

Ratan and anr. Vs. State

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Court : Uttaranchal

Decided On : Sep-29-2003

Reported in : 2004CriLJ486

Judge : S.H. Kapadia, C.J. and; Irshad Hussain, J.

Acts : [Evidence Act, 1872](#) - Sections 3; Code of Criminal Procedure (CrPC) - Sections 161; [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 304

Appeal No. : Criminal Appeal No. 1046 of 2001

Appellant : Ratan and anr.

Respondent : State

Advocate for Def. : S.P.S. Panwar, Govt. Adv.

Advocate for Pet/Ap. : Pushpa Joshi, Adv.

Judgement :

S.H. Tapadia, C.J.

1. This appeal has been filed by Ratan s/o Mohan Lal and by Bhagwan Das, s/o Harnaam Singh, r/o Village Ram Nagar, P.S. Ram Nagar, Distt. Nainital, Ratan was charged for offences punishable under Section 302, I.P.C. and Section 307, I.P.C. read with Section 34, I.P.C. Bhagwan Das was charged for offences punishable under Section 302, I.P.C. read with Section 34, I.P.C. and under

Section 307, I.P.C. Bhagwan Das died during pendency of this appeal.. Hence, the appeal to that extent abates. Ratan has been convicted for the offence punishable under Section 302, I.P.C. for the murder of Ram Chandra (since deceased) and he has been sentenced to undergo life imprisonment under Section 302, I.P.C. by the impugned judgment dated 19th July, 1982 by first Addl. Session Judge, Nainital. Being aggrieved Ratan has come in appeal.

2. The case of the prosecution, briefly, was as follows :

On 17th March, 1981 at about 2.30 p.m. the incident took place in Mohalla Bainba Ghar, Ram Nagar, P.S. Ram Nagar, Distt. Nainital. The report of the incident was lodged by Ram Kumar (brother of the deceased) at P.S., Ram Nagar on the same day at 4.35 p.m. The deceased and Ratan used to do fishing in partnership. Ratan did not clear the partnership accounts. Therefore, the relations of the partners became strained. The deceased used to remind Ratan to settle the accounts. Ratan avoided.

On 17th March, 1981 at 2.30 p.m., Ratan and his brother Bhagwan Das were passing from, in front of, the house of the Ram Chandra, who stopped them and once again asked Ratan to clear the accounts. On this Ratan got annoyed. He abused Ram Chandra. He said that he would clear the accounts then and there. Bhagwan Das also exhorted Ratan to take the given opportunity of sending Ram Chandra to the other world. Instantaneously, Ratan struck Ram Chandra with his axe. On shouts emanating from the spot, Smt. Imratia, mother of Ram Chandra and Ram Kumar came out of the house. Bhagwan Das struck Smt. Imratia with a 'Lathi' as she tried to intervene. Her other son Ram Kumar, her neighbours Hari Om, Subhash and Leela Dhar intervened and tried to apprehend Ratan and Bhagwan Das who however managed to escape. Ram Kumar took his injured brother Ram Chandra and his injured mother Imratia on a 'Thali' to the hospital. Ram Kumar, thereafter, went to Ram Nagar Police Station where he lodged a written report (Ex. Ka7). Ram Kumar dictated the report to Sita Ram (scribe). At that time Ram Chandra was alive. Therefore, the case was registered through chick FIR (Ex. Ka 16) and through entry in General Diary (Ex. Ka 17) under Sections 308/323, I.P.C. Ram Chandra was serious. He was removed from Ram

Nagar Civil Hospital to Kashipur Civil Hospital on the same day where he died at 11.45 p.m. To this effect, a memo was sent by the Kashipur Civil Hospital to the Station Officer of P.S. Kashipur and the case was ultimately converted into Sections 304/323.

At the medical examination of Smt. Imratia in Ram Nagar Civil Hospital on 17th March, 1981 at 3.45 p.m. the following injuries were found on her person as per the injury report (Ex. Kal) :

- i. Complaints of pain here and there; alleged to have been beaten by hand and feet. No external injury seen. No sign of disease.
- ii. Contusion on the scalp 2 cm. x 2 cm. ring was present.

Ram Chandra was examined on 17th March, 1981 at 4.00 p.m. when the following injuries were found as per the injury report (Ex. Ka2) :

- i. Lacerated wound on top of the scalp 'Y' shaped bone deep. Fresh bleeding is present.
- ii. Abraded contusion 6 cm. posterior to (No. 1), 4 cm. x 4 cm. Fresh oozing present. Red in colour.

Thereafter X-ray was also done on Imratia, however, no fracture was detected. However, the X-ray of the scalp of Ram Chandra revealed multiple fractures of scalp bones.

The post-mortem over the dead body of Ram Chandra was conducted by Dr. Arora, P.W. 8. This was on March 20, 1981 at 11.00 a.m. The post-mortem report (Ex. Ka9) revealed the following :

A. Deceased was 35 years of age and he had died in Kashipur Civil Hospital on 19th March, 1981 at 11.45 p.m.

B. The following anti-mortem injuries were found on his person :

- i. Abrasion 2.5 cms. x 1 cm. on the outer side of the left arm middle part.

ii. Lacerated wound 3 cm. x 2.5 cm. skull deep on the right parietal region 12 cms. above the right ear.

iii. Abrasion 2.5 cm. x 5 cm. on left side of the back of the head 12 cm. above the left ear surrounded by swelling 8 cm. x 8 cm.

C. On internal examination the fracture of right parietal bone was found. A triangular portion of bone was depressed and lacerating, membrane and the brain were open on both sides from parietal suture.

D. As per the opinion of the doctor, death occurred due to injuries Nos. 2 and 3 caused on the brain.

The investigation in this case was conducted by Sub-Inspector Mohd. Tausif (P.W. 10). After the accused came to be charge-sheeted, the Magistrate, holding, committed the accused to the Sessions' Court. On 26th October, 1981, the First Addl. Sessions' Judge framed the charges in two sets.

Against Ratan, the charges were under Section 302 and Sections 307/34 on account of injury to the deceased and to his mother Imratia respectively. Whereas, against Bhagwan Das, the charges were under Section 307 and Sections 302/34 on account of common intention with Ratan in the matter of the death of the deceased, Ram Ghandra. Under the circumstances, the two accused had to face the trial. At this stage, we may point out that the lower Court has convicted Ratan only regarding the charge under Section 302. He has been sentenced accordingly for life imprisonment. The other charge has failed.

In their statements before the Court under Section 313, Criminal Procedure Code, both the accused denied the prosecution case. They pleaded 'not guilty.' In his statement under Section 313, Cr. P.C. Ratan, appellant No. 1 stated that the deceased-Ram Chandra owed Rs. 7000/- to him.

3. The prosecution examined 10 witnesses in support of his case apart from relying on documentary evidence. Documentary evidence was led on behalf of the defence as they pleaded alibi.

4. Heard Smt. Pushpa Joshi, learned counsel for the appellant-Ratan, and Shri S.P.S. Panwar, learned Govt. Advocate for the State.

5. We have considered the evidence on record, the circumstances and probabilities of the case.

FINDINGS

6. Smt. Pushpa Joshi, learned counsel appearing on behalf of the appellant-Ratan contended that in this case the medical evidence of Dr. Shanker Sharma from Ram Nagar Civil Hospital, who had examined Ram Chandra on 17th March, 1981 at 4.00 p.m. when he was alive, was contrary to the FIR (Ex. Ka.16). In this connection, it was pointed out that according to Ex. Ka. 16, the injury was caused by an axe. Whereas, according to the evidence of Dr. Sharma (P.W. 1), the injury was caused by the use of the blunt side of the axe. In this connection, it was further submitted that although the informant Ram Kumar (P.W. 2) was available, the prosecution started its case with the evidence of Dr. Sharma (P.W. 1) who has deposed that the injury was inflicted by the blunt side of the axe on the suggestion of the prosecution and thereafter that was followed by the statement of Smt. Imratia (P.W. 3), mother of Ram Chandra and consequently, there was an improvement in the case of the prosecution. It was submitted that the story of the use of the blunt side of the axe has come only from P.W. 1 for the first time and thereafter that story has been picked up by P.W. 3. That even the injury report as indicated in the evidence of P.W. 1 showed lacerated wound on the skull and abraded contusion on the skull. Therefore, there was no incised wound. According to the appellant-Ram Chandra had fallen from the roof, which is corroborated by the evidence of P.W. 8 as there is no incised wound. It was, therefore, contended that P.W. 3 should not be believed.

We do not find any merit in these arguments. According to the evidence of Ram Kumar, informant (P.W. 2) there were partnership disputes between his brother Ram Chandra and Ratan before 17th March, 1981. That on 17th March, 1981 at 2.30 p.m., Ratan and Ghurre (appellants) were walking outside the residence of Ram Chandra, P.W. 2 and P.W. 3 when Ram Chandra accosted Ratan and asked for his dues, when Ghurre exhorted Ratan to finish off Ram Chandra, which led to

altercation. Ratan was carrying an axe and with it he struck on the head of Ram Chandra who fell on the Kharanjha' (i.e. a kutchha road). At that moment, P.W. 3, mother of Ram Chandra, intervened and tried to save her son, Ram Chandra when she was hit by a 'Laathi' by Ghurre. Hearing the altercation, Hari Om (P.W. 5), Subhash (P.W. 4) and Leela Dhar, all neighbours, came out. They tried to stop the appellants, who fled. The injured Ram Chandra and P.W. 3 were taken to Ram Nagar Civil Hospital, where P.W. 3 was examined at 3.45 p.m. on the same day and Ram Chandra, who was alive, was examined at 4.00 p.m. by Dr. Sharma (P.W. 1) who confirmed that both the injured were alive when he had examined them that the injuries were fresh and they were not self-inflicted. He has further deposed that condition of Ram Chandra did not Improve at Ram Nagar Civil Hospital and, therefore, he was taken to Kashipur Civil Hospital, where he died on the day next to his admission i.e. on 19th March, 1981 at 11.45 p.m. Ex. Ka.7 was proved by Sitaram (P.W. 6). He was the scribe to whom the complaint was dictated in the Civil Hospital at Ram Nagar. Hence, it was spontaneous and genuine. In her evidence P.W, 3, mother of Ram Chandra, has also deposed that the incident took place around 2.30 p.m., that she was in her house when she heard her son Ram Chandra quarrelling with Ratan and Ghurre about financial matters; that when she had heard the altercation, she came out of her house when she saw Ratan with an axe and Ghurre with a 'Lathi.' P.W. 3 actually heard the threats from Ratan as quoted in her statement. She also heard the exhortations from Ghurre, which is also quoted in her evidence. P.W. 3 has deposed that in the process, Ratan struck Ram Chandra with an axe from its blunt side. That in order to save her son, she intervened when she was assaulted by Ghurre with his Lathi and she was injured. That at that moment, P.W. 2, Hari Om (P.W. 5), Subhash (P.W. 4) and Leela Dhar came. That they tried to apprehend Ratan and Ghurre, who fled. That P.W. 2 took her and Ram Chandra to the hospital where she and Ram Chandra were examined. That the condition of Ram Chandra did not improve at the Ram Nagar Civil Hospital and, therefore, he was taken to Kashipur Civil Hospital, where he died. These statements of P.W. 2 and P.W. 3 are supported by the evidence of P.W. 1, P.W. 6 and corroborated by the complaint (Ex. Ka.7), the FIR (Ex. Ka.16) and the memo sent by hospital to Kashipur P.S. and G.D. Therefore, the fact of injury being caused by an axe and participation of Ratan is

proved. P.W. 2 and P.W. 3 are natural witnesses. In the evidence of P.W. 3, there may be a few exaggerations like blood coming out from her injuries, but, that will not make her evidence unbelievable on the basic fact of the injury being caused on the head of Ram Chandra with an axe by Ratan (appellant No. 1 herein). In the case of Satpal v. State of Punjab, reported in 1996 SCC (Cri) 11 : (1996 AIR SCW 215), it has been held that it is not necessary to provide every minor detail in the FIR. Non-mention of the manner of user of axe was held to be not fatal to the prosecution case. It was further held that non-mention of manner of user of axe under the statement recorded by the Police under Section 161, Cr. P.C. does not amount to material omission amounting to contradiction. The ratio of the said judgment applies to the facts of the present case. In the present case, as stated above, the deceased was struck by an axe. That was the act committed by Ratan. That is the basic fact of the matter. That basic fact is proved. Therefore, non-mention of the manner of user of axe was not fatal to the prosecution case. The injury on P.W. 3 disproves the suggestion of the appellant that the injury on the deceased was possible by reason of falling from the roof. Lastly no case was put to P.W. 8, Dr. Arora, whether the said injuries could be caused by the blunt side of the axe. The injuries were three. They had broken the skull. The bone had penetrated the brain. Yet no question to the above effect was asked.

7. It was next argued on behalf of appellant No. 1 that P.W. 3, injured witness and mother of the deceased should not be believed. That in her statement, P.W. 3 has deposed that she was beaten twice by a 'Lathi' struck by Ghurre and blood started oozing out. In this connection, our attention was drawn to the evidence of P.W. 1 who has given injury report vis-a-vis P.W. 3 and it was pointed out from the report that there was no external injury on the body of P.W. 3 and, therefore, she should not be believed because her evidence is not corroborated by the injury report. We do not find any merit in this argument. P.W. 3 was 60 years old at the relevant time. She is the mother of the deceased. She intervened to save her son Ram Chandra and in the process she sustained injuries i.e. contusion on top of the scalp 2 cm. x 2 cm. This was the external injury. It is mentioned in the injury report submitted by P.W. 1. That injury was not self-inflicted. Therefore, her evidence was that of a natural witness. Her evidence is also supported by the evidence of P.W. 1. It should be once again reiterated that the incident had taken place outside

her house. P.W. 3 had lost her son. She herself received injuries. She had no personal enmity with Ratan. Therefore, she cannot be disbelieved. She has exaggerated when she has deposed that blood had oozed out and fallen on her 'Petticoat.' However, that does not make her a liar. On the contrary, it indicates that she is the natural witness. The injury report given by P.W. 1 is also supported by the anti-mortem injury report given by Dr. Arora (P.W. 8) of Kashipur Civil Hospital. The so-called contradictions pointed out by the learned Advocate for the appellant are minor contradictions and they cannot alter the evidence which proves the basic fact of Ratan causing injury to the deceased with an axe. It has been argued that P.W. 3 should not be believed as she has stated that she was in the hospital for 11 days. As stated above, P.W. 3 is a rustic. She is 60 years old. She was in the hospital in Ram Nagar. Against doctor's advice, she left as Ram Chandra was serious. Later on she was examined by P.W. 1 on 26-3-1981. This is proved by Ex. Ka.5. Hence, she is not a liar as alleged.

8. It was further argued on behalf of appellant No. 1 that P.W. 2 in his evidence has deposed that the deceased was struck twice whereas P.W. 3 has deposed that the deceased was struck by Ratan only once. Whereas P.W. 4 has deposed that Ratan had struck the deceased with an axe repeatedly for about 10 to 15 minutes. It was therefore, submitted that the evidence of P.W. 2 and P.W. 3 should not be believed. We do not find, any merit in this argument. P.W. 2 has deposed that he had seen Ratan striking the deceased only once. That the deceased was struck with an axe also before he came out of his residence. Therefore. P.W. 2 had only seen one blow being struck by Ratan on the deceased and his evidence is supported, therefore, by the evidence of P.W. 3 who has also seen one blow being struck on the deceased by Ratan. Therefore, there is no contradiction as alleged. As far as P.W. 4 is concerned, he has deposed that he was not an eye-witness to the incident, therefore, his evidence is not relevant when he has stated that blows were inflicted with the axe for 10 to 15 minutes. In this case we are essentially concerned with the evidence of P.W. 2 and P.W. 3. That evidence is reliable. Evidence of P.W. 2 and P.W. 3 are truthful. They are most natural witnesses. There is no reason to disbelieve them. Therefore, there is no merit in the above argument.

9. It was next argued on behalf of appellant No. 1 that there are contradictions in the statements of P.W. 2 and P.W. 3 on one hand and P.W. 5 on the other hand. That according to P.W. 2, Ram Chandra fell in the 'Nalli' after he was hit. Whereas according to Hari Om (P.W. 5) Ram Chandra fell near a Mandir. We do not find any merit in the above arguments. The incident took place on the 'Kharranja.' The evidence of the IO shows that there was a 'Nalli' besides the 'Kharranja.' P.W. 5 has deposed that he has not seen the incident. P.W. 2 who was the witness of fact and P.W. 3, the injured witness have both stated that after being hit, Ram Chandra fell in the 'Nalli.' Further, the evidence of these two witnesses is corroborated by the evidence of the IO (P.W. 10) who had visited the site and who had prepared the site plan (Ex. Ka. 18). In his evidence P.W. 10 has stated that at the scene of the incident he had seen the 'Nalli' besides the 'Kharranja.' That the altercation had taken place at the 'Kharranja.' In the circumstances, the falling of the deceased on the 'Nalli' cannot be ruled out. Therefore there is no merit in this argument.

10. Learned counsel for the appellant further pointed out that although P.W. 3 has deposed that blood was oozing out after he was struck and after he fell in the 'Nalli,' blood has not been collected from the spot and, therefore, P.W. 3 is a liar. We do not find any merit in this argument. P.W. 2 has stated in his evidence that after being struck on the head Ram Chandra fell in the 'Nalli' and the blood was coming out from his nose and that blood flowed out with the water in the 'Nalli' and, therefore, the blood stains were not there on the 'Kharranja' because blood had flowed with the water in the 'Nalli.' In the circumstances there is no merit in the argument of the appellant that P.W. 2 and P.W. 3 should not be believed.

11. It was next argued that P.W. 3 in her evidence has stated that Ram Chandra fell in the 'Nalli.' That when he fell he was on his back whereas P.W. 4 has deposed that Ram Chandra fell on the side (Karwat) and that he was lying on the Karwat. These are minor contradictions. The position in which the body was lying whether on back or on karwat, cannot make us disbelieve P.W. 3. It is quite possible that he fell on the back with the head injury and slightly turned on one of the sides of his body. Therefore, on this ground we cannot disbelieve P.W. 3.

12. It was next argued that the conduct of the eye-witnesses was unnatural. That no efforts were made by P.W. 4, P.W. 5 and Leela Dhar to save Ram Chandra, when he was allegedly attacked by Ratan. That Ratan was not armed with any weapon and, therefore, it was surprising that neither P.W. 2 nor P.W. 4 and P.W. 5 tried to stop Ratan from striking with an axe which shows that no such incident had taken place on 17th March, 1981 at 2.30 p.m. and that P.W. 2 and P.W. 3 have falsely deposed about the said incident. We do not find any merit in this argument. By the time P.W. 4 and P.W. 5 came out of their houses, the injury was already inflicted. That on seeing P.W. 4 and P.W. 5, both the appellants had fled. Hence, there is no ground to disbelieve P.W. 2 and P.W. 3 regarding the incident having taken place on 17th March, 1981 at 2.30 p.m. Their evidence is fully corroborated by FIR, GD, evidence of P.W. 1, evidence of P.W. 6 and evidence of P.W. 8.

13. It was next argued on behalf of the appellant No. 1 that there was no motive and no reason for Ratan to murder Ram Chandra and injure P.W. 3. That the dispute was only for Rs. 500/- and for such a paltry amount, no reasonable person would cause injury of such a nature. We do not find any merit in this argument. Ratan and Ram Chandra were doing business of selling fish in partnership. There were monetary disputes between them. The deceased used to call upon Ratan to return his dues. That despite repeated demands the dues were not returned. That on 17th March, 1981 at 2.30 p.m. Ratan and Ghurre passed near the house of the deceased, Ram Chandra. That when they were passing, Ratan had an axe. That when Ratan and Ghurre were passing, the deceased came out of his house and demanded his dues when the incident took place and the injury was inflicted with an axe. In a statement under Section 313, Ratan has stated that Rs. 7000/- was payable by Ram Chandra to him. This shows that there were pending disputes between the two. Therefore, the prosecution has proved the motive behind the causing of injury on 17th March, 1981 at 2.30 p.m.

It was also contended that on date of incident both the appellants were before the Court of SDM at Kashipur. Reliance in this connection was placed on Ex. Kha. 1 i.e. order sheet dated 17-3-1981. Now as per Ex. Kha. 1, the case was adjourned on 17-3-1981 to 15-4-1981. The Court of SDM is only 20 kms. away from place of incident. No evidence is led by the appellants to show at what time they were

present in Court of SDM at Kashipur. Hence, there is no merit in this argument. Lastly, in this case, as stated above, P.W. 4 and P.W. 5 have stated that they had not seen the incident. Therefore, the disputes between appellants and P.W. 4 and P.W. 5 have no relevance.

14. Lastly it was argued that this was the case of single blow injury. That the incident took place at the spur of the moment. That the incident took place when Ram Chandra saw Ratan and Ghurre passing by his house on 17th March, 1981 at 2.30 p.m. and on seeing the appellants-Ram Chandra came out of his house and started the dispute by demanding his dues at which moment, Ratan lost his temper. He was exhorted by Ghurre to finish off Ram Chandra to put an end to the dispute and at that spur of the moment, the axe was struck on the head of the deceased. That there was no quarrel or altercation before the incident. It was therefore, argued that in this case conviction under Section 302 be substituted by conviction under Section 304, Part I. In reply, it was argued on behalf of the prosecution that conviction under Section 302 imposed by the lower Court was justified. It was argued that three injuries were found on the body of the deceased. That the skull was fractured. That it was virtually divided into two parts. That the bone had pierced the brain. That the injury indicated the force with which the axe was used. That even the medical evidence shows that the injury was sufficient to cause death in ordinary course of nature. We find merit in the argument advanced on behalf of Ratan, appellant No. 1. This is the case of single blow injury. It is not the case where Ratan had planned to murder Ram Chandra. On 17th March, 1981 at 2.30 p.m. Ratan and his brother happened to pass by the house of the deceased. There were pending financial disputes between the two. The deceased used to repeatedly demand his dues. Ratan was fed up of these demands. The partnership accounts were not settled. According to the deceased, Ratan owed moneys to him, whereas according to Ratan it was Ram Chandra who owed moneys to him. Under these circumstances there were disputes for settlement of accounts between the two. Therefore, on 17th March, 1981 at 2.30 p.m. when Ratan happened to pass by the house of Ram Chandra and when Ram Chandra came out from his house to demand his dues, quarrel ensued and in the course of that altercation, Ratan inflicted the blow with his axe on the head of the deceased. In the circumstances, we are of the view that there was no intention to cause

death. That there was an intention to cause severe bodily injuries. Under the circumstances, appellant No. 1-Ratan was liable to be convicted under Section 304, Part I, I.P.C. instead of Section 302, I.P.C. His conviction and sentence is modified accordingly. In a similar case of Shanmugam v. State of Tamil Nadu, reported in 2003 SCC (Cri) 1501 : (2003 Cri LJ 418), the accused, on being questioned by the deceased as to why he was whistling at ladies, all of a sudden, entered his house, came out with a spear and attacked the deceased inflicting severe injuries on the deceased. The act of the accused was sudden. It was held by the Supreme Court that there was no intention to cause death, but an intention to cause severe bodily injuries. In that matter also, the nature of injuries and medical opinion indicated that the injuries inflicted on the deceased were likely to cause death. It was held by the Supreme Court that the accused was liable to be convicted under Section 304, Part I and not under Section 302, I.P.C. and his conviction and sentence was modified accordingly. The facts before the Supreme Court in the above case of Shanmugam v. State of Tamil Nadu (2003 Cri LJ 418) (supra) are similar to the facts of the present case. We are therefore, of the view that appellant-Ratan is liable to be punished under First Part of Section 304, I.P.C. and accordingly, he stands convicted.

15. Accordingly, we pass the following order :

ORDER

a. Appeal is partly allowed. The order of conviction and sentence passed by the lower Court against the appellant-Ratan under Section 302, I.P.C. is set aside and shall stand substituted by conviction and sentence under Section 304, Part I, I.P.C. Accordingly, the appellant is sentenced to 7 years rigorous imprisonment and a fine of Rs. 1,000/-, in default, he shall suffer further imprisonment for a period of 4 months. Appellant-Ratan is on bail. His bail is cancelled. He shall be taken into custody forthwith to serve out the sentence.

b. Bhagwan Das alias Ghurre is no more. His appeal stands abated.

Let a copy of this order be sent to the lower Court for compliance and to report to this Court within two months from the date of the receipt of the record.

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