

Ramratan and ors. Vs. the State

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Court : Rajasthan

Decided On : Mar-22-1956

Reported in : AIR1956Raj196; 1956CriLJ1432

Judge : Ranawat and; Sharma, JJ.

Acts : [Evidence Act, 1872](#) - Sections 145 and 155; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154 and 367

Appeal No. : Criminal Appeal No. 69 of 1955

Appellant : Ramratan and ors.

Respondent : The State

Advocate for Def. : R.A. Gupta, Adv.

Advocate for Pet/Ap. : J.K. Mathur, Adv.

Judgement :

Ranawat, J.

1. This is a criminal appeal by Ram Ratan, Ganpat and Harbilas, against the judgment of the Additional Sessions Judge of Dholpur, dated 21-4-1955, convicting the accused-appellants under Sections 302 and 307 both read with Section 34, Penal Code, and sentencing them each to transportation for life and a

fine of Rs. 300/- or in default 6 months' further rigorous imprisonment under Section 302 read with Section 34 I.P.C., and to 7 years' R. I. and fine of Rs. 200/- or in default 4 months' further R. I. under Section 307 read with Section 34 I.P.C. Both the sentences were ordered to run concurrently.

2. The prosecution case is that Pyare, brother of the three accused-appellants, was murdered about one year before the date of occurrence in this case, and a case against Daryav, Bidha and others is pending in the Court of the Sub-Divisional Magistrate of Dholpur. The relations of Daryav, Bidha and others with Ram Ratan and his family were strained on account of the murder of Pyare,

Daryav was keeping Mt. Ramdei, a Kachhi girl, and Pati, who was also a Kachhi and who wanted to keep Mt. Ramdei, had a grievance against Daryav on this account. During night between 14 and 15-4-1954, when Daryav was sleeping on a cot with Mt. Ramdei in a Madhaiya in the Nohra of Chela Gadariya, the accused Ram Ratan, Ganpat and Harbilas, Sudhre, Inder, Pati, Ajba and others came and Pati and Ajba took their positions in front of the gate of Cheta's Nohra and Inder and Sudhre near the cot of Megha and Narain in the court-yard of the Nohra, while Ram Ratan, Ganpat and Harbilas entered the Madhaiya.

Both Ram Ratan and Ganpat were armed with swords and Harbilas with a Lathi. Ram Ratan and Ganpat inflicted an injury on the neck of Mt. Ramdei, causing her instantaneous death and several cut injuries on the head and other parts of Daryav's person. Daryav raised a cry and Bidha, having heard it, came towards Cheta's Nohra and was confronted by Pati and Ajba at the gate. Pati fired a shot with the gun which he was carrying, one of its pellets hitting Bidha on the upper and front part of his right forearm.

After firing the gun both Pati and Ajba ran away from that place and Inder, Sudhre, Ram Ratan, Ganpat and Harbilas also came out of the Nohra and escaped, but they were noticed by Bidha who was at that time at the gate of the Nohra. While Ram Ratan, Ganpat and Harbilas were in the Mudhaiya Inder and Sudhre kept a watch on Megha and Narain and warned them not to get up.

After the accused left the place Daryav got up and having crossed the side-wall of the Nohra outside the Madhaiya saw Maharaj Singh s/o Pyare and Maharaj Singh s/o Hargovind, Nawab and his son, Amar Singh and Nihal Singh standing by the side of the Nohra wall but outside it and entered the Nohra by its main gate. He then called out Megha and Narain and asked Narain to get him his Pancha from the Madhaiya. Narain accordingly brought him his Panch which was then worn round his waist by himself.

Bidha then went to the house of Badan Singh, father of Daryav, and informed Rati Ram, brother of Daryav, about this concurrence, who sent Vidhya Ram to Badan Singh at the latter's Khaliyan in order to inform him about this affair. Badan Singh came to his house and then to the Nohra along with Bidha and Rati Ram. He saw Daryav and met Megha and Narain on the spot and left for the police station of Maina with Rati Ram.

First Information Report was lodged by him at 5 A.M. in which Ram Ratan, Hurbilas, Ganpat, Sudhre, Inder, Srichand, Ajab, Ninal, Maharaj Singh s/o Pyare, Maharaj Singh s/o Hargovind, Pati Ram Kacahi and one or two others whose names are not legible on account of the paper having been torn, were mentioned. Habib Khan and 'Girdharilal, constables of police, reached the spot of occurrence and a little later Makkhansingh, investigating officer, also joined them. The dead body of Ramdei, along with Daryav and Bidha were sent to Dholpur for medical examination.

All those persons who were named in the first information report except Shobha Ram & Srichand were arrested and, after investigation, challaned to the Court of the Sub-Divisional Magistrate. Dholpur, under Sections 302 and 307 both read with Section 149 or in the alternative with Section 34 I.P.C., who committed them to the Court of Session. The learned Additional Sessions Judge acquitted all the accused except Ram Ratan, Ganpat and Harbilas, who were convicted and sentenced as noted above.

3. The defence of the accused was that they were innocent and that they were implicated on account of their enmity with Daryav and his family.

4. The post mortem examination of Mt. Ramdei revealed that she had one cut wound on the front part of her neck, 8' long and 3' deep across the neck, which was the cause of her death. This injury was caused by a sharp-edged weapon & according to the opinion of the doctor could be caused by a sword. Daryav had the following incised wounds caused by a sharp-edged weapon:

(1) 5' x 3/4' x upto bone, left temporal is cut deep and left parietal bone is cut deep on the outer left part of the skull from above downwards.

(2) 3 3/4' x 2' x upto cheek bone which is cut. on the upper part of the left cheek from above downwards.

(3) 5 1/2' x 2' x upto chin bone, and lower teeth chin bone is cut, on the lower part of left cheek from above downwards.

(4) 3 1/2' x 1' x upto bone, across the lower lip.

(5) 2' x 1' x upto bone on the lower lip on the back of left forearm from above downwards.

(6) 2' x 1-1/2' x bone deep, on the left forearm 3' below injury No. 5.

(7) 2' x 1/4' x 1/6' on the back of left hand.

(8) 4' x 1/2' x 2' in the space between left thumb and index finger.

(9) 4 1/4' x 1' x upto bone, on the back outer and lower thumb of right arm.

(10) 1/2' x 1/2' x 1/6' on the upper back and outer part of right hand above right thumb.

(11) 5' x 1' x 3/4' on the front of right palm from wrist to index finger.

(12) 2 3/4' x 1' x 3/4' on the front and the upper part of the right hand over the right thumb.

(13) 2' x 1/2' x 1/4' on the upper part of the right shoulder.

He also had one abrasion 1 1/2 'x 1/10' on the front part of his forehead.

5. The injury of Bidha was a lacerated wound 1 1/4' x 1/2' x 1/6' on the upper and front part of his right forearm caused by a blunt weapon. In the opinion of Dr N. Katera, Bidha's injury could not have been caused by a gun-shot.

6. Megha, Narain and Bidha were named in the first information report as the persons who had seen the murder of Ramdei and the assault on Daryav

7. The learned Additional Sessions Judge held that Megha and Narain did not sleep in the compound of Cheta Gadariya's Nohra during the night of occurrence and their evidence was, therefore, not worthy of credit. The statement of Daryav that he crossed the wall of the Nohra after he had been injured and that he again entered the Nohra through the main gate had not been disbelieved and the evidence of Daryav against the accused persons whom he stated to have seen outside the Nohra was not accepted.

The evidence of Bidha that he received a gunshot injury was also not believed but his statement that he saw Ram Ratan and Ganpat each armed with a naked sword and Harbilas with a lathi coming out of the Nohra was accepted and the evidence of Daryav against Ram Ratan, Ganpat and Harbilas was taken to have been corroborated by the evidence of Bidha.

The finding of the learned Judge is that all the three accused-appellants entered the Madhaiya in which Ramdei and Daryav were sleeping and Ram Ratan and Ganpat gave sword blows to Ramdei and Daryav and injured Daryav seriously and killed Ramdei. All the three accused appellants were, therefore, convicted under Sections 302 and 307 both read with Section 34 I.P.C., and sentenced as noted above.

8. In this appeal the following points have been raised:

1. The learned trial Court ignored the statement of Khubchand (P.W. 4) who stated that when the witness went on the spot along with Badan, Singh, Daryav told them that two unknown persons had injured him and that he could not identify them.

2. There was no light in the Madhaiya in which Ramdei and Daryav are said to be sleeping at the time of occurrence and Daryav could not identify his assailants under the circumstances of this case.

3. The statement of Bidha should not have been believed because this witness was admittedly on inimical terms with the accused and his statement has been shown to be false on several other points.

4. The statement of Daryav has been disbelieved by the trial Court on several points and he bears enmity with the accused persons. His statement against the accused should have been considered and scrutinized more carefully than what has been done by the lower Court.

5. Badan Singh named a number of persons in the first information report, two out of whom at least were not challaned by the police as they were found to have had no hand in the occurrence. Badan Singh gave the names of all those with whom his family had bad relations, as the persons who were concerned in the matter. No value, therefore, should be attached to the first information report, and

6. The trial Court acquitted all the accused except the three accused-appellants and the prosecution evidence when it has not been believed against the majority of the accused, should not have formed the basis for the conviction of the three accused-appellants unless there was some reliable evidence forthcoming against them.

Point No. (1)-9. The observations of the learned Additional Sessions Judge as regards the evidence of Khubchand (P.W. 4) are as follows:--

'In this connection it was argued by the learned P. P. that such a statement at best can be inadmissible in evidence because it references (refers) to a statement made by Daryao P.W. 11 who is alive and has been produced in witness box and so it is only hearsay evidence. If really Daryao's statement is to be impeached under Section 155(3), Evidence Act, Section 145, Evidence (Act) controls Section 155 and so also it was necessary to have put such a question to Daryao P.W. 11 to give him an opportunity to explain in case he had really made such a statement

as referred to by Khoob Chand P.W. 4 that because it has not been done so, Khoob Chand's statement in this respect cannot, be taken advantage of.

In my opinion argument addressed by the P. P. in this regard has great force and so under the circumstances P.W. 4 (4's) this portion of the statement loses all its force & weight. Moreover, it will be seen that P.W. 4 is a Goojar by caste and so are the majority of the accused and as referred to above, a compromise appears to have been arrived at between the Goojars and the gadariyas, who were on inimical terms with each other and so Pyare's murder case has been withdrawn and accused in that case have been acquitted. Hence such a kind of statement of Khoob Chand P.W. 4 (a goojar) as has been also decided above that Megha and Narain P.Ws. were not at the scene, hence also P.W. 4's statement cannot be relied upon in this respect'.

10. It appears that the learned Judge was of the opinion that Khubchand's statement as to what was said by Daryav was not admissible into evidence as Daryav was not confronted with this portion of the evidence at the time of his cross-examination.

Section 145, Evidence Act was considered sufficient to warrant exclusion of this portion of Khubchand's evidence. The learned Judge also took into account the fact that Khubchand was a Gujar and a compromise had taken place between Gujar and Gadariyas, in holding that the witness made such a statement to favour the accused persons.

11. Section 145, Evidence Act provides that 'a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him'.

This section in express terms applies to previous statements in writing or reduced into writing only and does not apply to statements not in writing or not reduced to writing, in *Muktawandas Ajabdas v. Emperor*, AIR 1939 Nag 13 (A) it has been

observed that.

'Section 145 does not control Section 155 and hence questions proposed to be put to prosecution witnesses about oral statements made to them by other witnesses are legally admissible, although the Court may refuse to place any reliance on them on the ground that they had not been put to these witnesses for explanation. To disallow such questions may therefore be prejudicial to the accused'.

Our attention has been drawn to the decision in *Mt. Misri v. Emperor*, AIR 1934 Sind 100 (B) wherein the learned Judges have gone to the length of observing that

'where a person has been examined as a witness, a statement said to have been made by him to another is not admissible when no question is put to the witness as to whether the particular statement had been made to such other person'.

12. It may be pointed out that the learned Judges who decided *Mt. Misri's* case (B) did not discuss the import of Section 145. It seems the learned Judges were influenced by the provisions of English Law which places statements in writing and oral statements at par when such statements are used for the purpose of contradicting a witness in cross-examination.

The position of the law as laid down by the Indian Evidence Act is different from the position in English law on this point and the principles of English Law cannot be followed when they are inconsistent with the express text of the law as contained in the Indian Evidence Act. *Mt. Misri's* case (B), therefore, cannot be taken to lay down the correct law. In the Nagpur case, referred to above, the Sindh decision was discussed and was dissented from. Section 155, Evidence Act provides--

'The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him: --

(1)

(2)

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

(4)

It would be noticed that by virtue of Section 155, Evidence Act proof of former statements inconsistent with any part of the evidence given by a witness can be given and it is not required by Section 155 that the attention of the witness must be drawn to such previous statements in course of his examination. It is obvious, therefore, that Section 145, Evidence Act does not control the provisions of Section 155 which is much wider and the evidence of Khubchand, in the present case, cannot be regarded as inadmissible for the reason that the attention of Daryav was not drawn to the statement attributed to him by Khubchand.

The learned trial Court was, therefore, not right in excluding the evidence of Khubchand in this behalf. Coming to the other reasons given by the learned Judge for discarding Khubchand's evidence, it may be mentioned that Khubchand was examined as P.W. 4 before Daryav P.W. 11 was examined. No questions were put to Khubchand by the prosecution on this point and when Daryav was subsequently examined it was open to the prosecution as well to put to him questions to clarify the position that was created by the evidence of Khubchand on this point.

No explanation is forthcoming from the side of the prosecution as to why the statement of Khubchand on this point was allowed to go unchallenged when it was a point which was very material for the decision of the case. We, therefore, think that the evidence of Khubchand (P.W. 4) on this point cannot, under the circumstances of this case, be said to be not possessed of any weight. Badan Singh, father of Daryav, has admitted that Khubchand accompanied him when he went to make the first information report but he remained in 'the Bazaar of Maina while Badan Singh alone made the report at the Thana. ,

The fact that Badan Singh took Khubchand along with him when he went to make the first, information report shows that the witness was not hostile to the family of Daryav. No adverse inference against this witness could be drawn because he was a Gujar by caste. Daryav and Badan Singh are themselves Gujars and the

fact that Khubchand was a Gujar could not have constituted a reason for holding the testimony of this witness to be partial to the accused.

The fact that a compromise had taken place between Gujars and Gadariyas cannot be considered to have any relevancy on the point of partiality of a Gujar witness in a case between Gujars and Gujars and in which no Gadariya is involved as an accused. Moreover, it does not appear to have been the stand taken by the prosecution at any time that this witness had been influenced on account of the alleged compromise between Gujars and Gadariyas.

The conclusion on this point is that the evidence of Khubchand was wrongly excluded by the trial Court and in view of the statement made by Khubchand the evidence of Daryav that he gave out the names of the accused persons to Badan Singh becomes of doubtful value.

Point No. (2)-13. Coming to the second point we may refer to the statements of Daryav and Makkhansingh who have both stated that there was no roof on the top of the Madhaiya in which Daryav and Ramdei were sleeping at the time of the occurrence. It was the 12th day of the bright half of the month of Chait and there must have been sufficient moonlight for Daryav to identify the persons who assaulted him from close quarters and for some length of time.

The learned Judge has been influenced by the statements of Daryav and Makkhansingh on this point in holding that Daryav had ample opportunity of identifying the accused persons. It may be pointed out that the learned Judge has failed to refer to the evidence of Habib Khan (P.W. 12) on this point who has stated 'at the time when I reached the Jhopri I found it thatched'. The witness means the Madhaiya and has referred to it by the name of Jhopri.

Habib Khan was a police constable and he reached the spot of occurrence before Makhansingh reached according to the statements both of Habib Khan and Makkhansingh. He was examined as a prosecution witness. There appears no reason why he should make a false statement in this behalf. It is true that the statements of Makkhansingh and Daryav are to the contrary on this point. There appears no mention in the plan which was drawn up by Makkhansingh of the spot

of occurrence as regards the condition of the Madhaiya and its roof.

As the learned trial Court has failed to discuss the evidence of Habib Khan we are not in a position to get the benefit of the views of that Court regarding the value of Habib Khan's statement. In any case the value of the statement of Daryav arid Makkhansingh on this point has been much diminished on account of the statement of Habib Khan and it is doubtful if there was sufficient moonlight in the Madhaiya to enable Daryav to identify his assailants.

Point No. (3)- 14. Bidha is one of the accused in Pyare's murder case and it is an admitted fact that his relations with the accused persons, Ram Ratan, Ganpat and Harbilas are strained. His statement is that he saw Pati and Ajba standing at the gate of the Nohra when he reached there and received a gun-shot injury at the hands of Pati and after Pati and Ajba had run away he sat down at the gate of the Nohra and saw Ram Ratan, Ganpat, Harbilas, Sudhre and Inder passing out of the Nohra.

Ram Ratan and Ganpat had naked swords in their hands and the others were armed with lathis. The fact that this witness waited at the door of the Nohra has been disbelieved by the trial Court for the reason that the witness could not have dared to come to that place and sit there when Pati and Ajba were standing there with a gun and when he had received a gun-shot injury at the hands of Pati.

The opinion of the learned trial Court is based on the facts stated by the witness himself but the fact that Pati and Ajba ran away no sooner they fired a gun at the witness has not been taken notice of by the learned Judge in thinking that the witness could not have dared to approach near the gate of the Nohra where Pati and Ajba had taken their positions. There is nothing on the record to show that Pati and Ajba lingered at the gate of the Nohra after they had fired a gun at the witness.

There was, therefore, no basis for the learned Judge to think that Pati and Ajba continued to stay at the gate of the Nohra even after Pati had fired a gun. If, as has been stated by the witness Pati and Ajba had run away from that place, the basis for the argument of the learned Judge loses its force and there would have

been no difficulty. for the witness to have gone to the gate of the Nohra and sat down there. The witness had received an injury and it was quite natural for him to sit down for some time.

It seems the learned Judge did not read the statement of the witness carefully before commenting upon it. Dr. Katera, who examined the injury of the witness has expressed his opinion that the origin of the injury could not have been a gun-shot. No reasons have been given by the doctor in support of his opinion. The nature of the injury that has been described by the doctor is a lacerated wound 14' x 1/2' x 1/6'.

The medical jurisprudence of Modi was consulted by us as regards the nature of the injuries caused by projectiles fired by a gun. Ordinarily, lacerated wounds are caused by gun-shots and where there is an injury caused by entry of a bullet and a corresponding exit wound it is easier to find out the origin of the injury as being caused, by a gun-shot, in the present case the injury is only 1/6' deep and its length is 1 1/4'. Its breadth is only 1/2'. It may be that a pellet might have passed grazing the arm of the witness causing a long lacerated wound of very shallow depth.

However, no questions were put to the doctor as regards the nature of the injury and as to why the doctor thought that the injury could not have been caused by a gun-shot. The medical opinion, under these circumstances, has created a doubt regarding the truthfulness of the statement of Bidha as to whether he received an injury at the hands of Pati by a gun-shot. The learned lower Court disbelieved this witness on this point solely, on the basis of the opinion of the doctor which cannot be regarded as improper.

15. As regards the point whether the witness went inside the Nohra before he went to the house of Badan Singh the witness at first made an inconsistent statement at the trial from that which he made in the committing Court. At the trial he said he did not go into the Nohra before coming to the Baithak of Badan Singh but before the committing Magistrate he had stated he went into the Nohra and saw Daryav injured and then went to Badan Singh's Baithak. When was confronted With his earlier statement before the committing Court the witness had to admit that his

statements at the trial was false and that what he stated before the committing Magistrate was true.

This only shows that the witness was capable of making an incorrect statement, on another point as to what was communicated by Daryav to the witness when lie met him inside the Nohra, after cross-examination he stated at the trial that Daryav did not tell him anything but in his statement before the committing magistrate he had stated that Daryav told him that Ram Ratan and Ganpat had injured him with their swords.

When the attention of this witness was drawn to his statement before the Committing Magistrate he had to admit that his statement at the trial was incorrect and that what he had stated before the committing magistrate was true. There are some other inconsistencies in his statement as compared with his statement in the committing Magistrate's Court with which the witness was confronted at the time of his statement and he had to admit that his statement in those particulars was wrong and that what was stated earlier by him in the committing Magistrate's Court was correct.

If we could place full reliance on the statement of this witness regarding the fact of his having seen Ram Ratan, Ganpat and Harbilas coming out of the Nohra after the occurrence with naked swords, we would have been in a safer position to draw conclusions about the guilt of the accused persons against them in support of the other evidence that has come on the record but it seems this witness is not a reliable person and it would not be safe to arrive at a finding regarding the guilt of the accused persons solely on the evidence of this witness.

Point No. (4)-16. As regards this point We have already discussed the statement of Daryav in connection with points Nos. (1) and (2) and it may be added that in view of the conflicting evidence about the presence of light in the Madhaiya find the enmity of the witness with the accused it may not be sale to believe the evidence of this witness specially when Kubchand has stated that the witness told Badan Singh soon after the occurrence that he had been injured by two persons who could not be identified by him.

It may be noted here that the story that this witness went out of the Nohra by crossing over a wall soon after the occurrence and he returned by the main gate has been disbelieved by the trial Court. The learned Judge was right in thinking that the witness after having received numerous incised wounds could not have been in a position to cross a fairly high wall and to take a circuitous route for coming to Megha and Narain who were inside the Nohra.

This circumstance has been probably invented by the witness in order to enable him to give evidence against the two Maharaj Singhs, Nihal and two others who were roped in this case by Badan Singh by naming them in the first information report. The learned trial Court has observed in its judgment that the evidence of this witness is not untainted and we think that this observation is not improper.

Point No. (5): 17. Coming to the statement of Badan Singh it may be pointed out that he has stated that when he reached the Nohra he saw Daryav sitting but, later on, the witness admitted that Daryav was unconscious when he reached there. Narain (P.W. 9) has also stated that at the time Badan Singh came to the Nohra, Daryav was unconscious.

In conflict with the evidence of Badan Singh and Narain the statement of Daryav is that he told Badan Singh the names of the accused persons. In view of the conflicting statements of Daryav on the one hand and Narain and Badan Singh on the other it is difficult to say whether Daryav communicated the names of the accused to Badan Singh before he went to make the first information report.

Megha and Narain, according to the opinion of the learned Judge, were not present in the Nohra at the time of the occurrence and in case this opinion is correct both Megha and Narain were not in a position to give out the names of the accused persons to Badan Singh when he went into the Nohra after the occurrence. According to Bidha he saw only 7 accused persons and he could not have given out any names in addition to those 7 persons. Badan Singh has named 12 persons in the first information report. The explanation of Badan Singh is that he named all those persons in the first information report on the basis of the information received from Megha, Narain and Bidha.

Considering the statements of Bidha, Narain, Megha and Daryav along with the statement of Badan Singh it seems Badan Singh named more persons in the first information report than he could have possibly been told by the aforesaid witnesses and the only conclusion that may be drawn is that Badan Singh tried to rope in as many persons as he could who belonged to the family of Ram Ratan and others and who were not on good terms with him. Much reliance, therefore cannot be placed on the first information.

Point No. (6): 18. The basis of the argument of the learned counsel with regard to this point is not of much force but we find that the prosecution evidence that has come on the record has failed to establish beyond doubt that the accused appellants were responsible for causing injuries to Mt. Ramdei and Daryav.

The circumstance that there was enmity between the accused persons on the one hand and the family of Daryav on the other is capable of being used both in favour as well as against the accused, and in case, as stated by Khubchand. Daryav did not identify the assailants, he could name the persons who were his enemies and whom he could easily suspect for the commission of the offence. Having regard to all the circumstances of this case the matter does not appear to be free from doubt, the benefit of which should go to the accused.

19. This appeal is allowed and giving the benefit of doubt the convictions and sentences of the accused, Ram Ratan, Ganpat and Harbilas are set aside and they are acquitted. They shall be released if not required in any other case. Fine, if paid, shall be refunded to them.