

**Ramesh Vs. State of M.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/503138](http://sooperkanoon.com/503138)

**Court :** Madhya Pradesh

**Decided On :** Mar-18-2002

**Reported in :** 2002(2)MPHT244

**Judge :** S.S. Jha and ;R.B. Dixit, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

**Appeal No. :** Criminal Appeal No. 226/86

**Appellant :** Ramesh

**Respondent :** State of M.P.

**Advocate for Def. :** S.M.A. Naquvi, Dy. Govt. Adv.

**Advocate for Pet/Ap. :** Sanjay Gupta, Adv.

**Disposition :** Appeal partly allowed

**Judgement :**

**R.B. Dixit, J.**

1. Feeling aggrieved by judgment and order dated 10th October, 1986 of Sessions Judge, Shivpuri, passed in Sessions Trial No. 14/86, convicting appellant for offence under Section 302, IPC and sentencing him to imprisonment for life, appellant has come up in appeal seeking redress praying for setting aside of the

aforesaid sentence and conviction passed against him.

2. Unfortunately, according to prosecution both the parties belong to the same Family Tree and their agricultural land situate adjoining to each other. On 20-11-1985, at about 4 p.m. when Chaturi (P.W. 1) alongwith his son deceased Shivcharan were cutting and collecting bushes of Babool accused Bhasu father of appellant Ramesh and accused Manju stopped them from taking the bushes out of their field. However, deceased Shivcharan insisted to take the bushes from the same way, thereupon accused Manju, Bhasu started assaulting the deceased with lathis and appellant Ramesh armed with sickle alongwith Kishori, Brindawan, Amarsingh, Imrat, Hannu and Puniya wife of accused Bhasu, also joined them.

3. When all the accused person exhorted to finish deceased, appellant Ramesh assaulted the deceased on his head with sickle with such a violent force that the sickle penetrated into the skull and deceased fell profusely bleeding on the ground. When Chaturi intervened, he was also assaulted by Imrat, Hannu, Puniya, Brindawan, Amarsingh and Kishori with fists and lathis. On his raising hue and cry, Kailash, Prabhu and Nanha came for their rescue.

4. Deceased was brought unconscious by his father Chaturi at Police Station, Karera where he lodged First Information Report (Ex. P-1). Deceased was referred to medical examination of his injuries and Doctor R.S. Dixit (P.W. 12) who examined him found as follows:--

(1) A lacerated wound over right fronto parietal region of scalp 3' above ear, oblique 1-1/2' x 1/3' x bone deep.

(2) Incised wound over left fronto temporal region of scalp on left side oblique 1-1/2' x 1/3' x bone deep. On examination of base of it fracture of skull bone felt.

(3) Contusion over base of right shoulder 3' x 2'.

Injury Nos. 1 and 3 caused due to hard, blunt object and injury No. 2 caused due to sharp object which was dangerous to life.

5. Injuries of Chaturi were also examined and the Doctor found an abrasion over right upper arm and another abrasion over right leg and a lacerated wound over back of right upper arm. In view of precarious condition of the deceased, he was referred to District Hospital, Shivpuri for further treatment, where in his X-ray examination of the skull fracture of left fronto parietal bone was detected. Despite best effort, the deceased could not be saved and on 21-11-1985 he succumbed to his injuries. Police prepared Panchanama of the dead-body and the post-mortem was conducted by Dr. Ashok Kumar Jain (P.W. 4) who found one stitched wound of left fronto parietal region and other on right parietal obliquely placed. On deception below left stitched wound clotted blood was present and there was fracture of left skull bone deep up to brain matter and below tear of fracture left side was found ruptured. Cause of death was due to coma and shock caused by fracture and laceration of brain.

6. The Investigating Officer prepared spot map (Ex. P-2) and also collected blood stained soil from the spot. He also apprehended the accused person and on the basis of information received from them recovered a sickle from the appellant and lathis from other accused persons. Accused Bhassu, Kishori and Manju and the appellant had also received injuries in the same incident. However, the appellant sustained only an abrasion over back measuring  $1/3$ rd x  $1/3$  at the level of 12 vertebra, caused by some hard rough object. The learned Trial Court after recording prosecution evidence and examining the accused persons under Section 313, Cr.PC except the appellant acquitted rest of the accused person of the charge under Sections 118, 302 read with Section 149, IPC, however, found appellant guilty of the offence under Section 302, IPC and sentenced him, as stated hereinabove.

7. The learned counsel of the appellant has contended before us that the injuries suffered by Bhassu, Kishori and Manju being lacerated wounds over their skull are in no way simple in nature and since the dispute had started all of a sudden on the ground of taking bushes from the field of the accused person, it was well within their right of self defence as well as in defence of property to have caused injury to deceased and his father. Since it seems that except appellant other accused persons were acquitted of all the charges on the ground of self defence, the

appellant is also entitled to the same benefit as he was not expected to remain a silent spectator when his family members are being mercilessly assaulted by deceased and his father. The learned Govt. Advocate, on the other hand, has supported the findings arrived at by the learned Trial Court.

8. We have considered the rival submissions of the learned counsel of the parties and have carefully perused the evidence on record.

9. Chaturi (P.W. 1) father of the deceased had stated that his son deceased Shivcharan was cutting a Babool tree which was standing on the boundary towards his field and when the deceased was taking the cut portion of the tree from the field of the accused person, he was stopped by accused Bhassu and Manju. The deceased tried to console them by saying that he had not done any damage to the field, Bhassu and Manju caught him and Ramesh and Kishori who were working on the other side of the field also arrived there and then appellant Ramesh assaulted the deceased on his head with sickle. The sickle was assaulted with such a force that it penetrated three-fourth inch inside the skull, Kishori and Imrat also assaulted the deceased with lathi. Later on he was also caught hold by accused Bhassu and Manju and was assaulted by appellant with spade. On his raising alarm Prabhu, Kailash and Nanha arrived there and snatched lathi from Kishori and Kailash pulled out the sickle from the head of the deceased.

10. Witness Chaturi has assigned a very funny explanation, which was not believed by the Trial Court, regarding injuries sustained by the accused person, saying that Puniya had pelted stone towards the deceased which hit the accused person. He has admitted that Ramesh, Kishori and Puniya were picking up ground nut from the field, however, he has denied that there was any crop in the field from which the deceased was taking the bushes. He further admitted that Manju has snatched axe from him and had produced the same at the police station while lodging report of the incident, He has also contradicted his police case diary statement as well as his police report wherein it has not been mentioned that Kishori or Imrat had assaulted the deceased on his head over and above the sickle already fixed by the appellant by assaulting the deceased. There is no mention in the police case diary statement about the deceased being assaulted

with lathis by other accused persons, Appellant or Kishori assaulting him by spade or lathi is also conspicuously absent from his police report and police case diary statement. It shows to some extent the tendency of exaggerating the incident on the part of this witness.

11. Prabhu (P.W. 2) has fully corroborated the statement of Chaturi. However, he has denied recovery of weapon from any of the accused person before him. According to him, the sickle was pulled out by Kailash alongwith lathis which were seized from the accused person were taken by him and produced at the police station. This witness has also seems to have exaggerated the account of incident by stating that it was accused Imrat, who had assaulted the deceased with lathi over the skull already fixed on his head as it does not find place in his police case diary statement.

12. Nanha (P.W. 4) has stated that when accused Bhassu stopped the deceased from taking the bushes and deceased insisted to follow the way through the field, this caused further scuffle between the two. Meanwhile Bhassu and Kishori also arrived there and started beating each other. However, he separated both the parties from each other and went away towards his field. He has no knowledge as to what happened thereafter. In our opinion, it seems that this witness is deliberately avoiding to narrate the remaining part of the story when appellant had assaulted the deceased or he was not at all present on the spot. In the circumstances, the learned Trial Court has rightly discarded his evidence all together.

13. Learned counsel of the appellant has further submitted that where according to independent witnesses Prabhu, the weapons of the offence were taken by him from the spot itself and produced at the police station the evidence of the Investigating Officer that they were recovered at the instance of the accused person, turns out to be totally false and in such a situation, where there is no basis to presume that the injuries of the accused person were caused after the deadly assault made by appellant on the deceased, there arise reasonable doubt in favour of the accused persons about their right of self defence as well as private defence of the property. Strong reliance is placed on the decision of the Apex

Court in case of Mohar Rai v. State of Bihar, reported in AIR 1968 SC 1281, Lakshmi Singh and Ors. v. State of Bihar, reported in AIR 1976 SC 2263, State of Rajasthan v. Madho and Anr., reported in AIR 1991 SC 1065 and Bin Singh v. State of U.P. and Ors., reported in 1992 SCC (Cr.) 915. However, in our opinion, now the Supreme Court has veered to the view as expressed in case of Rajender Singh and Ors. v. State of Bihar, reported in (2000) 4 SCC 298 and Takhaji Hiraji v. Thakore Kubersingh Chamansingh and Ors., reported in (2001) 6 SCC 145 = AIR 2001 SC 2328, that non-explanation of the injuries of the accused person ipso facto can not be held to be fatal to the prosecution if evidence led by prosecution is otherwise clear, cogent and creditworthy. It can not be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the person of the accused by the prosecution witnesses may affect the prosecution case, the Court has to be satisfied of the existence of two conditions : (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consist of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution.

14. In so far as the present case is concerned, in our considered opinion, there is no reason to disbelieve the version of the story coming from the mouth of independent witness Prabhu which is further corroborated by evidence of Chaturi father of the deceased as well as by the medical evidence of the Doctors who had examined the injuries of the deceased and conducted autopsy on his dead-body. Thus the prosecution story as well as the evidence in our opinion so clear, cogent and creditworthy, that there remains no doubt in so far as appellant first coming forward, without any provocation on the part of the deceased and, assaulting the deceased, with a sickle with such a great force that it penetrated deep into the skull. Even if it can be presumed that the dispute had started all of a sudden and on the reason of deceased insisting upon to pass from the field of the accused person. It has caused no damage as there was no crop in the field at that moment

and the appellant, in our opinion, therefore, even if any right of defence of his associates was available to him, had clearly exceeded the right of self defence in causing deadly assault on the deceased.

15. The learned counsel of the appellant in the last has argued that where the appellant himself has sustained injury and his associates co-accused persons had also suffered lacerated wound each on their skull, in that case, even if it is held that he had exceeded his right of self defence, in absence of pre-existing motive, his act, at the most, may fall under the category of offence punishable under Section 304 Part II, IPC.

16. In case of *Tholan v. State of Tamilnadu*, reported in AIR 1984 SC 759, where only one blow with knife was attributed to the accused who having no dispute with the deceased and incident occurred on the spur of the moment, it was held that accused was guilty of committing offence under Section 304 Part II, IPC. In case of *Chanda Lal and Ors. v. State of Rajasthan*, reported in AIR 1992 SC 597, where there was no evidence as to causing of any injury after deceased had fallen down and one of the accused also sustained head injury, conviction under Section 304 Part I, IPC was charged to one under Section 304 Part II, IPC. However, it was a case where the accused was convicted in appeal after about eight years from granting bail after conviction.

17. In case of *K. Ramakrishnan Unnithan v. State of Kerala*, reported in AIR 1999 SC 1428, where narration by eye-witnesses, was consistent about role of accused in giving stabbing blow on vital part, resulted in protruding intestine of deceased and fully corroborated by medical evidence but in absence of any animosity towards deceased and was involved because of altercations with son of deceased and further scenario at time of occurrence not showing that he had intention or requisite knowledge to cause murder, it was observed that accused did not commit offence under Section 300, IPC but under Section 304 Part II, IPC.

18. Learned counsel of appellant has laid stress on certain admission of witness Chaturi (P.W. 1) father of the deceased that the sickle had penetrated deep into skull on account of subsequent force being caused by assault of either Imrat or Kishori by means of lathi. In such a situation no intention to cause death is

available as against the appellant. However, we are of the opinion that this part of the narration seems to be exaggeration in view of the contradictions found in police report and police case diary statements.

19. The Hon'ble Supreme Court in case of Arjun and Ors. v. State of Rajasthan, reported in AIR 1994 SC 2507, has made it clear that relationship between deceased and witnesses is no ground to reject testimony of witnesses where on appraisal of evidence of eye-witness, benefit of doubt given to certain accused, that does not mean that consistent evidence of eye-witnesses should be rejected in respect of other accused also. Similarly in the case of State of Rajasthan v. Kishore, reported in AIR 1996 SC 3035, it has been pointed out that mere fact that investigating officer committed irregularity or illegality during the course of the investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that account.

20. In the case of Leela Ram v. State of Haryana, reported in 2000 SCC (Cr.) 222, it was observed that minor embellishments and trivial discrepancies do not by themselves render the evidence of eye-witnesses unbelievable. Where the eye-witnesses asserted that the accused had fired two shots at the deceased but the doctor conducting the post-mortem examination and finding two entry injuries on the dead-body, agreed at the cross-examination that both the injuries could have been caused by a single hit, it was held that there was no material contradiction instead of hair-splitting on the said point, totality of the situation ought to have been reviewed and evidence should be considered from the point of view of trustworthiness.

21. The Hon'ble Apex Court in case of Sukhdev Yadav and Ors. v. State of Bihar, reported in (2001) 8 SCC 86 = AIR 2001 SC 3678, has further made it clear that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment. Sometimes there is a deliberate attempt to offer the exaggerated evidence and sometimes the witnesses in their over anxiety to do better from the witness box detail out an exaggerated account.

22. Taking into consideration the implications arisen under the aforesaid decisions of the Apex Court, referred to hereinabove, we are of the opinion that in totality of the facts and circumstances brought on record, it is well proved beyond doubt that the appellant had knowledge that the assault with greater force with sickle on the head of the deceased would cause his death. In the circumstances the act of appellant falls under the category of the offence punishable under Section 304 Part I, IPC.

23. For the reasons stated hereinabove the appeal is partly allowed and the conviction and sentence of the appellant under Section 302, IPC is modified to one under Section 304 Part I, IPC and he is sentenced to ten years rigorous imprisonment. Appellant is directed to surrender his bail bond and appear before the Chief Judicial Magistrate, Shivpuri within a fortnight from this order to serve out remaining part of the sentence or else steps be taken to forfeit his bail bond and issuance of the warrant of arrest.

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