

**Ramswaroop and ors. Vs. the State and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/760483](http://sooperkanoon.com/760483)

**Court :** Rajasthan

**Decided On :** May-26-1975

**Reported in :** 1975WLN(UC)254

**Judge :** Kan Singh and; S.N. Modi, JJ.

**Appeal No. :** D.B. Criminal Murder Reference Nos. 1, 8 and 79 of 1975

**Appellant :** Ramswaroop and ors.

**Respondent :** The State and ors.

**Disposition :** Appeal allowed

**Judgement :**

**Kan Singh, J.**

1. Three persons were put on trial before the learned Additional Sessions Judge, Gangapur City, for causing the death of one Mohania on 26-7-74. The learned Additional Sessions Judge convicted Ramswaroop under Section 302 I.P.C. and condemned him to death. He convicted accused Ramjilal for the offence under Section 302 read with Section 34 IPC and sentenced him to imprisonment for life. He however, acquitted Ramkhiladi. Ramswaroop's case is before us for confirmation of the death sentence and the two accused had filed appeals through jail as well as through their counsel and in this way all these four matters are being

disposed of by this judgment.

2. Deceased Mohania who was aged 60 or 62 years, was living in village Rendayal Turk in the part of the habitation where Thakurs lived. His relations with the Chamars of the village who lived in another part, were strained on account of a criminal case between Mohania and some of the Chamars. On the morning of 26-7-74 accused Ramswaroop accompanied by accused Ram jilal went to the house of Mohania and the two forcibly brought him to the Chamarwada. The prosecution case is that Ramswaroop had a pharsi with him and Ramjilal was armed with a lathi. The two were hitting him with their respective weapons while Mohania was being pulled or dragged towards the part of the village where the Chamars lived. This part of the incident was witnessed by PW 2 Malkhansingh and PW 6 Bahadursingh who were sitting on a chabutra in the village chowk. They had seen Mohania being forcibly taken away towards the Chamars habitation.

3. Mohania was thus brought to the Chamars habitation and there accused Ramkhiladi joined the assailants Ramkhiladi too was carrying a lathi with him. In this habitation of Chamars, Ramswaroop hit Mohania on the head with the pharsi while Ramjilal is alleged to have hit him on the shoulder with his lathi as a result of which the left arm of Mohania was fractured. As a result of the blows inflicted by Ramswaroop with the pharsi, Mohania was seriously injured. Thereafter one Narain Singh PW 3 and one Ghamandi put Mohania in a cart and started for Mahaveerji where there was a dispensary. Mohania, however, succumbed to the injuries on the way PW 1 Gopalsingh who was a vakil, happened to pass by the side of the bullock cart in a tractor. He stopped for a while to find out who the deceased was and how he had been done to death. The witness was then apprised by Narainsingh of the incident. While Narainsingh and others were bringing the dead body in the cart, PW 1 Gopalsingh informed the Police Station, Hindaun, on telephone. The information given by Gopal Singh on telephone was recorded by the Sub Inspector Bachansingh PW 11 He immediately took up the investigation. He arranged to send the dead body of Mohania to Dr. Gajanand PW 9. Dr. Gajanand performed the post mortem examination of Mohania the same day and he found the following external injuries on the dead body:

1. Incised wound on the head temporal region left side. The measurements are 4 1/2' x 1/2' x 1/2'.
2. Incised wound on the head occipital region, 3" x 1/2' x 1/2'.
3. Incised wound 2' x 1/2' x 1/2' on the forehead.
4. Incised wound on the clavicle Section 3' x 2" x 1/2'.
5. Left upper arm fractured.
6. Incised wound 4' x 1/2' x 1/4' on the right leg 6' above joint.
7. Incised wound anterior side of the left leg 2' x 1/2' x 1/2'.
8. Incised wound medial side left leg 2" x 1/2' x 1/2'.

The doctor noticed multiple, extensive abrasions on the thorax as well as the abdomen of Mohania. There was a fracture of the left upper arm humerus 3' below the shoulder joint According to the doctor, the cause of death was multiple head injuries and the fracture of the left upper arm and the injuries were sufficient in the ordinary course of nature to cause the death.

4. PW 11 Bachansing arrested the accused and on the information furnished by accused Ramswaroop he recovered the pharsi Article 2 at his instance. The pharsi was properly lesled and then sent for chemical examination. The report of the chemical examiner Ex P 18 shows that it was stained with blood and the report of the Serologist Ex P 19 shows that the blood on the pharsi was human blood. The lathi Article 4 was similarly recovered on the information furnished by accused Ramjilal and on being sent for chemical examination it was found to be stained with blood. According to the Serilogist, the blood was human blood After completing the investigation, the police put up a challan against the three accused with the result mentioned at the out-set.

5. The prosecution case depended on the evidence on the four witnesses; namely, PW 2 Malkhansingh, PW 6 Bahadursingh, PW 8 Rameshwar Pujari and PW 10 Karansingh. PW 2 Malknansingh and PW 6 Bahadutsingh had stated about the

earlier part of the incident According to PW 6, Mohania was being driven away by accused Ramjilal & Ramswaroop towards 'Chamars wada'. According to PW 2. Ramswaroop had hit Mohania with his pharsi once and Ramjilal was hitting the deceased with his lathi However, PW 2 is not supported by PW 6 about Ramswaroop hitting the deceased with the pharsi. The two witnesses are, however, one in saying that the deceased was being forcibly taken away towards the mohalla of Chamars. The witness did not say and follow the assailants and therefore they could not say as to what had happened in the mohalla of Chamars. When assailants as well as the deceased reached the mohalla of Chamars, PW 8 Ram Swaroop who was the Pujari in the village, happened to be going to his field and there he saw that Ram Swaroop had hit the deceased witness pharsi on his head About Ramjilal the witness stated that he had hit the deceased with a lathi on his shoulder. The same thing has been stated by PW 10 Karansingh. The learned trial Judge has accepted this direct evidence as worthy of belief and has consequently convicted the two accused while he gave the benefit of doubt to Ramkhaladi with whom we are not concerned in the murder reference or the appeals.

6. So far as the testimony of these witness against Ram Swaroop is concerned, we are in through agreement with the conclusions reached by the learned trial Judge. There is no reason to doubt these witnesses when they clearly stated that. Ramswaroop had forcibly pulled or dragged Mohania from his house to the mohalla of Chamars and there he was hit on the head with the pharsi. There was no ill-will or enmity between these eye-witnesses and Ramswaroop. The First Information Report was lodged at the Police Station, Hindaun, by PW 1 Gopalsingh without any loss of time. The FIR gives the gist of the prosecution version which we had set out above in giving the facts. Therefore we have no hesitation in affirming the finding of the learned trial judge that Ramswaroop had caused the injuries on the head of the deceased as result of which he died.

7. We may next turn to the case against accused Ramjilal. So far as the accused Ramjilal is concerned, his case fails to be considered in two parts. He was firstly with Ramswaroop when the deceased Mohania was being forcibly brought from his house to the Chamarwada. Regarding that part of the story, the testimony of

PW 2 Maikhansingh and PW 6 Bahadursingh is quite convincing. However, when we come to the evidence regarding second part, namely, as to what happened at the Chamarwada, we find some difficulty in accepting the testimony of PW 8 Rameshwar and PW 10 Karansingh regarding the part assigned to Ramjilal. PW 8 Rameshwar was confronted in cross examination with his statement before the police Ex P. 5. In portion C to D of that statement, the witness stated jke f[kykM+h us ykBh dh ekgR;k dksyh ds ck;s cktw ij yxh A eksgR;k dksyh dk gkFk VwV x;k A From this it is evident that where as before the police the witness had assigned the injury on the arm to Ramkhiladi. at the trial he had substituted the accused Ramjilal for Ramkhiladi so far as this injury was concerned. PW 10 Karansingh is also sailing in the same boat. In his police statement Ex. P. 10 on the record in portion C to D he stated ^jke f[kykM+h us ykBh eksgU;k dksyh ij mls ekjus ds fy, pykbZ tks mlds ck;s cktw ij yxh] eksgU;k dksyh fpYyk;k gkFk VwV x;k] gkFk VwV x;k A^^ He too has thus shifted the injury on the arm of the deceased from Ramkhiladi to Ramjilal. Therefore we are left in considerable doubt as to whether Ramjilal had participated in beating Mohania after he had been brought to Chamarwada.

8. This at once brings us to the question whether Ramjilal can be said to have shared the common intention with Ramswaroop to cause the death of Mohania Now, if we were satisfied that Ramjilal had participated in the act of causing injuries to Mohania after he had been brought to Chamarwada, there would have been no difficulty in drawing the inference that he shared the common intention with Ramswaroop for causing the death of Mohania. Once we are not satisfied with the part assigned to him at Chamarwada, we find it exceedingly difficult to hold that Ramjilal shared the common intention with Ramswaroop in causing the death of Mohania, though we are satisfied that Ramjilal had been found accompanying Ramswaroop when Mohania was being forcibly brought from his house to Chamarwada. In our view, therefore, it will be safer to hold Ramjilal guilty only of an offence under Section 323 IPC for the act of dragging Mohania forcibly from his house and for hitting him once or twice with the lathi if at all.

9. The next question is about the death penalty awarded to accused Ramswaroop. The complaint that the deceased had filed against the Chamars earlier to the occurrence in question is Ex. P. 21. What is noteworthy is that this complaint is

against five persons including Ramkhiladi, the person acquitted by the trial court, but Ramswaroop is not amongst the accused in that case. The prosecution has not furnished any evidence of motive or animus on the part of Ramswaroop for causing the death of Mohania. though it may be that in a general way, he might have made a common cause with the chamars in teaching a lesson to Mohania, for which too the evidence is scanty. Their Lordships have laid down in a recent case *Bhagwanta v. State of Maharashtra* : 1974 CriLJ1310 that the nature and strength of the motive and other circumstances leading to the crime are relevant factors for seeing whether the death penalty should not be imposed. Since, in the present case, there is no evidence of any motive on the part of the accused Ramswaroop for causing the death of Mohania, we do not think that this is a fit case for confirming the death sentence awarded to Ramswaroop. We accordingly commute the sentence of death to imprisonment for life only.

10. In the result, therefore, we commute the sentence of death awarded to Ramswaroop to imprisonment for life only.

11. The appeals filed by Ramswaroop are dismissed subject to the modification regarding the sentence.

12. The appeal filed by Ramjilal is allowed and while acquitting him for the offence under Section 302 read with Section 34 IPC; instead we convict him for the offence under Section 323 IPC and consequently reduce the sentence to the period already undergone by him. Accused Ramjilal is in jail. He shall be released forthwith, if not required in any other case.