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Shri Ram Vs. the State

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Court : Rajasthan

Decided On : Mar-27-1973

Reported in : 1973CriLJ1443; 1973()WLN401

Judge : V.P. Tyagi and; L.S. Mehta, JJ.

Appellant : Shri Ram

Respondent : The State

Advocate for Pet/Ap. : Shri. Ram

Judgement :

L.S. Mehta, J.

1. The prosecution story, in brief, is that on November 1, 1968, at about 8.30 p. m., Prabhu Narain P. W. 3, Gopal, P. W. 4, Radhey Shyam, P. W. 5, Mohan Lai, P. W. 6 and Ram Chander (deceased) were passing through Chaura Rasta, Jaipur City. On their taking a turn towards Tarkeshwarji's temple, some 8 to 10 persons confronted them near Jadiyon-ka-Rasta in front of the State Bank of Bikaner and Jaipur. There accused Bhairon prevented Ram Chander and others from proceeding ahead. In the meantime 7 or 8 other persons, including accused Madan, Shri Ram, Aziz, Jagdish and Gopal appeared on the spot. They were armed with sticks. Shri Ram assaulted Prabhu with a hockey-stick. That weapon was subsequently grabbed by Prabhu. Thereafter accused Gopal and Madan

assaulted Gopal Lai Yadav P. W. 4. The latter sustained certain injuries. Then accused Aziz inflicted a lathi blow on Gopal's head. The victim fell down. Soon after Shri Ram waived his knife. He wanted to thrust it into Gopal's abdomen. Gopal, however, turned aside to ward off knife-injury. The knife, however, struck his thigh. Thereafter Ram Chander appeared on the spot. He told Shri Ram, 'will you kill him'? This infuriated Shri Ram and he immediately gave a knife blow to Ram Chander as a result thereof the latter got an injury on his abdomen. Ram Chander fell down. He was first taken for first-aid to P. W. 2 Gopal Krishna, compounder of the private dispensary, Guru Pharmacy, Chaura Rasta, Jaipur. Gopal Krishna stitched his wound and on his advice the injured was taken to Sawai Mansingh Hospital, Jaipur, in a rickshaw. First information report of the occurrence was lodged with the police station, Manak Chowk, Jaipur, by Gopal Lai Yadav, P. W. 4, that very day at 10.50 p. m. The police registered a case and took over investigation. Dr. S. M. Dugar, P. W. 1, Medical Jurist, S. M. S. Hospital, Jaipur, examined Ram Chander on November 1, 1968, at 11.20 p. m. He had a stitched up wound ' X 1' towards the left of the umbilicus on the abdomen. The victim was unconscious. His pulse was 120 p.m. and his blood pressure was 78. systolic. Ram Chander had blood vomiting in the dispensary. Despite the best medical attention the victim breathed his last on November 4, 1968, at 7-15 p. m. His autopsy was conducted by Dr. Dugar, P. W. 1 on November 5, 1968, at 10 p. m. The Doctor found the following injuries on the person of the deceased:-

1. stitched-up wound 4 1/4' long on the mid-line of the abdomen;

2. stitched-up wound 2' long on the left side of the abdomen;

3. stab wound 1/3' x 1/5' on the left side of the abdomen.

Injury No. 3 was deep upto the peritoneum. The direction of the injury was upward and medial. In the opinion of the Doctor the cause of death of Ram Chander was shock as a result of the stab-injury, which had injured the stomach and the intestines. The post-mortem report is marked Ex. P-2. Injury No. 3, as set out above, the Doctor added, was sufficient to cause death. The injuries Nos. 1 and 2, mentioned in Ex. P-2, were due to the operative procedure in the hospital.

2. Dr. Dugar also examined P. W. 4 Gopal on November 1, 1968, at 11-30 p. m. He found 3 injuries, including a stab-wound 1' X 1/2' X H' on the posterior aspect of the left thigh. The injuries were simple in nature. Injuries Nos, 1 and 2 were caused by a blunt object and injury No. 3 was the result of the impact of a sharp-edged weapon. The injury report is marked Ex. P. 3.

3. The same night the Doctor examined P. W. 6 Mohan Lai. He had one bruise 8' X 1/2', transversely placed on the right suprascapular region. The injury was simple and was caused by a hard blunt object.

4. On November 5, 1968, the Doctor examined accused Madan and he found on his person two simple injuries, caused by a hard object. Accused Shri Ram had one abrasion 1/2' X 1/2'. The injury was simple, and was caused by a hard rough object.

5. After completing the investigation the police presented a challan to the Court of the Additional Munsiff-Magistrate, Jaipur City (East). Learned Magistrate conducted preliminary inquiry in accordance with the provisions of Section 207A, Criminal Procedure Code and committed accused Shri Ram, Aziz, Madan, Bhairon, Jagdish and Gopal, son of Raghunath, to the Court of the Sessions Judge, Jaipur City. The case was tried by the Additional Sessions Judge No, 1, Jaipur City. The accused Shri Ram was charged of the offences punishable under Sections 148, 302 and 324, I. P. C, to which he pleaded not guilty. The rest of the accused were indicted of the offences under Sections 147, 523/148, 324/149 and 302/149, IPC They also pleaded not guilty and claimed, trial. In support of its case the prosecution examined 14 witnesses. In their statements recorded under Section 342, Criminal Procedure Code, the accused denied the commission of the alleged crimes. In their defence they produced 5 witnesses. The trial Court, by its judgment, dated March 31, 1970, has acquitted Madan, Bhairon, Jagdish and Gopal son of Raghunath. Accused Aziz has been convicted under Section 323, I. P. C, but has been given benefit of the Probation of Offenders Act. The trial Court convicted accused Shri Ram under Section 302, IPC and sentenced him to imprisonment for life. It has also found Shri Ram guilty under Section 324, IPC and has sentenced him to rigorous imprisonment for one year. Both the sentences

have been made concurrent.

6. Dissatisfied by the above verdict, Shri Ram has taken this appeal. learned Counsel for the appellant has not challenged the injury sustained by Ram Chander on his abdominal region. He assailed the judgment of the trial Court on two grounds. His first contention is that it has not been brought home that Shri Ram was the author of injury No. 3 on the person of deceased Ram Chander. The weapon of the offence alleged to have been recovered on the information and at the instance of Shri Ram has not been chemically examined. This recovery, therefore, does not connect the accused with the crime. In the first information report filed by Gopal, P. W. 4, soon after the occurrence, it has not been mentioned that it was Shri Ram, who had caused injury to Ram Chander on his abdomen. The victim Ram Chander himself was not certain as to who the author of the injury was. Had there been no scepticism in his mind, he would not have told Gopal Krishna, P. W. 2, compounder of the Guru Pharmacy, Chaura Rasta, Jaipur, thai 'perhaps his relation-named Shri Ram had given him the knife blow'. The other contention of learned Counsel for the appellant is that even if the court reaches the conclusion that Shri Ram did cause the injury, which proved fatal, on the person of Ram Chander, the appellant could not have been convicted under Section 302, Indian Penal Code, He could at the most have been held guilty under Section 304, Part II, IPC Counsel also urged that if Shri Ram is convicted under Section 304, Part II, I. P, C, he being under 21 years of age at the time of his conviction by the trial Court on March 31, 1970, should have been given benefit of the Probation of Offenders Act.

7. From the medical evidence given by Dr. S. M. Dugar, Medical Jurist, S. M. S. Hospital, Jaipur, it is clear that Ram Chander received a stab-wound 1/3' X 1/5' on the left side of his abdomen. That wound damaged his stomach and his intestines. It was deep upto peritoneum and was sufficient to have caused his death. This medical evidence stands unchallenged by counsel for the appellant. We have, therefore, no hesitation in reaching the conclusion that Ram Chander sustained a homicidal injury on his abdomen, as a result whereof he died on November 4, 1968, in S. M. S. Hospital, Jaipur.

8. The other question that merits consideration is whether accused Shri Ram was the perpetrator of the crime. Gopal, P. W. 4, was an eye-witness to the occurrence. He says that Shri Ram aimed a knife blow towards his abdomen. But he took a turn to escape the assault of his enraged pursuer. The blow, however, fell on his left thigh. Ram Chander came to his rescue. He cried 'will you kill him?' This strongly provoked Shri Ram. He then turned towards Ram Chander and struck a knife blow on his abdomen. In the first information report, lodged by Gopal P. W. 4, the prosecution story is, no doubt, given in detail. But the informant did not specifically mention therein that Shri Ram had caused the fatal blow on the abdomen of Ram Chander. It only speaks that Ram Chander had sustained an injury on his abdominal region. This omission in respect of the actual author of the injury is of a vital character. It goes to show that Gopal Vadav in fact did not see Shri Ram causing a knife injury on the abdomen. P. W. 4, Gopal sustained 3 injuries, including one stab wound, as has been set out by the Medical Officer in his statement. The injuries lend assurance that Gopal P. W. 4 was present on the spot at the time of the incident and he did see a major portion of the episode. Gopal's statement can safely be used for the purpose of corroborating the factum of the presence of Shri Ram on the spot and for arriving at the conclusion that he had had a dagger, with which he had struck the witness. Besides Gopal, there are 3 other eye-witnesses, namely, Prabhu Narain, P. W. 3, Radhey Shyam, P. W. 5 and Mohan Lai, P. W. 6. The prosecution also examined Rabindra Kumar, P. W. 7, as an eyewitness. But the trial Court has not placed reliance on his evidence, as he was considered to be a chance-witness. He was living in Jat-ke-Kue-Ka-Rasta, Jaipur and not in the vicinity of the place of the occurrence. He also could not say which person took Ram Chander and Gopal in a rickshaw. After the occurrence the witness went away to his own house without doing anything and that reflects his unnatural conduct. From the trend of the answers which the witness has given in the cross-examination, we are in agreement with the trial court's views that the witness is merely a chance witness and is not worthy of any credence. As has been observed by their Lordships of the Privy Council in Ismail Ahmed v. Momin Bibi AIR 1941 PC 11, though the chance witness is not necessarily a false witness, it is proverbially rash to rely upon his evidence. We, therefore, do not take into consideration, while scanning the case closely on its merits, the testimony of

P. W. 7 Rabindra Kumar.

9. P. W. 5 Radhey Shyam has given a vivid and a graphic account of the whole prosecution version. He supports in toto the prosecution story. He has unequivocally said that Shri Ram gave a knife blow to Gopal, which hit him on his left thigh. Meanwhile Ram Chander came forward and said 'will you kill him?' This angered Shri Ram. He gave a knife blow to Ram Chander and that hit him on his stomach. No doubt, the witness has said at one place that first Bhairon and Gopal caught hold of Ram Chander, but this is only a minor variance in the prosecution story, as a result whereof his statement cannot be thrown overboard. The witness has also said that Jagdish gave a lathi blow to Ram Chander which hit him on his hand. This fact is not corroborated by the medical evidence. Excepting the prosecution story that Bhairon and Gopal at first caught hold of Ram Chander, the rest of the prosecution version, as unfolded by P. W. 5 Radhey Shyam, is corroborated by Mohan Lai, P. W. 6. Mohan Lai has also said that the author of the injury on the abdominal region of Ram Chander was Shri Ram. Though he involves Jagdish also as the perpetrator of some injury on the head of Ram Chander,his evidence cannot be thrown out. To the same effect is the testimony of Prabhu Narain, P. W. 3. learned Counsel for the appellant submits that the aforesaid eye-witnesses have falsely implicated Jagdish and, therefore, no reliance should be placed upon their evidence, Falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness, whose evidence does not contain a grain of untruth or, at any rate, exaggeration, embroidery or embellishment. In most cases the witnesses, when asked about details, venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have seen. But from this it cannot be inferred that their evidence as to the salient features of the case, after cautious and careful scrutiny, should not be considered: See Sohrab v. State of M. P. : 1972 CriLJ1302 . It may also be mentioned here that minor variance in the statements of witnesses cannot dislodge the prosecution story: vide Sheo Darshan v. State of U. P. : 1971 CriLJ1306 . There is, in our opinion, credible, cogent and convincing evidence that it was Shri Ram, who caused on the person of the victim an injury which eventually took away his life. It may also be said here that where, as here, when a concerted attack is made on

the victim by a large number of people, it is often difficult to determine the actual part played by each offender. But on that ground the evidence on the substratum of the prosecution case or on its material part in respect of the main incident cannot be rejected. Having carefully scrutinised the prosecution evidence, we are fully convinced that it was Shri Ram and Shri Ram alone who caused a knife injury on the abdomen of Ram Chander. It is true that the knife, recovered on the information and at the instance of Ram Chander, has not been proved to be stained with human blood and, therefore, that discovery is of no substance. The recovery of the weapon of the offence, however, is only a corroborative piece of evidence. If such corroboration is lacking, it would not mean 'that the eye-witness's account of reliable character stands condemned.

10. Lastly, learned Counsel for the appellant submitted that the accused should not have been convicted under Section 302, I. P. C, as Ram Chander only appeared on the scene of the crime as a rescuer and the accused could not be said to have had the intention to commit the murder of Ram Chander. Learned Deputy Government Advocate, on the other hand, urged that in the face of precise medical evidence that injury No. 3 (stab-wound), found on the person of the deceased, penetrating his intestines and stomach, was, as the medical evidence suggests, sufficient to have caused death, Shri Ram therefore, cannot, counsel adds, get out of the clutches of Section 302, IPC learned Counsel for the appellant has placed reliance in support of his argument on Laxman Kalu v. State of Maharashtra : 1968 CriLJ1647 . In that case the evidence disclosed the following facts:-

1. that the injury inflicted on the person of the deceased was a single wound, caused on the right clavical region, penetrating the chest cavity upto 4';

2. that though the injury was a serious one, as it had cut the axillary, artery and veins, it was not on the vital part of the chest and had not reached the lungs; and

3. that the incident took place as a result of a quarrel over a minor subject as to when the accused could take back his wife home;

The case could not come in the first and the second parts of Section 299, IPC The matter fell under the thrid part of Section 299, I. P. C, since the accused had had knowledge that his act was likely to cause the death of the victim. The conviction of accused Laxman Kalu was accordingly altered from Section 302, IPC to Section 304, Part II and he was awarded a sentence of rigorous imprisonment for seven years.

11. Mayne in his monumental work, Criminal Law of India, 4th Edition, writes, at page 485, thus:-

If the circumstances attendant on the act would support the inference that the accused must have known the act was likely to cause death or vital injury, then it would be within Clause (c) of Section 299.

12. In the present case the injury caused to Ram Chander, as stated above, was only 1/3' x 1/5' on the left side of the abdomen. True it is that injury No. 3 was caused on the vital part of the victim's body. Nonetheless it is to be seen how far any of the clauses of Section 300, IPC is applicable to the present case. It must be remembered that the quarrel between Shri Ram and Ram Chander was not such as would have prompted Shri Ram to make a homicidal attack upon his victim. Ram Chander was only a rescuer. When Shri Ram attacked Gopal, P. W. 4 and Ram Chander intervened, Shri Ram lost the equilibrium of his temper. Ram Chander's intervention provoked a sharp retort and Shri Ram took out his knife and gave one blow to Ram Chander. The accused did not make any second attack, nor had he any animus against the victim. Deceased Ram Chander also died some four days after the occurrence. Dr. Dugar has neither in his statement nor in the postmortem report mentioned the depth of the injury.

13. Now the question is whether the offence, under the circumstances of the case, can be said to be covered by clause thirdly of Section 300, IPC That section requires that the bodily injury must be intended and the bodily injury intended must be sufficient in the ordinary course of nature to cause the death. The first part is a subjective one, indicating that the injury must be intentional. The second part is an objective one. In that case the Court must be satisfied that the injury sustained by the victim was sufficient in the ordinary course of nature to have caused the death.

In the instant case the first and the second parts, in our opinion, are not fulfilled. Looking at the matter objectively, the injury which Shri Ram intended to cause, was only meant to wound him. The abdomen can easily be penetrated by a pointed instrument, and it requires but a slight force to wound the peritoneum or the intestines. 'Penetrating wounds', as has been observed in Principle and Practice of Medical Jurisorudence by Taylor, 12th Edn., Vol. 1 page 251 'are not always fatal, even when such a result might be expected.' It is also necessary to reiterate that a stab-wound of the abdomen may be considerably deeper when measured on the post-mortem table than it was at the moment of infliction. The reason is given by Lyon in his Medical Jurisprudence 10th Edn., Page 243, in the following words:-

The hand clasping the knife pushes the belly wall inwards, more especially a fat wall, to a distance of 2 or more inches.

In that view of the matter including the size of the injury and the fact that Ram Chander died on the 4th day of the occurrence, we are of the opinion that clause thirdly of Section 300, I. P. C, does not cover the case. Inasmuch as death has been caused, the matter must still fall within the ambit of culpable homicide not amounting to murder. Section 299, IPC, is in 3 parts. The first part deals with doing an act with the inten-iion of causing death. As we have shown above, Shri Ram did not intend to cause the death of the rescuer. Therefore, first part of Section 299, I. P. C, does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again the intention must bo likely to cause death and that also, in our opinion, was not the intention of Shri Ram. The matter, however, squarely falls within the third part. The act which was done was done with the knowledge that Shri Ram was likely by such act to cause the death of Ram Chander. The case thus falls within the bounds of the third part of Section 299, IPC and will be punishable under the second part of Section 304, I. P. C as culpable homicide not amounting to murder. We accordingly alter the conviction of Shri Ram from under Section 302 to Section 304, Part II. IPC

14. In a matter like this when the accused was below 21 years of age, (vide his statement recorded by the Court below)., on the date when the judgment was

pronounced by the trial Court, he can claim the benefit of the Probation of Offenders Act: See Chand v. State of U. P.. : 1972 CriLJ590 . While alter ing the conviction of the accused from Sec tion 302 to Section 304, Part II, and maintaining his conviction under Section 324, I. P. C, the sentences passed on both the counts against the accused, who is the first offender, are set aside and he will be release ed under Sections 4/6 of the Probation oi Offenders Act, on his entering into a bond with a surety in a sum of Rs. 2,000/- each to receive the sentences when called upon during the period of two years and during that period to keep the peace and be of good behaviour. The District Magistrate, Jaipur, where the accused resides, is directed to take the necessary bonds in compliance with the above order.

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