

**Rakesh and ors. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/489868](http://sooperkanoon.com/489868)

**Court :** Allahabad

**Decided On :** Jan-31-2003

**Reported in :** 2003CriLJ3446

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

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300 and 302

**Appeal No. :** Criminal Appeal No. 1325 of 1980

**Appellant :** Rakesh and ors.

**Respondent :** State

**Advocate for Def. :** Ratan Singh, A.G.A.

**Advocate for Pet/Ap. :** Madan Bihari Lal, ;A.K. Srivastava and ;R.K.K. Trivedi, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**M.C. Jain, J.**

1. There are four appellants, namely, Rakesh, Ram Babu, Rajendra Kumar alias Rajjan and Basant who have preferred this appeal against judgment and order dated 6-6-1980 passed by Sri D.K. Trivedi, the then VII Additional Sessions Judge,

Kanpur in Sessions Trial No. 64 of 1979. Each of them has been convicted under Section 302 I.P.C. read with Section 34 I.P.C. and sentenced to life imprisonment. It was one Prem Kumar alias Chillu who was murdered in this incident which occurred on 24-11-1977 at about 7.15 P.M. in Ahata Sawai Singh situated in Pheelkhana, District Kanpur Nagar. The distance of the police station from the place of occurrence was only 4 Furlongs and the report had been lodged by Manoj Kumar Dixit P.W. 3 (nephew of the deceased), not an eye-witness.

2. The allegation was that the victim was caught hold of by the accused Ram Babu and Rakesh and he was stabbed by the other two accused Rajendra Kumar alias Rajjan and Basant on the stairs leading to the Chabutra of the house of one Triloki Babu situated in Ahata Sawai Singh. The incident was witnessed by Shyam Sunder P.W. 5 and Prem Shankar P.W. 6 and few others. On being informed by someone, Manoj Kumar Dixit P.W. 3 reached the place of the incident and found his uncle Prem Kumar alias Chillu lying in a pool of blood in an injured and unconscious condition. Manoj Kumar Dixit P.W. 3 took his uncle Prem Kumar alias Chillu to U.H.M. Hospital Kanpur where he was declared brought dead. He then lodged the F.I.R. at 9.30 P.M. the said night. The names of the accused or the witnesses were not mentioned in the F.I.R. and the same came to light during investigation which also revealed enmity between the accused and the deceased named above.

3. The post-mortem over the dead body of the deceased was conducted by Dr. B. D. Ravi P.W. 1 on 25-11-1977 at 3 P.M. The deceased was aged about 28 years and 3/4th (sic) had passed since he died. The following ante-mortem injuries were found on his person :

1. Abrasion 2.5 cm x 3/4 cm on outer half of right clavicle.

2. Abrasion 3 cm x 1 .5 cm on right deltoid.

3. Incised wound 3.5 cm x 1/3 cm x subcutaneous tissue deep on left chest 10 cm below arm-pit.

4. Seven linear abrasions in an area of 13 cm x 11 cm on left side abdomen, 1 cm to 5 cm in length in lumbar region.
  5. Incised wound 3 cm x 3/4 cm x subcutaneous tissue deep, 4.5 cm above the left anterior superior iliac spine.
  6. Stab wound 4 cm x 1 cm x peritoneal cavity deep on tip of right ninth costal cartilage.
  7. Stab wound 5 cm x 2 cm x peritoneal cavity deep on left suprapubic region.
  8. Incised wound 1 cm x 3 cm x subcutaneous tissue deep on the front of right thumb.
  9. Incised wound 1.5 cm x 4 cm x muscle deep on right (sic) eminence.
  10. Incised wound 1.4 cm x .4 cm x muscle deep on front of middle digit of left index finger.
  11. Incised wound 1.6 cm x .5 cm x muscle deep just below left middle finger.
  12. Incised wound 1.4 cm x .3 cm x muscle deep on front of first digit of left middle finger.
  13. Incised wound 3.5 cm x 1 cm x bone deep on the back at the level of 8th thoracic vertebra slightly to the right from the midline.
  14. Three abrasions linear 2 cm x 9.5 cm on back of left arm.
4. The abdominal walls, small intestines and liver were found cut. Injuries Nos. 1, 2, 4 and 14 could have been caused on a fall while the others could be caused by knife. According to the Doctor, the cause of death was shock and haemorrhage as a result of the injuries sustained by the deceased which were sufficient in ordinary course of nature to cause death and it might have taken place between 7.30 and 8 P.M. on 24-11-1977.

5. The prosecution, in all, examined seven witnesses including Doctor and Investigating Officer. The eye-witnesses were Shyam Sundar P.W. 5 and Prem

Shankar P.W. 6 while Manoj Kumar P.W. 3 was the informant of the case. Sri Gopal Dixit P.W. 4 was the brother of the deceased. The evidence adduced by the prosecution found favour with the learned trial Judge who recorded the impugned judgment.

6. The accused denied the allegations of the prosecution and so also their complicity in the crime. Their contention was that they had been falsely implicated due to party factions and police enmity. Jageshwar Dayal 'Nashtar' D.W. 1. Raj Kumar Trivedi D.W. 2 and Dinesh Singh, Constable D.W. 3 were examined in defence by them.

7. At the hearing of the appeal nobody has turned up from the side of the appellants even at the revision of the list, though they are represented on record by Sri Madan Bihari Lal and Sri A.K. Srivastava, Advocates. It was Sri Madan Bihari Lal who had filed this appeal as counsel for the appellants. We have heard Sri Ratan Singh, learned A.G.A. on behalf of the respondent-State and have carefully gone through the record of the case which has been summoned before us. We propose to decide the appeal on merits adverted hereinbelow to the important aspects of the matter at hand.

8. To begin with, it deserves mention that the F.I.R. of the incident is prompt having been lodged without loss of time by Manoj Kumar Dixit P.W. 3 nephew of the deceased. He is not an eye-witness and had reached the place of incident on being informed by someone that his uncle was lying injured there. He had found him lying in a pool of blood in injured and unconscious condition. The names of the assailants and the witnesses are not mentioned in the F.I.R. which indicate that it is a spontaneous document. Naturally, first anxiety of the nephew of the victim was to first remove him to the hospital to save his life, if possible. He first took him to the hospital where he was declared dead. Thereafter he lodged a written F.I.R. at 9.30 P.M. the same night. So the F.I.R. of the case is a prompt and genuine document.

9. So far as the question of motive is concerned, it is not very important in this case because the assailants (appellants) came to light during investigation against whom Shyam Sundar P.W. 5 and Prem Shankar P.W. 6 have rendered the eye-

witness account. Still, the prosecution has placed on record the facts known to it concerning the previous background. Sri Gopal Dixit P.W. 4 is the elder brother of the deceased and he stated that the accused-appellants belonged to one party and they were on inimical terms with the deceased, who was a daring person of fearless nature. He testified that the appellants and deceased had quarrelled in jail as well and about 2-3 days before Deepawali, there was a compromise between them and the deceased. The incident took place after Deepawali on 24-11-1977. It appears that the crack of differences had mended only on the surface and the appellants continued to bear grudge against the deceased in their hearts. He was apparently lulled and trapped because of compromise arrived at a few days before. They took him on the fateful day and killed him. Therefore, it also cannot be said that the appellants had no motive to commit the murder of the deceased.

10. We note on going through the impugned judgment that an argument was raised before the trial Court that the names of the assailants were not mentioned in the Panchayatnama. We find that it is well explained. By the time Panchayatnama was prepared, the names of the assailants had not been disclosed to the officer making the inquest report. No names were mentioned in the F.I.R. and no witness had at all by then given out the names either of the accused. It was, therefore, not possible for the officer making inquest report to record the names of the accused in the Panchayatnama. Needless to say, the object of holding an inquest report is simply to make an investigation and to draw up a report of the apparent cause of death, describing such wounds, fracture and other marks of injury, as may be found on the body and stating in what manner and by what weapon or instrument, if any, such mark or injury appears to have been inflicted. It is not necessary that the names of the assailants should be contained in the inquest report. The present case is still different because it was not possible to mention the names of the assailants as the same were not known to the Investigating Officer at the time of preparation of inquest report. The Investigating Officer recorded the statement of Sri Gopal Dixit P.W. 4 after preparation of the inquest report and then came to know the names of the appellants and the witnesses. No doubt, Sri Gopal Dixit P.W. 4 was present when the inquest report was prepared. However, even if he would have given the names of the assailants or the witnesses before preparation of the inquest report, the

same could not be incorporated by the Investigating Officer because Sri Gopal Dixit was not an eye-witness and his testimony with regard to the names of the accused and witnesses could be no better than hearsay. Indeed, no Investigating Officer having even a little experience could have made mention thereof in the inquest report without ascertaining the true facts. Under these circumstances, it was quite logical that the names of the assailants could not be mentioned in the inquest report.

11. We also note on going through the impugned judgment that an attempt was made by the defence to create doubt as to the place of occurrence which, according to the prosecution, was stairs leading to the Chabutra of the house of one Triloki Babu situated in Ahata Sawai Singh School. Raj Kumar Trivedi D.W. 2 was examined to say that he had seen the victim lying injured in the drain in the Chawal Mandi Wali Gali at about 7.45 p.m. From there, the house of Triloki Babu was not visible which was at a distance of 100 paces. However, he admitted that he never told the accused about it, though he knew them for about 25 years. He did not speak about this fact to the police either. He did not know parentage of the victim or any other details about him. It was apparent that he came to depose in favour of the accused, falsely disputing the place of incident. He has rightly been disbelieved by the trial Court. It was proved by trustworthy evidence of the eye-witnesses Shyam Sundar P.W. 5 and Prem Shankar P.W. 6 that the incident had taken place at the stairs leading to the Chabutra of Triloki Babu in the Ahata Sawai Singh. It was at that spot that Manoj Kumar Dixit P.W. 3 had also found his uncle lying in injured condition where he had hurried on being informed by someone immediately after the incident.

12. We gather from the perusal of the impugned judgment that another argument was raised from the side of defence that the other independent witnesses had not been examined, though a crowd had allegedly collected at the spot as per the testimony of Shyam Sundar P.W. 5 and Prem Shankar P.W. 6. We agree that the learned trial Judge rightly rejected this contention. The prosecution is not supposed to multiply the evidence. It is the quality of evidence, and not the quantity that matters. In our view also, Shyam Sundar P.W. 5 and Prem Shankar P.W. 6 were independent witnesses who plausibly explained their presence at the

spot. They had no axe to grind against the accused and their testimony had a ring of truth proving beyond doubt the accused-appellants to be the culprits of the crime.

13. Another argument before the learned trial Judge, as gleaned from the perusal of the impugned judgment, was that it had come on record that the deceased was involved in a number of criminal cases and as such he had a number of enemies who could have killed him. In our opinion, this argument was also rightly rejected by the trial Court. The accused-appellant could not gain any point by the mere fact that several criminal cases were there against the deceased. It did not mean that he had lost the right of his life. This factum could not wash away the impartial eye-witness account of Shyam Sundar P.W. 5 and Prem Shankar P.W. 6 proving the accused-appellants to be the assailants of this crime. So-called unsavoury antecedents of the victim cannot earn benefit of doubt to the accused-appellants.

14. We note from the impugned judgment that the testimony of the eye-witnesses Shyam Sundar P.W. 5 and Prem Shankar P.W. 6 was subjected to criticism, branding them as chance and interested witnesses incapable of belief. On thoroughly examining their evidence in the light of other factors and circumstances we do not see any justification to deem their testimony to be tainted. They were neither shown to be thick with the deceased or his family nor inimical to any of the accused-appellants. Shyam Sundar P.W. 5 gave appealing explanation about his presence at the spot that he was going to the shop of Mangali Halwai to purchase sweetmeat at about 7.15 p.m. on the fateful day. When he reached near Ahata Sawai Singh, he heard noise from the side of the house of Triloki Bahu. Looking to that side he saw Chillu lying on the staircase leading to the Chabutra of the house of Triloki Babu. The appellants Rajendra alias Rajjan and Basant were stabbing him while two others, namely, Ram Babu and Rakesh were holding him. Chillu was crying for help. Two or three persons came from the other side whereupon the accused fled away. He stated that he saw the incident in the light of a bulb and also in the light emanating from the tube-light of the house of Triloki Babu. According to him, Prem Shankar P.W. 6 and Harish Chandra had come from the side of public latrine. He disclosed his presence at the spot on being interrogated by the Investigating Officer. It was Sri Gopal Dixit P.W. 4 who had informed the

names of the assailants to the Investigating Officer as rumoured in the locality and the Investigating Officer came to locate and interrogate this witness. The accused could not prove any enmity with this witness. Nor could they show that either he was friendly with the deceased or his family members. Rather, the accused attempted to create indirect pressure on him. It is there in his statement that the proceedings under Section 107/116. Cr.P.C. had been initiated against him after this incident at the instance of the accused. He belongs to the same locality and had every occasion to be present at the place of incident as explained by him. He categorically denied that he was in any party. He was a disinterested person and there is nothing unusual that after the incident he did not go to inform the police or family members of the deceased. He was going to purchase sweets. He went to purchase sweets and came back. He saw a crowd. It was not expected of him, a disinterested person, to have gone to the police when he was not the only person present at the place of incident. He had no axe to grind against the accused. Nor did he have any concern with the deceased. Having regard to the general apathy and indifference of the public relating to crimes, the way in which this witness conducted himself is not unusual.

15. We also do not see anything to discredit the testimony of Prem Shankar P.W. 6 who has fully supported and corroborated the statement of Shyam Sundar P.W. 5 as regards the incident and part played by the accused persons that Rajendra and Basant had stabbed the victim whereas Rakesh and Ram Babu were holding him. He explained his presence that he was going from Parade Market to his house when he saw the incident in the light of bulb and tube light emanating from the window of the house of Triloki Babu. At that time, he was returning home with a load of cloth, which he used to sell. He has a house in the Chawal Mandi also where he keeps his cloth which he sells in different markets. Usually he does business in Babu Purwa and Parade. On being interrogated, he made his statement to the Investigating Officer. He cannot be termed to be a chance witness. It has also been explained by him that due to fear, he could not proceed further and placed his load in the Gali. According to him, many persons had collected when the injured was carried in a Rikshaw by Manoj Kumar Dixit. It is also in his statement that the accused were of bad character. Therefore, he did not go to the police station or to the house of injured, though he had told about the

incident to several persons. The statement of the witness is quite natural and reasonable. He too was a disinterested person with no axe to grind against the accused or to favour the family of the deceased. In other words, he had no motive against the accused persons to implicate them falsely.

16. On carefully scrutinizing the record and evidence, we endorse the view taken by the learned trial Judge. It admits of no doubt that the four accused-appellants committed this murder by pre-planning and pre-meditation. They were acting in concert and sharing common intention of one another. All the four played potent role in liquidating the deceased. As many as 14 injuries were caused on his person out of which 10 were in the form of stab or incised wounds. The accused-appellants Rakesh and Ram Babu who caught hold of the victim played no lessor role as they pinned him down sealing every scope of his escape and facilitating repeated blows on him by the other two, namely, Rajendra Kumar alias Rajjan and Basant. All of them committed an offence punishable under Section 302 I.P.C. read with Section 34, I.P.C. and they have rightly been sentenced to life imprisonment.

17. In view of the above discussion, we see no merit in this appeal and it is hereby dismissed.

18. The appellants Rakesh, Ram Babu, Rajendra Kumar alias Rajjan and Basant are on bail. The Chief Metropolitan Magistrate, Kanpur Nagar shall cause them to be arrested and lodged in jail to serve out the sentence of life imprisonment.

19. Let a copy of this judgment along with record of the case be immediately sent to the Court below for needful compliance under intimation to this Court within two months from the date of receipt.