

**Ramesh Chandra and ors. Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** May-24-2005

**Reported in :** RLW2005(4)Raj2250; 2005(3)WLC697

**Judge :** V.K. Bali and; Harbans Lal, JJ.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 157 and 313; Indian Penal Code (IPC) - Sections 302

**Appeal No. :** D.B. Criminal Appeal No. 733 of 1999

**Appellant :** Ramesh Chandra and ors.

**Respondent :** State of Rajasthan

**Advocate for Def. :** Nirmala Sharma, Public Prosecutor

**Advocate for Pet/Ap. :** A.K. Gupta and; Alka Bhatnagar, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

V.K. Bali, J

1. Appellants Ramesh Chandra and Radhey Shyam brothers faced trial for intentionally causing death of Mohan Lal alongwith Satya Narain the third appellant herein. The trial culminated into order of conviction and sentence dated

28.10.1999 passed by the Additional Sessions Judge, Chhabra, Distt. Baran. The appellants named above, have been found guilty for offence under Section 302 IPC and sentenced to undergo rigorous imprisonment for life as also to pay fine of Rs. 1,000/-and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

2. The occurrence leading to death of Mohan Lal as per prosecution case had taken place at 10-11 a.m. on 05.04.1993. The first information report with regard to incident came to be lodged on the basis of a written report made by Badri Lal Dhakar, P.W. 1 on the same day at 02.00 p.m. The FIR was entered into and registered by the SHO. Police Station, Atru. Badri Lal in the written report made by him on the basis of which a formal FIR was recorded stated that on the eventful day at about 10-11 a.m. in the morning his brother Mohan Lal was going to the fields from his house. He was also going behind him towards the fields on the way, there falls a field of Ramesh son of Prahlad Brahman. In the fields, Ramesh, his younger brother Radhey Shyam, his mother Mohini Bai and his relations Satya Narain, Ramesh Brahman Bamori Wala and Baboo Mali of their village were sitting in a thatched hut. When these persons saw his brother Mohanlal, Satya Narain called him in his fields upon which his brother Mohan Lal went to the fields and started talking with Satya Narain. He was also standing in the passage that all of a sudden Ramesh son of Prahlad came out from the thatched hut with a 'Gandasi'. He gave a gandasi blow on the head of his brother Mohan Lal. Radhey Shyam gave a 'Dharia' blow on the fore head of his brother Mohan Lal upon which his brother fell down. Ramesh Bamori Wala hit his brother with a stone. Satya Narain gave knife blow on the right hand and arm as also left hand of his brother. When he raised an alarm, his brother Bal Ram and Choth Mal Dhakad came running at that place. They also saw his brother being given injuries with Gandasi, Dharia, Knife and Datali by the accused and their mother Mohini Bai. When they reached at the spot, the accused ran away. They saw that Mohan Lal had received injuries on his body but he was still alive. He and my brother Bal Ram and also Choth Mal brought their brother Mohan Lal in a bullock cart and when they were taking him to Atru, Mohan Lal succumbed to the injuries sustained by him near Antana.

3. During the course of trial, the prosecution examined Dr. Mahesh Soni as P.W. 13 who had conducted post-mortem on the dead body of Mohan Lal at 04.00 p.m. on 05.04.1993. The Doctor found following ten injuries on the dead body of Mohanlal which have been described in the post-mortem report (Ex.P.18) as follows:

- '1. Incised injury  $1 \times 1\frac{1}{2} \times 1\frac{1}{2}$  mid of left arm laterally.
2. Incised wound  $1\frac{1}{2} \times 1\frac{1}{2} \times 2$  cm. lower  $\frac{1}{4}$ th of left arm laterally.
3. Incised wound  $2 \times 1\frac{1}{2} \times 2$  cm. mid of right arm laterally.
4. Incised wound  $1\frac{1}{2} \times 1\frac{1}{2} \times 2$  cm. mid  $\frac{1}{4}$  of right arm laterally.
5. Incised wound  $1 \times 1\frac{1}{2} \times 2$  cm. lower  $\frac{1}{4}$  of right arm laterally.
6. Incised wound  $3 \times 1\frac{1}{2} \times 2$  cm. just above to right elbow laterally.
7. Incised wound  $4 \times 1 \times 1\frac{1}{2}$  cm. base of right little and right finger.
8. Incised wound  $4 \times 2 \times 1\frac{1}{2}$  cm. right parietal region.
9. Lacerated wound  $3 \times \frac{1}{4} \times \frac{1}{4}$  right side of Nose, and
10. Crushed and depressed wound  $10 \times 5 \times 3$  cm. base of lower part of forehead both Eyes root and middle part of Nose Eye socket.

4. In the opinion of Doctor death was caused due to irreversible coma due to crushed injury of head and multiple injuries. In his cross-examination, the Doctor stated that injuries No. 3, 4, 5 and 7 from injuries No. 1 to 7 were serious in nature whereas rest were simple, injury No. 8 was also serious.

5. The prosecution in its endeavour to secure conviction against the appellants examined Badri Lal P.W. 1, Madan Lal P.W.7, Bal Ram P.W. 8 and Chauth Mal, P.W.9. These witnesses provided eye witness account of the events leading to death of Mohan Lal. Ramesh Chandra P.W. 2 and Ram Kishan P.W. 3 who too were examined to provide ocular version of the events however, did not support the prosecution case. They were declared hostile and cross-examined by the

Public Prosecutor. The prosecution also relied upon recoveries of weapons of offence from the appellants and a report of FSL (Ex.P.25) and also the report of serologist (Ex.P.26).

6. Badri Lal Dhakar the first informant had named the appellants alongwith Ramesh Brahman R/o Bamori, Baboo Mali and Mohini Bai who together had caused death of Mohan Lal. It appears that whereas Ramesh Brahman resident of Bamori and Baboo Mali were not tried as no challan was put up against them; Mohini Bai tried alongwith appellants was acquitted by the learned Addl. Sessions Judge, Chhabra, Distt. Baran. Out of five witnesses who were said to have witnessed the occurrence, whereas P.W. 2 Ramesh Chand, P.W. 3 Kishan and P.W. 9 Chouth Mal did not support the prosecution case. P.W. 1 Badri Lal, P.W. 7 Madan Lal and P.W. 8 Bai Ram supported the prosecution version.

7. Badri Lal while appearing as P.W. 1 stated that on 05.04.1993 at 10-11 a.m. he was going from village to the fields, his brother Mohan Lal was also going from the village towards the fields that on the way, there are fields of one Ramesh Chandra. At that place Satya Narain called his brother Mohan Lal so as to have talks with him, upon which Mohan Lal went in the fields. Thereafter, Ramesh Brahman came from the fields and gave a 'Gandasi' blow on the head of his brother, thereafter, his younger brother Radhey Shyam came and gave a 'Dharia' blow on the fore head of his brother upon which Mohan Lal fell down. Satya Narain then gave a knife blow on his head. He also gave blows on his left hand. Mohini Bai gave a 'Datali' blow to his brother on his eyes whereas Baboo Mali gave a blow with 'Takua' which hit on the finger of his left hand. Ramesh Bamoriwala was also present there who struck his brother with a stone on his chest. Balram, Chouth Mal, Ramesh Meena and Madan Meena were also present there. When together they reached there, Ramesh Radhey Shyam, Satya Narain and Ors went towards Antana on a Motor-cycle. Mohini Bai, Baboo Mali and Ramesh Bamoriwala went towards the village side. In the cross-examination, he stated that on the day of occurrence at about 10.00 a.m. Banshi Lal and Ramesh Bamoriwala had come to his house. He again stated that when they came, time was about 08.30 a.m. He further stated that at that time he was in the fields and when these people had come to him in the fields from where he alongwith others went to his house. He admitted that there was no

enmity between them and the accused persons. He also stated that he had seen the fight from a distance of 200 paces and that there were about 25 houses of his caste near the place of occurrence and that he had called them but they did not come. He could not count as to which accused had caused how many injuries. He admitted that number of cases were pending against his brother but the said cases had come to an end before the occurrence. He also admitted that in recoveries of all the weapons, he and his brother Bal Ram were the witnesses. P.W. 2 Ramesh Chandra even though, declared hostile stated in the cross-examination adverted to him by the Public Prosecutor that Ramesh, Radhey Shyam and Satya Narain were beating Mohan Lal but with which weapon they were doing so, he would not know. Ram Kishan examined as P.W. 3 stated that when he was going on his tractor to take stones, at about 10-11 a.m. Mohan Dhakad met him and told him that he should drop him in the village. He alongwith another boy sat in the tractor. They got down from the tractor towards the village and he went to take the stones and came to know on the next day that Mohan had been killed. This witness did not support the prosecution version but was not declared hostile. Dhanna Lal examined as P.W. 4 only stated that on 05.04.1993 dead body of Mohan Lal was carried in a Bullock Cart and taken to Police Station, Atru and from there it was taken to Hospital. He admitted in the cross-examination that he was brother of Mohan Lal and that number of cases were pending against his brother. Ram Kishan P.W. 5 and Banshi Lal P.W.6 are formal witnesses, there is no need to refer to their statements. Madan Lal P.W.7 supported the prosecution case and stated that he alongwith Mohan Dhakad were going together after getting down from the tractor, Satya Narain had called Mdhan Dhakad in the fields and on his reaching there, Ramesh gave him a gandasi blow whereas Radhey Shyam and Ramesh also gave him injuries. No other persons gave any injuries. The mother of Bramhans were trying to rescue Mohan Dhakad. She was mother of Radhey Shyam and Ramesh. Nobody was present at that time. Bal Ram and Badri Lal had come there afterwards from the village. In the cross-examination, he stated that he had boarded the tractor alongwith Mohan Dhakad, there were two or more persons sitting on the tractor as well. Immediately on fight, the persons having tractor ran away. He also stated that there was a case against Mohan in which he was convicted. He would not know as to how many injuries Mohan had received

as he had not seen the same. He had found him lying down and had run away, the moment he saw him. Bal Ram examined as P.W. 8 while supporting the prosecution case stated that the fight had taken-place in the fields of Ramesh. Radhey Shyam, Satya Narain and Ors together were beating Mohan Lal. Mohini bai also gave him datali blows alongwith other accused. Ramesh was armed with Gandasi whereas Radhey Shyam was armed with Dharia which is known as 'Kutia also. Satya Narain was armed with Knife. Chauth Mal examined as P.W. 9 only stated that at 11.00 a.m. when they were going to village and Bal Ram was also with him, on the way Badri Lal called him and said that Mohan Lal has been killed. They came to the fields of Ramesh where fight was taking-place. He only saw Ramesh, Radhey Shyam and Satya Narain going on the motor-cycle whereas Mohini Bai was going towards the village. He had also seen the dead body of Mohan Lal lying there in the fields. Rameshwar Prasad examined as P.W. 15 deposed with regard to steps taken by him while investigating the case.

8. When examined under Section 313 Cr.P.C. the appellants denied their involvement in the commission of crime. They claimed themselves to be innocent having been falsely implicated in the case.

9. Mr. A.K. Gupta, learned Counsel representing appellants vehemently contends that Ramesh Chandra P.W. 2, Ram Kishan P.W. 3 and Chauth Mal P.W. 9 stated to be the eye witnesses have not supported the prosecution case and in so far as the, PWs. Badri Lal, Madan Lal and Bal Ram, 1,7 and 8 respectively are concerned, no faith can be held in the deposition made by them as they changed the entire version when they appeared in the witness box from the one given by them before the police. There was no enmity between the appellants and Mohan Lal deceased and it appears that because of criminal background of Mohan Lal, he was killed by somebody and his dead body was thrown near the fields of the appellants and for that reason only they were involved on the basis of suspicion. He further contends that there was a considerable delay in sending report to the Magistrate which would be a circumstance providing basis to raise suspicion that FIR was the result of consultation and deliberation. For his contentions as noted above, learned Counsel for the appellants relies upon the Division Bench Judgment of this Court in the Case of Sawai Ram and Anr. v. State of Rajasthan,

10. We have given our thoughtful consideration to the contentions of the learned Counsel for the appellants as noted above, but in the context of the facts and circumstances of the present case, we find no merit therein. It may be recalled that the occurrence in this case had taken-place at 10-11 a.m. on 05.04.1993 and the FIR was lodged at 02.00 p.m. on the same day. The prompt lodging of the FIR lends credence to the prosecution version. There was no time for Badri Lal the first informant to deliberate and ponder over the issue and lodge the first information report after consultation. It is no doubt true, that in so far as the special report is concerned, the same reached the concerned Magistrate the next day at 10.30 a.m. but the learned Counsel for the appellants has not pointed out any evidence brought on record that may show that the first information report was not lodged at a time when it purports to be. The first informant and SHO who recorded the formal FIR were not even suggested that the FIR in fact, was lodged later in point of time and for that precise reason there was delay in sending the special report. Section 157 of the Code of Criminal Procedure casts duty upon the Investigating Officer to send a copy of the FIR pertaining to cognizable offence to concerned Magistrate forthwith. The purpose of sending the report to concerned Magistrate is to keep the Magistrate informed of the investigation of the cognizable offence so that he may be able to control the investigation and, if required, to issue appropriate direction. Late sending of report to the Magistrate would no doubt given circumstance to provide basis to raise suspicion that FIR was a result of consultation and deliberation and that it was recorded later than the date and time mentioned in it. In the present case, there is no doubt, that there is a delay in sending the special report but that, at the most, would raise suspicion with regard to time of lodging the first information report. To take, however, the suspicion further that may result in a finding that delay was utilised in consultation as to how a case is to be made it has also to be shown that delay was caused for the said purpose. As mentioned above, it is not even the case projected by the defence that the delay was intentional and the first information report was actually not recorded on the day and at the time when it purports to be. The first informant Badri Lal and the I.O. were not cross-examined on this point at all. So much so, even suggestion was not given to them that FIR was not actually recorded on

02.00 p.m. on 05.04.1993. In *Sawai Ram and Anr. v. State of Rajasthan* (supra), the delay in sending the special report was of ten days and despite that, it was held that mere delay in the despatch of FIR itself, is not a ground to throw away the prosecution case in its entirety and that sending the report to the concerned Magistrate is a circumstance which provides a basis to raise suspicion that FIR was result of consultation and deliberation and it was recorded much later than the time recorded in it.

11. We don't find the present case to be one where P.W. 1 Badri Lal, P.W. 7 Madan Lal and Bal Ram P.W. 8 might have changed there entire version and thus made entirely a different statement in the Court from the one they made before the Police. The essential features of the case with regard to time, place of occurrence and accused involved in the commission of crime remain the same. Some minor variation in details not essential to the prosecution case would not be enough to hold that PWs. mentioned above and changed their entire version. With regard to involvement of the appellants and the role played by them, their version is consistent and inspires confidence. In fact if the statements made by Ramesh P.W. 2, Ram Kishan P.W. 3 and Chauth Mal P.W. 9 are examined and analised properly the same do provide corroboration to the statements made by Badri Lal, P.W. 1, Madan Lal, P.W. 7 and Bal Ram, P.W. 8. It may be recalled that Ramesh P.W. 2 stated that he had seen the fight which was taking place in the fields of the appellants and that Ramesh, Radhey Shyam and Satya Narain were giving beating to Mohan Lal. This witness was not declared hostile by the prosecution. The versions given by the first informant Badri Lal P.W. 1, Madan Lal P.W. 7 and Bal Ram P.W. 8 respectively with regard to Mohan Lal being murdered in the fields of the appellants is consistent. Ram Kishan P.W. 3 stated that at about 10-11 a.m. on the day of occurrence Mohan Lal had boarded his tractor and had got down in the village. His statement lends credence at-least to the time when Mohan Lal was killed. Chauth Mal examined as P.W. 9 even though reached late yet time of 11.00 a.m. when Mohan Lal was done to death is confirmed by him. This witness had also seen the appellants going on the Motor-cycle and Mohini Bai going towards the village. He had also seen the dead body of Mohan Lal lying in the fields. His statement in our view, also corroborates the prosecution version as he had seen the dead body of Mohan Lal lying in the fields and also simultaneously seen the

appellants going on the motor-cycle.

12. The defence has no doubt been able to show that Mohan Lal was involved in some cases which may be pending before the occurrence took-place and further that the prosecution did not come with any evidence that may show enmity between the appellants and Mohan Lal, but from these two circumstances, it cannot be said that the first informant would involve innocent persons simply on the basis of suspicion entertained by him because dead body was found in the fields of the appellants. If it was a case of suspicion alone, the first information report would not have been lodged between three to four hours, from the time of occurrence. The first informant would certainly have taken time to ascertain as to who were the real culprits. No-one as per normal human conduct would involve innocent person and let go the guilty scotfree. When the prosecution may prove commission of crime by leading evidence which may inspire confidence, lack of motive pales into insignificance.

13. In view of the discussions made above, we don't find any merit in this appeal, the same is accordingly dismissed thus, upholding the order of conviction and sentence recorded by the learned Additional Sessions Judge, Chhabra, Distt. Baran, dated 28.10.1999.