had seized from the appellant, proceeded to police station Kotwali-Nagar, district Bahraich to lodge the FIR.

3. The evidence of Head Constable Gaya Prasad Tripathi (P.W. 10) shows that on 12-6-1978, at 4.30 a.m. Sidheshwar Singh came to police station Kotwali-Nagar and lodged his written FIR. A perusal of the chik FIR shows that on the basis of the FIR, a case under Section 352/307, IPC was registered against the appellant, Chhutkan and Munnan. The evidence of Head Constable Gaya Prasad Tripathi shows that the informant had brought along with him appellant Ramesh and a blood stained knife, which he had used in the incident. His evidence further shows that he seized the knife under, a recovery memo and arrested the appellant Ramesh.

4. The injuries of Om Prakash Singh, Gayasuddin, Jitendra Singh, Arun Kumar Singh and Nizam were medically examined on 12-6-1978 at 4.15 a.m., 4.30 a.m., 4.45 a.m., 5.00 a.m. and 5.15 a.m. respectively by Dr. V. K. Chopra (P.W. 9), at District Hospital, Bahraich, who found on their person the injuries enumerated hereinafter :--

Om Prakash Singh :-- One incised wound;

Gayasuddin :-- three incised wounds;

Jitendra Singh :-- two incised wounds;

Arun Kumar:-- One incised wound; and

Nizam :-- two contusions and three incised wounds.

5. It is pertinent to mention that since the condition of Om Prakash and Gayasuddin was critical, it was decided to have their dying declaration recorded.

6. The evidence of Dr. R. K. Srivastava (P.W.13) shows that on 12-6-1978, he was posted as Medical Officer, at District Hospital Bahraich. On the said date, the Magistrate recorded the dying declarations of Gayasuddin and Om Prakash, at

7.00 a.m. and 7.27 a.m. respectively in his presence. His evidence shows that prior to the declarations being recorded, he examined them and certified that they were mentally fit to make declaration. It is pertinent to mention that Ext. ka-27 is the certificate of fitness in relation to Gayasuddin and Ext. ka-28 is that in relation to Om Prakash. Since the said declarations are crucial pieces of evidence, we propose extracting them in entirety.

7. The dying declaration of Gayasuddin reads thus :--

'.... .Mein Ki Gayasuddin Putra Jalaluddin Aayu 33 Varsh Nivashi Chitrashala Cinema Bahraich Bahlak Bayan Kiya Ki Teen Dakait Dinank 11-6-1978 Ki Raat Ko Teen Baje Sinema Ke Andar Dakatti Ke Maksad Se Aaye Aur Ham Logon Par Hamla Kiya Aur Chaku Se Jagha Vah Jagha Mara. In Teenon Aadmiyon Se Mein Ramesh Ko Jo Pakad Ka Aya Hai Ramesh Ko Hi Pahchan Sakta Hun Baki Logon Ko Nahi Pehchanta. Ramesh Ne Hamko Chaku Se Jayada Mara Hai. Hamari Inki Pehle Ki Dushmasni Nahi Thi. Ye Log Sinema Ghar Mein Daka Dalne Aaye The.....'

In English, it would read thus :--

'I, Gayasuddin, S/o Jalaluddin, aged 35 years, resident of Chitrashala Cinema, Bahraich state on oath that three dacoits on 11-6-1978, at 3.00 a.m., entered into the cinema with a view to commit dacoity and attacked us with knives on different parts of body. Out of them, Ramesh was caught and I can recognize him but I cannot recognize the other two. Ramesh inflicted, a number of knife blows on me. There was no enmity between me and Ramesh prior to the incident.'

7-A. The dying declaration of Om Prakash reads thus :--

'.....Shri Om Prakash Putra Ram Badan Singh, Sakin Chitrashala Cinema, Bahraich Ne Shapathpurvak Bayan Kiya Ki Kabreeb Teen Baje Pichli Raat Mein Haal Ke Bahar So Raha Tha Tab Daku Jitki Tadat Teen Thi Aaye Aur Ham Logon Par Chakuon Se Hamla Kama Sum Kar Diya Aur Kaha Ki Jo Paise Ho Dedo Varna Ham Jan Se Mar Denge. Maine Sabhi Ko Pehchana Hai. Unke Naam Chhutkan, Munnan Va Ramesh Hai. Hamri Koi Ranjish Unse Nahi Thi Sirf Paisa

Loothne Aaye The. Ye Sab Log Chitrashala Cinema Ke Nazdeek Ke Hi Rehne Wale Hai. Is Marpeet Mein Ham Logon Ne Milkar Ramesh Ko Pakad Liya Hai.'

In English, it would read thus :--

'Om Prakash, S/o Ram Badan Singh, R/o Chitrashala Cinema, Bahraich stated on oath that at about 3,00 a.m., the previous night, when he was sleeping outside the cinema hall, three dacoits came and started assaulting them with knives. They said that handover whatever money you have otherwise you would be killed. I have recognized all three of them and they are Chhutkan, Munnan and Ramesh. I have no enmity with them. They had only come to loot cash. They reside in the vicinity of Chitrashala Talkies. After giving some beating, we apprehended Ramesh on the spot.'

8. It is pertinent to mention that after the recording of their dying declarations, Gyasuddin and Om Prakash succumbed to their injuries. Consequently, the case was converted from Sections 452/307, IPC to one under Section 452/302 IPC.

8-A. The autopsy on the corpse of the deceased Gyasuddin and Om Prakash was conducted on 15-6-1978 at 4.00 P. M. by Dr. Nirankar Singh (P.W. 4) and Dr. Z. U. Ahmad (P.W. 5) respectively.

On the person of Gyasuddin, Dr. Nirankar Singh found the following injuries :--

(i) Incised wound (stitched) 3 cm. x 1/2 cm. x muscle deep placed transversely over sic chest upper part and shoulder;

(ii) Incised wound (stitched) 3 cm. x 1/2 cm. x skin deep front part of right shoulder just above injury No. 1 obliquely placed; and

(iii) Incised punctured wound (stitched) 2 cm. x 1 cm. x chest cavity deep front of chest sic. 5 cm. below left nipple placed transversely at 9th costal space.

On internal examination he found left pleura and lower lobe of left lung punctured under injury No. 3.

In the opinion of Dr. Singh, the deceased died as a result of injury to lung.

On the person of Om Prakash Dr. Ahmad found the ante-mortem injuries enumerated hereinafter :

'One operated gaping septic wound with visible stitch marks 10 cm. x 6 cm. x cavity deep on both side of flank 18 cm. from axilla and 13 cm. from umbilicus. Pus seen.'

On internal examination, he found peritoneum stitched.

In the opinion of Dr. Ahmad, the deceased died on account of septicemia as a result of the wound.

9. The investigation was conducted in the usual manner by S. I. Laik Ahmad (P.W. 7) of police station Kotwali-Nagar, Bahraich. His evidence shows that:--

The FIR was lodged in his presence. He immediately took over the investigation. Thereafter he recorded the statement of the informant and inspected the knife, which had been used by the appellant Ramesh in the incident. He recorded the statement of appellant Ramesh at 8.30 a.m. He reached District Hospital Bahraich, where he recorded the statements of Gayasuddin, Om Prakash, Jitendra Singh, Nizam and Arun Kumar, At 11.00 a.m. he reached the place of incident, where he recorded the statement of Hirday Ram alias Motu and prepared the site plan on the pointing out of the informant and others. He seized from the place of incident plain and blood stained earth in separate containers under a recovery memo. He did some other investigation also, but since in our view a reference, to it is not necessary for disposal of this appeal, we are not adverting to it.

On 8-7-1978, he submitted the charge-sheet against the appellant Ramesh and Chhutkan.

10. The case was committed to the Court of Session in the usual manner, where the appellant and co-accused Chhutkan were charged for offences punishable under Section 302/34, IPC and 324/34, IPC, to which charges they pleaded not guilty and claimed to be tried. It is pertinent to mention that Chhutkan died prior to the commencement of trial.

11. During the trial, in all, the prosecution examined 14 witnesses. Out of them, three, namely Sidheshwar Singh, Arun Kumar and Nizam P. Ws. 1, 2 and 3 respectively were examined as eye-witnesses.

In defence three witnesses, namely, Dr. S. Prasad, Dr. S. K. Srivastava and Ratnakar Prasad D. Ws. 1, 2 and 3 respectively were examined; the first who was posted as Superintendent, District Hospital, Bahraich to prove the injuries of the appellant; the second to prove that he had admitted the appellant in the Surgical Ward of District Hospital Bahraich; and the third to prove that the appellant was not arrested in the manner furnished by the prosecution but at about 4.00 a.m., on the date of the incident, two constables took him from the shop of Bindu Kumar, where he was lying down.

The learned trial Judge believed the prosecution evidence vis-a-vis the appellant and co-accused Chhutkan and convicted and sentenced the appellant, as also co-accused Chhutkan in the manner stated in paragraph-1.

12. Aggrieved by his conviction, the appellant Ramesh preferred criminal appeal No. 564 of 1980 and Chhutkan preferred Criminal Appeal No. 570 of 1980. It is pertinent to mention that Chhutkan died during the pendency of the appeal and, therefore, his appeal was ordered to abate in terms of Section 394, Cr. P. C.

13. We have heard learned counsel for the parties and perused the entire record and are constrained to observe that we do not find any merit in this appeal. In the instant case, to fix the involvement of the appellant in the crime there is not only the testimony of three eye-witnesses, two out of whom, namely, Arun Kumar (P. W. 2) and Nizam (P.W. 3) are injured witnesses but also there is evidence under Section 32 of the Indian Evidence Act in the form of dying declarations of Gayasuddin and Om Prakash. In our judgment, the evidence of both these categories inspires confidence.

We, now propose furnishing our reasons for reaching the aforesaid conclusion.

14. We would first like to begin with the ocular account furnished by Sidheshwar (P.W. 1), Arun Kumar (P.W. 2) and Nizam (P.W. 3). Their evidence shows :-- On

the date and time of the incident i.e. 12-6-1978, at about 3.00 a.m., they were sleeping in the premises of Chitrashala Talkies in District Bahraich. At that time, the appellant, co-accused Chhutkan and co-accused Munnar, armed with knives came. They entered inside the quarter of the deceased Gyasuddin and started assaulting him. Hearing the cries, they along with Jitendra Singh and Om Prakash, who were also sleeping in the premises of Chitrashala Talkies, rushed to the place of the incident, whereupon, two out of them, namely, Arun Kumar and Nizam as also Om Prakash and Jitendra Singh were assaulted by the appellant, co-accused Chhutkan and co-accused Munnar with knives. After precariously injuring, Gyasuddin and Om Prakash and injuring three others, namely, Arun Kumar, Nizam and Jitendra Singh, Chhutkan and Munnar ran away but appellant-Ramesh was apprehended on the spot along with a blood stained knife after being given some beating. This incident was seen in electric light.

14-A. We have gone through the statement of the aforesaid three eye-witnesses and make no bones in observing that we find their evidence to be credible. In the first place, they have explained their presence at the place of the incident.

Sidheshwar Singh has stated that at the time of the incident, he was employed as Assistant Manager in Chitrashala Cinema, Bahraich and was sleeping in the premises of the said Cinema and Arun Kumar and Nizam have also stated that at the time of the incident they were sleeping in the premises of the said Cinema.

Secondly, the manner of assault furnished by them is corroborated by the medical evidence. They stated that the appellant and the other two co-accused persons belaboured the victims with knives and as we have earlier seen all the victims sustained incised wounds. It is common knowledge that incised wounds are caused by knife.

It is significant to point out that although they were extensively examined but nothing could be extracted therefrom which could create even an iota of doubt in our mind regarding their presence at the place of incident.

15. Assurance to the claim of the said eye-witnesses of having seen the incident is lent by the circumstance that Sidheshwar (P.W. 1) within one and a half hour of

the incident taking place, lodged the FIR (We have seen that the incident took place on 11-6-1978, at 3.00 a.m. and Sidheshwar lodged the FIR same morning at 4.30 a.m.). It is pertinent to mention that there is a categorical mention in the F, I. R. that not only he (Sidheshwar) but also Arun Kumar and Nizam saw the incident and also therein all the essential features of the prosecution case including the spot of arrest of the appellant Ramesh have been mentioned.

16. In our view, the ocular account of Sidheshwar, Arun Kumar and Nizam is both individually and cumulatively sufficient to sustain the conviction of the appellant.

17. However, we are fortunate in this case in also having evidence under Section 32 of the Indian Evidence Act against the appellant. This evidence is in the form of dying declarations of Gayasuddin and Om Prakash, which we have extracted in entirety earlier. Their perusal makes it manifest that both of them have categorically stated that appellant Ramesh along with others assaulted them with knives and he was apprehended on the spot.

It is pertinent to mention that the said dying declarations were recorded by Tehsildar Magistrate, Salig Ram Nigam (P.W. 14), who prior to recording them, got the certificate of fitness from Dr. R. K. Srivastava (P. W. 13), who found them in a mentally fit condition to give the declarations. It is also pertinent to mention that neither Dr. Srivastava nor the Tehsildar Magistrate had any animus of grudge against the appellant and in the absence of the same, the former would not have given a false certificate in terms that the deceased persons were fit to make the declarations and the latter would not have recorded them.

17-A. For the said reasons, we feel that these dying declarations also inspire confidence and are both individually and cumulatively sufficient to fix the involvement of the appellant in the incident.

18. We make no bones in observing that the evidence of D. W. 3 (Ratnakar Prasad Sharma) does not inspire any confidence. His evidence shows that :- His house is situated to the south of Chitrashala Talkies. at about 2-2.30 a.m., he heard cries coming from Chitrashala Talkies in terms chor-chor (thief thief). Fifteen to twenty minutes later, he went inside the premises of the talkies and found

Gayasuddin, Om Prakash, Jitendra, Nizam and one other whose name he did not remember in an injured condition. A rickshaw came, on which the said persons were taken to hospital. After some time, he returned home. At about 4.00 a.m. two constables came and took Ramesh (appellant), who was lying in front of Bindu's shop.

19. We have gone through the evidence of Ratnakar Prasad Sharma and find him to be a untrustworthy witness. In his cross-examination, he admitted that he did not inform any officer that two constables had taken away Ramesh (appellant) in his presence. It appears that for the first time in the trial Court he has come out with this story. That apart, his cross-examination shows that while he was standing on the roof of his house, in torch light he saw the constables taking away Ramesh. In our judgment, It is extremely improbable that at about 4.00 a.m. instead of sleeping he would have been standing on his roof. For the said reasons, his evidence does not inspire any confidence.

20. We would be failing in our fairness if before proceeding to the operative part of the judgment we do not advert to the two principal submissions canvassed by Mr. Prem Singh, learned counsel for the appellant. He firstly contended that appellant Ramesh was medically examined by Dr. S. Prasad (P. W. 1) at District Hospital, Bahraich on 1-7-1978 at 12.10 p.m. and was found to have suffered 17 injuries, which have not been explained by the prosecution. These injuries are :-

(i) Soft scab 2 cm x 0.5 c.m. on the back top of the head;

(ii) Serrated depymented are semi-circular 3 cm. x 0.5 cm. on the outer surface right arm upper half;

(iii) soft skin 1 cm. x 0.2 cm. on the right upper lip;

(iv) Almost healed up incised wound 2 cm. x 1 cm. on the back and inner surface right forearm middle with bandage over it 2 meter dressing;

(v) Depigmented area 4 cm. x 0.3 cm. on the back surface right forearm lower part;

(vi) Depigmented area 4.5 cm. x 0.5 cm. on the back surface right forearm 4 cm. above the injury No. 5;

(vii) Multiple depigmented area of various sizes on the back surface right wrist in an area of 4 cm. x 3 cm.;

(viii) soft skin 1 cm. x 0.4 cm. on the back surface right hand surrounded by depigmented area of various sizes in an area of 3 cm. x 2 cm.;

(ix) Almost healed up around 3 cm. x 1 cm. on the web in between the index finger and thumb left hand;

(x) Two circular depigmented area of sizes 2 cm. x 2 cm. and 1 cm x 1 cm. on the back centre surface left elbow at a distance of 1.5 cm. from each other;

(xi) Multiple contusion under surface of the left lower part elbow and left forearm and some swelling lower half of forearm tenderness over the swelling;

(xii) Depigmented area of zigzag type and shape fine in no of varying size 1.5 cm. to 2.5 cm. over left side back below the scapula in an area of 15 cm. x 3 cm.;

(xiii) Soft skin 1.5 cm. x 1 cm. on the right side back 3 cm. behind the post auxiliary fold at the same level;

(xiv) Multiple fading contusions of various sizes on the over surface right thigh middle over aspect 8 cm. x 2 cm. area;

(xv) Multiple fading contusions of various sizes on outer aspect right leg in an area of 5 cm. x 4 cm.;

(xvi) Multiple fading contusions of various sizes on the outer and front aspect left thigh lower half in an area of 8 cm. x 2 cm; and

(xvii) Diffusal swelling tenderness at the end of the index finger left hand.

21. We have reflected over the submission of Mr. Prem Singh and are constrained to observe that we do not find any merit in it. We find that in the instant case the injuries suffered by the appellant have been explained by the prosecution. It is

pertinent to mention that in his dying declaration, Om Prakash has categorically mentioned that appellant Ramesh was apprehended after some beating was given to him. We also find that the said injuries have been explained by Sidheshwar (P. W. 1) in his statement in the trial Court. During the course of his cross-examination (in paragraph-23) he stated that appellant had received injuries on his hands and legs, which were caused to him while he was being apprehended. That apart, it is common knowledge that when an accused is apprehended on the spot, he is given beating. We cannot also lose sight of the grim reality that after the accused is handed over to the police, he is also beaten.

It is pertinent to mention that in his examination-in-chief, Dr. S. Prasad (D. W. 1), who medically examined the injuries of the appellant on 1-7-1978, at 12.10 p.m., stated that they were about three weeks old. Since the incident took place on 12-6-1978, at about 3.00 a.m., It appears that these injuries were caused to the appellant-Ramesh during the course of his arrest as is the prosecution case.

For the said reasons, this submission fails.

22. Secondly, Mr. Prem Singh urged that even if the prosecution story is accepted on its face value, no offence under Section 303/ 34, IPC would be made out against the appellant and only one under Section 304(II)/ 34, IPC would be made out against him. He urged that there is no evidence to show as to which of the three persons, including the appellant, were responsible for the solitary incised wound suffered by the deceased Om Prakash and injury No. 3 suffered by deceased Gyasuddin underneath, which autopsy surgeon found left pleura punctured

and left lower lobe of left lung punctured and which proved to be fatal.

23. We have reflected over the said submission and find no merit in it. It is true that neither the ocular account nor dying declarations make it manifest that as to who amongst the three assailants was responsible for the fatal injuries of the deceased persons but in our view in this case this would make no difference because there is sufficient evidence to show that the murder of Gyasuddin was committed by appellant Ramesh along with his two associates in furtherance of

their common intention. The evidence is that accused persons nursed ill-will against Gyasuddin. On the night of 12-6-1978, at 3.00 a.m., they entered into the quarter of Gyasuddin and launched concerted assault with knife on his person; causing him three incised wounds, one of which, injury No. 3 proved fatal. In our Judgment, It is tailor made case, where Section 34 of the Indian Penal Code would have application. In our view, circumstances make it absolutely manifest that the appellant along with his two associates in furtherance of their common intention to murder Gyasuddin committed his murder. Hence, we feel that it is absolutely inconsequential that prosecution has failed to specify as to which of the accused persons caused the fatal injury suffered by Gyasuddin.

24. It is true that Dr. Nirankar Singh (P.W. 4), who performed the autopsy on the corpse of Gyasuddin, in his examination-in-chief, did not state that the injuries suffered by Gyasuddin were sufficient in the ordinary course of nature to cause death but in our view this would make no difference because the Supreme Court in the oft-quoted case of Brij Bhukhan v. State of U.P. reported in AIR 1957 SC 474 : 1957 Cri LJ 591, in para 6 has laid down the ratio that if a bare perusal of the injuries makes it manifest that they are sufficient in the ordinary course of nature to cause death, then the absence of the medical evidence to the said effect would be no impediment in the way of Court in recording a conviction for the offence punishable under Section 302, I.P.C. In our judgement, a perusal of injury No. 3 suffered by Gyasuddin, coupled with the internal damage beneath it, makes it manifest that it was sufficient to cause his death in ordinary course of nature. Since the said injury was caused by appellant-Ramesh and his two associates in furtherance of their intention, an offence punishable under S. 302/ 34, IPC would be made out against them.

25. For the aforesaid reasons, we confirm the conviction of the appellant Ramesh on both the counts namely, under Sections 302/34, IPC and 324/34, IPC and the sentences of imprisonment for life on the former count and two years' R. I. on the latter count awarded to him and dismiss this appeal. The appellant is on bail. He shall be taken into custody forthwith to serve out his sentences.