

Ram Ratan Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-01-2002

Reported in : 2002CriLJ2688

Judge : Binod Kumar Roy and ;U.S. Tripathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 307, 323 and 324

Appeal No. : Criminal Appeal No. 517 of 1993

Appellant : Ram Ratan

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Samit Gopal, ;Ram Jee Saxena, ;R.L. Verma, ;Satish Trivedi, ;S.C. Shukala and ;L.V. Singh, Advs.

Disposition : Appeal dismissed

Judgement :

U.S. Tripathi, J.

1. Appellant Ram Ratan has preferred this appeal against the judgment and order dated 29-3-1993 passed by Special Judge/Additional Sessions Judge, Shahjahanpur in Sessions Trial No. 339 of 1991 convicting the appellant under

Section 323, 324 and 302, I.P.C. and sentencing him to undergo R.I. for a period of 3 months under Section 323, I.P.C, R.I. for a period of one year under Section 324, I.P.C. and imprisonment for life under Section 302, I.P.C.

2. Appellant Ram Ratan was the real brother of Ram Pal and Bheemsen (co-accused who had not appealed). Bheemsen was father's elder brother of Ram Avtar deceased. Maiku Lal (P.W.1) Ram Avtar deceased and Ram Ladete (P.W.2) were real brothers. They and the appellant Ram Ratan were residents of village Babunuwa, P.S. Tilhar, district Shahjahanpur. Houses of appellant and the deceased were previously one and subsequently partitioned and there was an intervening wall between their houses. The house of appellant faced towards north in the lane while that of deceased faced towards west towards rasta.

3. Before a month of the occurrence of this case Ram Ladete (P.W.2) was reading Alha-bok of appellant Ram Ratan. Ram Ratan snatched his book and started reading it sitting on Charpai of Ram Ladete. Ram Ladete removed the appellant from his Charpai. On it Ram Ratan threatened to see him.

4. On 30-10-1990 Ram Ladete (P.W.2) was going to catch fish in the tank of the village through Mend of the field of Bheemsen, father of the appellant Ram Ratan. The Appellant Ram Ratan along with his brother Ram Pal co-accused, met him and caused Lathi injuries on him saying that he had removed him from his Charpai still he dared to pass through his field. Ram Ladete (P.W.2) came to his house and complained about the incident to Maiku Lal (P.W. 1) and Ram Avtar deceased. On it they decided to complain to the appellant. Maiku Lal (P.W.1), Ram Ladete (P.W.2) along with Ram Avtar deceased went to the door of appellant at about 4.00 P.M. and complaining him about the incident told that they were going to lodge report of the occurrence. Appellant Ram Ratan and his father Bheemsen tried to stop them. Ram Ratan was having licensed gun of his father Bheemsen. Ram Avtar deceased told that he has no relation with them as they had caused injuries to his brother Ram Ladete and he would certainly lodge report. On it Bheemsen exhorted Ram Ratan appellant to shoot him as he claimed a big report lodger. On his exhortation appellant Ram Ratan fired from licensed gun of his father on Ram Avtar deceased who sustained injuries and fell down. Laxman

(P.W. 3) who was taking bath on the public tap also sustained injury. Besides Maiku Lal (P.W.1) and Ram Ladete (P.W.2) the occurrence was witnessed by Laxman (P.W. 3) and Ramadhin also. Ram Avtar died on the spot and the appellant and the other accused ran away.

5. Leaving the dead body of Ram Avtar deceased in the watch of family members Maiku Lal (P.W.1) came to police station Tilahar at 5.30 P.M. where he lodged oral report. Chik F.I.R. (Ext-Ka-1) was prepared by Head Constable Samar Pal Singh (P.W. 8) . who made an endorsement of the same at G.D. report (Ext.Ka-5) and registered a case under Section 302, 307 and 323, I.P.C. against Bheemsen, Ram Ratan and Ram Pal Singh. Injured Laxman (P.W. 3) who had also gone to the police station was sent to Primary Health Centre, Tilhar for medical examination where he was medically examined at 7.15 P.M. by Dr. S.K. Agrawal (P.W.5) who found multiple firearm wounds of entry about three in number over front of left thigh and left knee joint in an area of 27 cm x 9 cm size varying from 0.4 cm x 0.4 cm x muscle deep to 0.4 cm x 0.3 cm x muscle deep. Margins inverted. No blackening or tattooing present. The Doctor prepared injury report (Ex. Ka-13).

6. The investigation of the case was taken up by Krishna Kumar Singh (P.W. 7), who interrogated Maiku Lal (P.W.1) and Head Moharrir Samar Pal Singh (P.W. 8) at the police station and thereafter reached the place of occurrence. On the spot he conducted inquest of dead body of Ram Avtar deceased and got prepared inquest report (Ext.Ka-6) and other relevant papers (Ext.Ka-7 to Ka- 10) through Sub Inspector Devendra Singh. He sealed the dead body and handed over it to Constables Vinod Kumar (P.W.6) and Khedu for taking to mortuary for post mortem. The I.O. interrogated Ram Ladete (P.W.2) and sent him to Primary Health Centre, Tilhar through Chiththi Majrubi for medical examination. Ram Ladete (P.W.2) was medically examined on 31-10-1990 at 00.50 A.M. by Dr. S.K. Agarwal (P.W.5) who found one contusion 9 cm x 6 cm over right side of right leg 5 cm above the right ankle joint and prepared injury report (Ext.Ka-4).

7. The I.O. recovered empty cartridge and wad from the spot and prepared recovery memo (Ext.Ka-12). He also inspected place of occurrence and prepared site plan (Ext.Ka-13). He interrogated Laxman (P.W.3) and other witnesses.

8. Autopsy on the dead body of the deceased was conducted on 31-10-1990 at 4.35 P.M. by Dr. Pratap Singh (P.W.4) who found multiple gun shot wounds of entry in an area 27 cm x 20 cm on the right side front of chest and upper part of abdomen. Size of wounds varying from 0.3 cm x 0.3 cm x Cavity deep to 0.3 cm x skin deep. Margins inverted. Cause of death was due to shock & hemorrhage as a result of ante mortem firearm injury. The Doctor prepared post mortem report (Ext. Ka-2).

9. On 1-11-1990 the I.O. was going to village Banthara in search of the accused of the case. Accused Bheemsen, Ram Ratan and Rampal met him near the culvert. He apprehended them. Bheemsen was carrying his licensed gun and bandoleer containing 5 cartridges which were taken into possession. Smell of gun powder was coming out from the barrel of the gun. Gun and bandoleer along with cartridges were sealed on the spot and recovery memo (Ext.Ka-15) was prepared. The gun and empty cartridge recovered from the spot were sent to Ballistic Expert for examination and report. On completion of investigation the Investigating Officer submitted charge sheet (Ext.Ka-17) against the Bheemsen, Ram Ratan and Rampal on 11-12-1990.

10. Cognizance of the case was taken up by the C.J.M. who committed the case of appellant and other accused to the Court of Sessions.

11. Appellant Ram Ratan was charged with the offence punishable under Section 302, 307 and 323 read with Section 34, I.P.C. while other accused namely Bheemsen alias Rajpal and Rampal (wrongly mentioned in the charge as Ram Ratan) were charged with the offence punishable under Section 302 read with Section 34, I.P.C. and Section 307 read with Section 34, I.P.C. The appellant and other accused pleaded not guilty and contended that they were falsely implicated on account of enmity because they had taken some more share in the ancestral house. They further contended that Ram Avtar deceased was a person of bad character and was having several enemies and he was killed some where else in the darkness.

12. The prosecution in support of its case examined Maiku Lal (P.W.I), Ram Ladete (P.W.2), Laxman (P.W.3) as witnesses of fact besides Dr. Pratap Singh

(P.W.4), Dr. S.K. Agarwal (P.W.5), Constable Vinod Kumar (P.W.6), S.I. Krishna Kumar Singh, I.O. (P.W.7) and Head Constable Samar Pal Singh (P.W.8) as formal witnesses. The appellant did not adduce any evidence in his defence.

13. The learned Additional Sessions Judge on considering the evidence of the prosecution held that the prosecution successfully proved the guilt of accused Ram Pal for the offence punishable under Section 323, I.P.C, the guilt of accused Bheemsen for the offence punishable under Section 324 read with 34, I.P.C. and guilt of accused-appellant Ram Ratan for the offence punishable under Sections 323, 324 and 302, I.P.C. With these findings he convicted the appellant and other accused under said sections and sentenced accused Rampal to pay fine of Rs. 250/- under Section 323, I.P.C, accused Bheemsen to undergo R.I. for a period of four months and 14 days under Section 324, I.P.C. The appellant Ram Ratan was however sentenced to undergo R.I. for a period of 3 months under Section 323, I.P.C, R.I. for a period of one year under Section 324, I.P.C. and imprisonment for life under Section 302, I.P.C. All the substantiate sentences were ordered to run concurrently.

14. The learned Amicus Curieae informed that the accused; Bheemsen and Ram Pal did not prefer any appeal.

15. The hearing of appeal was expedited by the order of Hon'ble the Chief Justice dated 20-07-2001.

16. On the date of hearing no one turned up on behalf of the appellant to argue the appeal. Since the appellant was in jail, Sri Samit Gopal was appointed Amicus Curiae to facilitate the; disposal of the appeal.

17. We have heard Sri Samit Gopal learned Amicus Curiae on behalf of appellant and learned A.G.A. on behalf of the respondent and have gone through the evidence on record.

18. The identity, death and cause of death of Ram Avtar deceased has not been disputed. Maiku Lal (P.W. 1), Ram Ladete (P.W.2) and Laxman (P.W. 3) have categorically stated that on receiving gun shot injury Ram Avtar deceased fell

down on the spot and died. The I.O. Sri Krishna Kumar Singh (P.W.7) stated that after registration of the case he reached the spot and conducted inquest of dead body of Ram Avtar deceased. He sealed the dead body and sent it for post mortem examination. Constable Vinod Kumar (P.W.6) stated that dead body of Ram Avtar deceased was handed over to him and Constable Khedu Tiwari in sealed condition. Both of them took the dead body in sealed condition to the mortuary and produced before the Doctor along with relevant papers. Dr. Pratap Singh (P.W. 4) stated that he conducted autopsy on the dead body of the deceased and found following ante mortem injuries on his person:-

Multiple gunshot wounds of entry in an area of 27 cm x 20 cm on the right side of front of chest & upper part of abdomen. Size of wounds varying from 0.3 cm x cavity deep to 0.3 cm x 0.3 cm x skin deep. Margins inverted.

The internal examination showed 4th to 8th rib of right side fractured. Pleura lacerated on right side. Right lung lacerated. Pericardium, heart, peritoneum ascending colon of large intestine, liver and right kidney lacerated. Two litres of blood was found in thoracic cavity. One litre blood was found in abdominal cavity. Stomach contained semi digested food material. Small intestine contained semi digested food and gases while large intestine contained faecal matters. He further stated that 10 pellets recovered from right lung and right side of thoracic cavity, two pellets from heart, nine pellets from liver & five pellets from muscles & skin of the right side chest and abdominal wall.

19. In the opinion of the Doctor the cause of death was due to shock and & hemorrhage as a result of ante mortem firearm injuries.

20. The appellant had not challenged the above evidence regarding sustaining firearm injury by the deceased and his death on account of above injury as well as the medical evidence. Therefore, identity, death and cause of death of Ram Avtar deceased has been fully established by the prosecution.

21. According to the prosecution occurrence of the case took place on 30-10-1990 at about 4.00 P.M. in front of the house of deceased situate at village Bamanuwa, P.S. Tilhar. The contention of the appellant was that Ram Avtar deceased was

killed some where else in the darkness. Maiku Lal (P.W. 1) stated that occurrence took place on the Rasta in front of his house. Ram Ladete (P.W.2) also stated that occurrence took place at said place. Laxman (P.W. 3) an independent witness who was having no concern with the family of the deceased and appellant also stated that Ram Avtar sustained firearm injuries at about 4-5 P.M. on the date of occurrence near the public tap. The public tap has been shown by the I.O. in the plan (Ext.Ka-13) near the Rasta in front of house of deceased. Though it was suggested to Maiku Lal (P.W. 1) and Ram Ladete (P.W.2) that appellant was killed some where else, but no counter date, time and place of occurrence had been suggested. It was also suggested to Laxman (P.W. 3) that he sustained pellets injuries in jungle. The above witness has repelled the suggestion and there is nothing on record to support it. Injuries of Laxman (P.W. 3) were examined on the same day at 7.15 P.M. by Dr. S.K. Agarwal (P.W.7) who found the injuries fresh. The report of the occurrence was also lodged at 5.30 P.M. while the distance of P.S. was 10 km..

22. The I.O. visited the spot in the evening of the occurrence and found the dead body of Ram Avtar deceased lying at place 'C' as shown in the site plan which is on the western corner of the rasta in front of the house of the deceased. This fact is also mentioned in inquest report (Ext.Ka-7). It is not the case of the appellant that the occurrence took place some where else and thereafter the dead body of the deceased was brought in front of his house. No such suggestion was also given to the I.O. The I.O. also recovered empty cartridge and wad from the spot. The medical evidence, G.D. retort, presence of dead body, empty cartridges and wad on the place of occurrence supported the ocular testimony of Maiku Lal (P.W. 1), Ram Ladete (P.W.2) and Laxman (P.W.3) that occurrence took place on the date, time and place as alleged by the prosecution.

23. The report of the occurrence was lodged on same evening at 5.30 P.M. The distance of police station is about 10 km. Informant Maikulal (P.W. 1) stated that after the occurrence he went to police station Tilahar where he lodged oral report. Thus, the report was promptly lodged. The learned Amicus Curiae contended that the report was ante time and it was not lodged at the time alleged by the prosecution. He pointed out that the original report does not appear the signature

of any Magistrate and it shows that it was not sent to the Magistrate. Perusal of original report shows that it was sent to office of the Circle Officer and it bears the signature of Circle Officer dated 1-11-1990. There was also endorsement of Circle Officer that report be sent to Court concerned. The absence of the signature of the Magistrate does not show that the report was not in existence on the date and time as alleged by the prosecution. The report contains date, time and place of occurrence, the name of assailant, the weapon used by the accused as well precise manner of the occurrence. Therefore, the F.I.R. is admissible in evidence as corroborative piece of evidence.

24. The motive of the occurrence alleged by the prosecution was that a month before occurrence of this case Ram Ladete (P.W. 2) was reading Alha Book belonging to the appellant. The appellant came there and took the book from him and himself started reading on the charpai of Ram Ladete (P.W. 2). On it Ram Ladete (P.W.2) removed the appellant from his Charpai. On account of it the appellant was having grudge against the Ram Ladete (P.W.2). That on the date of occurrence Ram Ladete (P.W.2) was going to catch fish in the tank through the mend of the field appellant. The appellant and his brother Ram Pal, co-accused, met him on the mend and asked him as to why he was passing through his mend when he had removed him from his Charpai. Saying it they caused injuries on him. On the same day at about 4.00 P.M. Maiku Lal (P.W.I) Ram Ladete (P.W.2) and Ram Avtar deceased went to the house of appellant to complain about the above incident. Ram Avtar deceased also told that he was going to lodge report of the occurrence. This annoyed the appellant, his brother Ram Pal and father Bheemsen. The appellant was having licensed gun of his father. When Ram Avtar started going, Bheemsen and the appellant stopped his way and on the exhortation of Bheemsen Ram Ratan appellant fired gun shot on the deceased.

25. The contention of learned Amicus Curiae was that the motive alleged by the prosecution is very weak and assuming that incident regarding removal of appellant from the Charpai by Ram Ladete (P.W.2) had taken place, it could not have been the motive for committing the murder of Ram Avtar deceased who was first cousin of the appellant. May it be so that the motive was not so strong but it appears that when Ram Avtar insisted that he would lodge the report of the

incident despite of stopping his way by the appellant and his father, this act of Ram Avtar deceased infuriated the appellant as well as his father, and on the instigation of his father the appellant fired gun shot on the deceased resulting into his death. The reaction and retaliation differs from person to person and the prosecution cannot lead evidence as to what was the degree of reaction or retaliation in the mind of an accused and to what extent one can go. Therefore, the occurrence cannot be said without a motive. Moreover, the weakness of motive and absence of motive is not material in this case as the prosecution has relied on the testimony of eye witness and where there is eye witness account of version the motive become immaterial and case is to be decided on the basis of strength of evidence of ocular witnesses.

26. In order to prove manner of occurrence and complicity of the appellant the prosecution had relied on ocular testimony of Maiku Lal (P.W. 1), Ram Ladete (P.W.2) and Laxman (P.W. 3).

27. Maiku Lal (P.W.I) stated that on the date of occurrence he and Ram Avtar deceased were at their house. Ram Ladete (P.W.2), came to the house and told him and Ram Avtar deceased that while he was going to the tank for catching fish through the mend of field of the appellant Ram Ratan, appellant and his brother Ram Pal co-accused, saying as to why he was passing through the mend of their field when he removed him from his Charpai, caused injuries on him. That on it he and Ram Avtar deceased decided to complain the matter to the appellant and his father. The witness in the company of Ram Ladete (P.W.2) and Ram Avtar deceased went to the house of appellant and complained. Ram Avtar also told that he was going to lodge report of the occurrence. On it Bheemsen and Ram Ratan appellant stopped them. Ram Avtar again insisted that he would lodge report because they had caused injuries to his brother. On it Bheemsen exhorted the appellant to kill him and the appellant caused firearm injuries on the deceased.

28. The witness is no doubt real brother of the deceased. But only near and dear accompany with a person to complain the matter. The relationship of the witness is no ground to disbelieve his testimony. The witness has faced cross-examination and there is nothing in his cross-examination, which may make his testimony

unbelievable. It was but natural for the witness to accompany his elder brother Ram Avtar deceased, to the house of appellant to complain about the act of appellant and his brother Rampal. Therefore, the witness had natural and probable occasion for going to house of the appellant and to have observed what happened there.

29. Next witness of the occurrence is Ram Ladete (P.W.2). The witness stated about the incident which took place on the mend of the field of the appellant and further stated that when he came to his house he narrated the above incident to his brother Maiku Lal (P.W. 1) and Ram Avtar deceased who decided to complain and all the three brothers went to the house of the appellant where the matter was complained to Bheemsen father of the appellant. Ram Avtar deceased also insisted that he would lodge report. Saying it he proceeded. The appellant and his father stopped them on the public path but when Ram Avtar deceased again insisted that he would lodge report Bheemsen instigated the appellant to kill him (Ram Avtar) and on his instigation the appellant caused firearm injuries on the deceased.

30. The witness was medically examined on the next day of the occurrence by Dr. S.K. Agrawal (P.W.7) who found following injuries on his person:-

1. Contusion 9 cm x 6 cm present over side of right leg, 5 cm above the right ankle joint.

31. The Doctor opined that injury was simple in nature and could be caused by some hard blunt object. Its duration was about 1/2 day.

32. Duration and nature of injury support the evidence of witness that he sustained blunt object injury on the date of occurrence. The learned Amicus Curiae contended that Ram Ladete (P.W.2) stated in his evidence that Ram Ratan and Ram Pal had caused injuries on him with lathis and Munna and Balram had seen the above occurrence. That he further stated that two persons inflicted lathi blows on him and marpeet went on for about 5 minutes. That on the above circumstances Ram Ladete (P.W.2) would have sustained much more injuries. But he sustained only one injury and the alleged witnesses of the said occurrence

namely Munna and Balram were not examined which indicates that Ram Ladete (P.W.2) is not reliable witness. Having considered the above contention of learned Amicus Curiae we find no force in it. Ram Ladete (P.W.2) was illiterate village person. Generally it is the habit of the witness specially the villagers to exaggerate the matter. The villagers have no knowledge about the singular or plural number and generally they use plural number. They also give time of any incident according to their own speculation, irrespective of its exactness. On this ground their testimony cannot be thrown out. Therefore the manner of incident which took place on the mound of field of the appellant given by the Ram Ladete (P.W.2) is not such which may belie the evidence of the witness. Non examination of Munna and Balram is also not material because that incident was not main incident and it was simply a cause for subsequent incident in which Ram Avtar deceased lost his life.

33. Learned Amicus Curiae further pointed out that Ram Ladete (P.W.2) however admitted in his cross examination that he had engaged his private counsel and his private counsel as well as police officer had told him what evidence he would give in the Court. And this shows that he was a tutored witness. Again we find no force in above contention. If the witness stated that he was told by his counsel and the police as to what evidence he had to give in the Court, it does not amount tutoring him. It would have been a simple indication as about which incident he had to state. Moreover, the witness was entitled to refresh his memory and if his memory was refreshed, it does not amount tutoring. Perusal of entire evidence of the witness shows that he has stated what happened with him and what he observed on the spot. The witness was aged about 20 years and as such did not require any tutoring. He had capacity to narrate what he had seen.

34. No doubt, Ram Ladete (P.W.2) is another brother of the deceased, but his above relationship is no ground to disbelieve his testimony.

35. The next eye witness of occurrence is Laxman (P.W.3). He has stated that on the date of occurrence at about 4-5 P.M. while he was taking bath on the public tap near the school, he sustained firearm injury, but since there was foam of soap on his face, he could not see from which direction the shot came and who fired the

shot. He further stated that Ram Avtar deceased also sustained firearm injury and he died. Further he stated that when he opened his eye he could not see the assailants. The witness was declared hostile by the prosecution. It is true that the witness had not fully supported the prosecution story and had not stated anything about the assailant, but the testimony of the witness supports the date, time and place of occurrence as well as causing firearm injury to Ram Avtar deceased near the public tap and his death on the spot. There may be certain reasons for the witness not to name the assailant, but on account of it the prosecution story is not affected.

36. The testimony of above ocular witnesses is fully corroborated by the medical evidence of Dr. Pratap Singh (P.W.4) and Dr. S.K. Agarwal (P.W.5). The testimony of ocular witnesses also finds support from the F.I.R. and other circumstances of the case referred to above.

37. The contention of learned Amicus Curiae was that the deceased had several enemies on account of he being a person of bad character and he was killed somewhere else in the darkness. But this contention has been belied by the evidence of ocular witnesses, the presence of dead body of the deceased on the spot prompt lodging of the report i.e. much before the darkness as well as the evidence of Laxman (P.W.3) who had no enmity with the appellant or his family. Moreover, the appellant is the first cousin brother of Maiku Lal (P.W.1) and Ram Ladete (P.W.2) and they were not expected to falsely implicate the appellant simply because according to appellant he had taken some more share in the ancestral house of the parties as they were not going to get back the above alleged share by false implication of the appellant. Therefore, we are not inclined to accept the above contention.

38. In view of our above discussion and observation, we find that the prosecution has successfully proved the guilt of the appellant Ram Ratan for the offences punishable under Sections 323, 324 and 302 I.P.G.

39. The appeal is, therefore, devoid of merits and is, accordingly, dismissed.

40. The appellant is already in jail and he shall serve out the remaining sentence.

41. Let a copy of this judgment be sent to C.J.M., Shahjahanpur for information and follow up action.

42. Sri Samit Gopal learned Amicus Cu-riae shall get his fee as per the rules.

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