

Ramdeo and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-17-2003

Reported in : 2003CriLJ4082

Judge : M.C. Jain and ;K.N. Ojha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300 and 323

Appeal No. : Crl. A. No. 2658 of 1981

Appellant : Ramdeo and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.N. Mulla and ;A.N. Mulla, Advs.

Judgement :

K.N. Ojha, J.

1. Appellants Ramdeo, Harihar, Suresh and Lallan have preferred this appeal against order of conviction and sentence dated 6-11-81 passed by learned VI Additional Sessions Judge, Deoria in S.T. No. 30 of 1981, State v. Ramdeo and others, by which the appellants have been convicted under Section 302 and 323, IPC, both read with Section 34, IPC and have been sentenced to undergo life

imprisonment and six months rigorous imprisonment respectively and the sentences are to run concurrently.

2. After filing the appeal, the accused appellants were granted bail. None appeared from the side of the appellants to argue, hence the arguments of the learned A.G.A. were heard. The appeal is being decided on merits.

3. The incident is said to have taken place on 30-8-79 at about 7.00 a.m. FIR was lodged on the same day at 9.15 a.m. at Police Station Tareya Sujan which is at, the distance of 3 km. from the place of occurrence. It is alleged that in the evening on 29-8-79, complainant Ramashanker was irrigating his field from the canal. It could not be fully irrigated, therefore, he started to irrigate the land in the morning of 30-8-79. His brother Awadh Bihari was also with him. At about 7.00 a.m. on 30-8-79, Ramdeo, Harihar and Suresh, residents of village Mehadiya, P.S. Tareya Sujan, District Deoria, started to obstruct flow of the water. Ramashanker, who is resident of the same village, requested not to obstruct the flow of the water as a little portion of the field was still left to be irrigated. At this, these three accused persons started to abuse him. Ramashanker raised alarm. His brother Awadh Behari also reached. Other accused persons namely Lallan, Ramchandra, Ramadhar, Kartikey, Jamadar and Mangal Prasad also ran there armed with lathis. Ramdeo, Suresh and Harihar caused injuries with lathis to Ramashanker and other accused persons beat him with fists. His brother Awadh Behari tried to save him but he was also beaten by lathis. Awadh Behari fell down, on which, the accused persons sat on his chest, caused injuries with fists on chest and blood came from his mouth. Kartikey and Jamadar were making exhortation. On alarm Bhaggan and Rajamangal reached there and witnessed the occurrence. Awadh Behari became unconscious due to injuries caused to him.

4. Awadh Behari was brought to police station Tareya Sujan by his brother on bullock cart and FIR was lodged by his brother Rama Shanker. The case was registered under Sections 147/323/308, IPC.

5. Awadh Behari and Ramashanker were examined by Dr. Moti Lal Jaiswal at P.H.C. Tamkuhi. Following injuries were found on the body of Ramashanker :--

1. Lacerated wound 1.5 cm. x 0.3 cm. x scalp deep on the left side forehead 6 cm. above left eye-brow. Serum was oozing out from wound.
2. Traumatic swelling 9 cm. x 7, cm. on back of right head. Advised X-ray.
3. Contusions 6 cm. x 2.5 cm. on the posterio lateral aspect and lower 1/3 cm. of left forearm 4 cm. above left wrist joint, red in colour.
4. Complaint of pain on the back but no mark of injury seen.
6. The condition of Awadh Behari was serious, so after examining his injuries at P.H.C. Tamkuhi, he was got admitted in District Hospital, Deoria on 30-8-79 at 7.10 p.m. He was unconscious and his general condition was poor. He died on 31-8-1979 at 10.05 p.m. After his death inquest report was prepared.
7. Doctor Kamlesh Prasad Verma performed autopsy on dead body of Awadh Behari. The following ante-mortem injuries were found on his body :--
 1. Contusion 6 cm. x 4 cm. left side on head 6 cm. above the left ear. On cut echymosis was found present.
 2. Contusion 4 1/2 cm. x 3 cm. left side posterio portion of head. On cut, echymosis was found present.
 3. Contusion 4 cm. x 4 cm. right side on mustoi and posterio part of head. On cut echymosis was found present.
 4. Contusion 6 cm. x 4 1/2 cm. right side head just above the ear. On cut, echymosis was found present.
 5. Contusions 6 cm. x 4 cm. lateral aspect of left middle thigh on cut exchymosis was found present.
 6. Contusion 3 cm. x 3 cm. posterio part on the right side waist 1 1/2 cm. x 1 1/2 cm., above ilioe creast.
 7. Multiple contusions in an area of 8 cm. x 6 cm. back of chest, on cut echymosis was found present.

8. On internal examination clotted blood was found present in subcutaneous, tissues of scalp. Both parietal bones and both mastoid bones were found fractured. Clotted blood was present in the mind and it was congested and there was fracture of the base bone of the brain. In the opinion of the Doctor, the death of Awadh Behari did take place due to shock and haemorrhage as a result of head injury and these injuries were sufficient to cause death of Awadh Behari.

9. The police sub-inspector Lal Ji Singh made investigation and recorded the statement of the witnesses, prepared site-plan, took blood stained and plain earth from the spot. He tried to arrest the accused persons but they were absconding. After completing the investigation, he submitted the charge-sheet against appellants and Ram Chandra, Ram Adhar, Kartikey, Jamadar, Mangal Prasad under Section 147, 302, 307, 149, IPC.

10. The appellants and other accused denied the commission of the offence to have been committed by them. It is also alleged that to the west of the house of Awadh Behari, there was a land belonging to the accused persons, Awadh Behari was willing to purchase it. The accused were not ready to transfer that land in favour, of Awadh Behari and, therefore, they have been falsely implicated in this case.

11. After the case has been committed to the Court of Session, accused Ramdeo, Harihar, Suresh, Lallan, Ram Chandra, Ram Adhar, Kartikey, Jamadar and Mangal were charged under Sections 147, 302 read with Section 149 and 307 read with Section 149, IPC. After the evidence, the learned Sessions Judge found the charges proved against Ramdeo, Harihar, Suresh and Lallan under Sections 302 and 323, both read with Section 34, IPC and rest of the accused were acquitted. Therefore, these four accused have preferred instant appeal before this Court.

12. Prosecution has examined P.W. 1 Dr. Kamlesh Prasad Varma, who performed autopsy on the dead body of Awadh Behari, P.W. 2 is Dr. Moti Lal Jaiswal, who examined the injuries of Awadh Behari and Ramashanker Dubey at P.H.C. Tamkuhi. He had proved injury reports of both these persons. P.W. 3 is Ramashanker, complainant injured and eye-witness of the occurrence. P.W. 4 Raj

Mangal and P.W. 5 Bhaggan are also eye-witnesses of the occurrence, P.W. 6 is Dr. M.S. Alam, who was posted at District Hospital, Deoria and got Awadh Behari admitted in the District Hospital. P.W. 7 is Balmik Prasad Gupta, constable who has stated that inquest report was prepared by the Police Sub-Inspector. P.W. 8 is Head Constable Chotey Lal Varma, who had prepared chick-report and P.W. 9 is Lal Ji Singh, who made investigation and submitted charge-sheet.

13. A perusal of the statement of P.W. 3 Ramashanker Dubey shows that he is natural witness, who was present on the spot because he was helping his brother Awadh Behari in irrigating the land from the canal, when the appellants came armed with lathis and caused injuries to Ramashankar and his brother Awadh Behari. The injuries which were caused to Ramashankar are lacerated wounds on skull, right head, left forearm and nature and extent of the injuries show that these injuries cannot be taken to have been caused to falsely implicate the accused persons. Statement of P.W. 3 Ramashanker Dubey is supported by the statement of P.W. 4 Raj Mangal and P.W. 5 Bhaggan, being the residents of the same village who arrived at the spot. Their statement cannot be doubted as there is no material contradiction in the statement of these eye-witnesses, whose names find place in the FIR which was promptly lodged on the same day within 2 hours 15 minutes at the police station which is at a distance of about 3 miles from the scene of occurrence. First the FIR, was lodged under Section 308, IPC. Both these injured persons were brought to P.H.C. Tamkuhi, but as the condition of Awadh Behari was serious, therefore, he was brought to District Hospital, Deoria, where he succumbed to the injuries. Ante-mortem injuries, which were found on the body of Awadh Behari, aged about 35 years, are in the nature of contusion and as many as four contusions were caused on his head resulting into his death. If two persons were irrigating the land and they were on constant watch that the flow of water is not stopped by any other person and as many as seven injuries were caused to Awadh Behari and four injuries were caused to Ramashanker, it cannot be believed that the injuries were caused by one person. There is specific statement of eye-witnesses that Ramdeo, Harihar and Suresh, armed with lathis, came there and stopped the flow of water and when objection was raised by Ramashanker, they caused injuries to him and his brother Awadh Behari, who was present there. In cross-examination, P.W. 3, Ramashanker has stated that Ramdeo caught hold

of Awadh Behari. FIR shows that Lallan sat down on his chest, pressed it and blood came out of the mouth of Awadh Behari, but ante-mortem injuries found by the Doctor in post-mortem examination, do not show that any injury was caused on chest, though injury No. 7 was shown to be on the back of chest. Therefore, it becomes doubtful as to whether really Lallan had participated in the commission of the crime. But consistent and. natural statement of abovementioned three eye-witnesses including injured Ramashanker is sufficient to conclude that Ramdeo, Harihar and Suresh had thrashed lathi blows on Ramashanker and Awadh Behari, which later on resulted into the death of Awadh Behari.

14. It is broad day light occurrence. FIR has been promptly lodged by name against Ramdeo, Harihar and Suresh. Their role has been specified in the FIR which has been supported by the eye-witnesses and the medical evidence. Both injured were brought to P.H.C. Tamkuhi on the same day and their injuries were promptly, examined by the Doctor and condition of Awadh Behari being serious, he was carried to district hospital, Deoria. Blood was found on the spot. The statement of the Investigating Officer also is consistent with the statement of the eye-witnesses. Thus, it cannot be doubted that Ramdeo, Harihar and Suresh caused injuries to both these persons.

15. A person aged about 35 years has been done to death and in the post-mortem examination as many as four injuries were found on his head and one injury was caused on the forearm and two on the head of another victim Ramashanker. If the intention of these three appellants would not have been to commit the murder, they would have caused injuries on non-vital parts of the body, which might have been sufficient to change the flow of water towards their field, in as much as the evidence shows that neither Ramashanker nor Awadh Behari was armed with lathis. If these persons would have been armed with lathis, they would also have resisted. These persons were looking after the flow of water only and still so many injuries were caused to them and the injuries caused to Awadh Behari were so grievous in nature that he became unconscious on the spot and he could never gain consciousness and ultimately parted with his life. In our opinion, the intention of committing murder is evident. So far other injuries are concerned, the charge under Section 323 read with Section 34, IPC is proved against Ramdeo, Harihar

and Suresh.

16. Therefore, order of conviction and sentence passed against the appellants Ramdeo, Harihar and Suresh are affirmed but order of conviction and sentence passed against appellant Lallan are set aside.

17. The appeal is partly allowed. The order of conviction and sentence passed against appellant Lallan are set-aside and his appeal is allowed. The appeal of the appellants Ramdeo, Harihar and Suresh is dismissed. Their bail is cancelled. Let them be taken into custody and sent to jail to serve out the sentence.

18. Let a copy of this judgment along with the record be sent down to the trial Court for compliance and report to this Court within two months from the date of the receipt of the record.

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