

Ramdhan and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-04-1987

Reported in : 1987(2)WLN421

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Cr. Appeal Nos. 878 and 978 of 1976

Appellant : Ramdhan and ors.

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Shyam Sunder Byas, J.

1. Since these two appeals: one by the appellant Ramdhan and the other by the appellants Sohan Lal, Prithviraj and Ramswaroop. are directed against one and the same judgment of the learned Additional Sessions Judge. Ganganagar dated October 30, 1976, they were heard together and are decided by a common judgment. By the impugned judgment, the learned Additional Sessions Judge convicted accused Ramswaroop under Sections 302, 307 and 307/34, accused Ramdhan under Sections 302/34, 307 and 307/34, I.P.C. and the remaining two Prithviraj and Sohan Lal under Sections 302/34, 307/34 and 307/34-109, I.P.C.

and sentenced them to various terms, the longest being the imprisonment for life under Sections 302 or 302-34-109, I.P.C.

2. Put briefly, the prosecution case is that PW 4 Maniram, PW 6 Rampratap and the appellant Sohan Lal are real brothers and reside in 5-C Chhoti Police Station Mathili Rathan district Ganganagar. The deceased-victim Khetpal, aged about 20 years, was the son of PW 4 Maniram. Maniram and the appellant Sohan Lal purchased Murabba No. 10 comprising an area of 25 Bighas situate in Rohi Chak 5-C Chhoti. Maniram was cultivating 10 Kilas while Sohan Lal was cultivating the remaining 15 Bighas in this Murabba No. 10, as shown in site plan Ex. P 11. In the South of this Murabba runs a Pacca Khala (water channel) as shown in site plan Ex. P 11. Maniram and accused Sohan Lal constructed a Kaccha Khala (water channel) contiguous in the North of Pacca Khala, as shown in Ex. P 11, to take water to their Murabba No. 10. Disputes arose between Maniram and Sohan Lal about the fields of this Murabba, resulting in civil, criminal and revenue litigations between them.

3. At about 9.00 p m. on September 10, 1973, PW 4 Maniram, PW 6 Rampratap PW 1 Budhram and the deceased Khetpal went to Murabba No. 10 to irrigate the fields of Maniram. They opened an out-let in the Kaccha Khala to divert water to the fields of Maniram. Accused Sohan Lal, who was present there, forbade Maniram and others from taking and diverting water towards his fields of Murabba No. 10. Maniram and others raised protests and stated that as they had the turn to take the water to the fields of Maniram, they should be allowed to do so. Accused Sohan Lal started abusing them and cried aloud 'here are the enemies and shoot them'. Hearing his command, accused Ramswaroop Prithviraj and Ramdhan, who were hiding themselves in the standing crop of cotton, came out. Ramswaroop and Ramdhan had guns, Prithviraj had a Sela and Sohan Lal had a Lathi. Ram Swaroop fired a shot at Khetpal, which hit him in the chest. Khetpal fell down on the side of the main channel (Pacca Khala). Ramdhan fired a shot at Rampratap which hit him on the waist and hand. He also fell down. Budh Ram took to heels. Accused Prithviraj cried aloud and asked accused Ramswaroop to shoot Budhram. Ramswaroop again fired a shot which hit on the back of Budhram. Budhram also fell down. The accused thereafter retreated and went to their Dhani situate in this

very Murabba No. 10. Maniram went towards the bridge of the channel where he met prosecution witnesses Pooranram, Jeet Singh and others. Pooranram brought a bullockcart in which the injured Khetpal, Rampratap and Budhram were placed. They started towards Ganganagar for medical treatment. Maniram went to Police Station, Mathili Rathan and verbally lodged report Ex. P 10 at about 11 00 p.m. on the same day. The police registered a case under Section 307, I.P.C. and proceeded with the investigation. The Station House Officer was not available at the police station. The Assistant Sub-Inspector Anoop Singh (PW 7) deputed some police constables to keep a watch on the spot of occurrence and he himself went to Government Hospital, Ganganagar. There he learnt that Khetpal had already passed away in the way when he was being taken in the bullockcart to Ganganagar. The condition of Rampratap was precarious. He got his statement recorded by a Magistrate. Meanwhile the station House Officer Swaran Ram (PW 16) also arrived at Ganganagar He prepared the inquest-report of the dead body of Khetpal and seized his bloodstained clothes. The postmortem examination of the victim's dead body was conducted in the noon of September 11, 1973 by PW 8 Dr. Agrawal the then Medical Jurist, General Hospital, Ganganagar. The doctor noticed the following ante-mortem injuries on the victim's dead body:

(1) Multiple gun shot wounds of entry lacerated, circular, inverted and closely situated over an area of 9' x 9' on the right lower chest anteriorly, right hypocondrium and right epigastrium i.e. right upper part of abdomen extending from the level of umbilicus to the 6th rib on right side area and just on left to the mid epigastric line (central line) to the lateral abdominal wall (mid axillary line) with bruises and abrasion over 1/1-2' x 3/4' area in the centre and 3/4' x 1/2' just above the umbilicus. There was no tattooing and searching. The number of the wounds could not be counted exactly but was about 120 to 130, each sized 1/8' x 1/8' with clotted blood;

(2) There were two similar wounds of entry on the right side of the back of lumber region on post axillary line near the final angle;

(3) Abrasion 1' x 1/2' on the lumbo sacral region of the vertibral column;

(4) Abrasion 1/4' x 1/4' on the dorsum of right hand.

Injuries No. 1 and 2 were found to have been caused by a fire-arm while injuries No. 3 and 4 were found to have been caused by some blunt object. In the opinion of Dr. Agrawal, the cause of death was fire arm injury with multiple shots causing perforation of the vital organs, intra-abdominal and intra-thoracic region and shock. Injury No. 1 was found sufficient in the ordinary course of nature to cause death. The post-mortem examination report prepared by him is Ex. P 19. Some pellets were found embedded in the victim's dead body, which were removed by the doctor. They were seized and sealed by him and were sent to the police. The injuries of Rampratap (PW 6) and Budhram (PW 1) were also examined by Dr. Agrawal on September 11, 1973. Four injuries caused by a fire-arm were found on the person of Rampratap Multiple scattered wounds caused by a firearm and two abrasions were found on the person of Budhram. Their injury reports are Ex. P 17 and Ex. P 18.

4. The Station House Officer Swaran Ram visited the spot on September 11, 1973, inspected the site and prepared the site plan Ex. P 11. He found two fired and one live cartridges and two wads on the spot. He also found marks of blood on the wall of the channel, but they were not capable of being lifted. The appellants were arrested and in consequence of the informations furnished by them, guns and pistols were recovered. The guns and cartridges were sent to the Ballistic Expert for scientific examination. The scientific examination revealed that the empty cartridges found on the spot were fired from the gun recovered in consequence of the information furnished by accused Ramswaroop. On the completion of investigation, the police submitted a crime report against all the appellants in the Court of Munsif cum Judicial Magistrate Ganganagar, who, in his turn, committed the case for trial to the Court of Sessions. The case came for trial before the learned Additional Sessions Judge, who framed charges under Sections 302, 302/34-109, and 307/34-109, I.P.C. against all of them, to which they pleaded not guilty and faced the trial. Accused Sohan Lal, Prithviraj and Ramdhan denied their complicity in the commission of the offence. According to them, they were not on the spot at the time of the alleged incident. Accused Ram Swaroop advanced a counter story in his statement under Section 313. Cr. P.C. He deposed that at about 9.00 p.m. on September 10, 1973, he and the members of his family were in his Dhani situate in Murabba No. 10. Maniram Khetpal,

Rampratap, Budhram and some other persons came there and started firing. He sent his daughter-in-law Smt. Rameshwari to find out what was the matter. The aforesaid persons fired a shot at her, as a result of which she sustained multiple injuries. When the site was inspected by the investigating officer, he had noticed some pellets embedded in the wall of his Dhani. In support of its case the prosecution examined 16 witnesses and filed some documents. In defence, no evidence was adduced. On the conclusion of the trial, the learned Additional Sessions Judge found the prosecution story substantially true and the charges duly proved against the appellants. He found no substance in the defence put forward by them. The appellants were consequently convicted and sentenced, as mentioned at the very outset. Aggrieved against their conviction, they have taken these appeals.

5. During the pendency of the appeal, appellant Ramdhan passed away. As such, the court passed an order on February 17, 1982 that his appeal has finally abated in view of the provisions of Section 394(2) Cr. P.C.

6. We have heard the learned Counsel for the appellants and the learned Public Prosecutor assisted by Mr. S.R. Singhi learned Counsel for the complainant. We have also gone through the case file carefully.

7. In order to establish the charges against the appellants, the prosecution examined three witnesses, viz., PW 1 Budhram, PW 4 Maniram and PW 6 Rampratap, each of whom has claimed to have seen the incident. PW 1 Budhram and PW 6 Rampratap are the injured persons, who received fire-arm injuries in this incident. PW 4 Maniram is the person who had lodged the First Information Report at the police station. The names of all these witnesses have been mentioned in the FIR Ex P 10. The learned Additional Sessions Judge, after a detailed analysis of the evidence of these three witnesses, held them reliable and treated them as witnesses of truth.

8. In assailing the conviction, Mr. Bishnoi strenuously contended before us that these three witnesses have suppressed the real facts and have put forward only a lope-sided and truncated version. They have not satisfactorily explained the injuries found on the person of Smt. Rameshwari. When Smt. Rameshwari was

medically examined, numerous fire-arms injuries were found on her person. The prosecution explanation that Smt. Rameshwari had sustained injuries on account of the shot fired by Ramswaroop, is culpably false. The presence of fire-arm injuries and the fact that some pellets were found embedded in the wall of their Dhani, strongly probablises that the incident had taken place not as stated by the prosecution witnesses but as stated by the appellant Ramswaroop in his statement under Section 313, Cr. P.C. It was further argued that accused Sohan Lal and Prithviraj have been wrongly convicted with the aid of Section 34 or 109, I.P.C. Both of them were armed with Lathi and Sela and had their been a common intention of their part to kill Khetpal, they would have inflicted injuries to him by their weapons. The story of their giving instigation or exhortation to Ram Swaroop or Ramdhan is a brazen lie and has been falsely introduced to connect them with the commission of the crime. It would be proper to examine these contentions at seriatim.

9. PW 4 Maniram, PW 6 Rampratap and PW 1 Budhram are the ocular witnesses of the incident. PW 1 Budhram and PW 6 Rampratap had received injuries by gun shots in this incident and as such their presence on the spot is not open to any doubt. These three witnesses stated that at about 9.00 p.m. when they started making an out-let in the Kaccha Khala to take and divert water to the fields of Maniram in Murabba No. 10, accused Sohan Lal who was already there, forbade them to do so Maniram asserted his right to take water as he had his tern at that time. Accused Sohan Lal started abusing them and cried aloud 'here are the enemies and shoot them.' Hearing his command and order, the accused Ramdhan, Ramswaroop and Prithviraj, who were hiding themselves in the cotton-crop standing in Kila No. 24 of Mirabba No. 10, cam; out. Accused Ramswaroop and Ramdhan had guns, Prithviraj had a Sela and Sohan Lal had a lathi Accused Ram Swaroop fired a shot at Khetpal, which hit him on his chest. Khetpal fell down on the bank of the main water channel. Accused Ramdhan fired a shot at Rampratap (PW 6), which hit him in his waist and hand: He also fell down Budhram (PW 1) took to heels. Accused Ramdhan fired another shot at Budhram which hit him on his back and hands. The accused thereafter retreated and went to their Dhani. These three witnesses were cross-examined at length, but on the whole their evidence remains unshaken and unimpeached on the role played by

accused Ramswaroop and Ramdhan. The names of all these witnesses have been mentioned in the FIR Ex. P 10 lodged by PW 4 Maniram. It is true that PW 4 Maniram and PW 6 Rampratap are the real brothers and the deceased Khetpal was the son of PW 4 Maniram. PW 1 Budhram was their servant employed on daily wages. But this close relationship does not diminish the evidentiary value of what they testified on oath. It may be stated that accused Ramswaroop, in his statement under Section 313 Cr. P.C. admitted that he had fired two or three shots to save his daughter-in-law Smt. Rameshwari. The report of the Ballistic Expert shows that the empty cartridges found on the spot were fired from the gun recovered in consequence of the information and at the instance of accused Ramswaroop, In view of the aforesaid evidence and the statement of accused Ramswaroop, it can be safely held that accused Ramswaroop fired two shots one at the deceased Khetpal and the other at PW 1 Budhram. Khetpal died on account of the gun shot injuries inflicted to him by accused Ramswaroop. PW 1 Budhram also sustained injuries of the shot fired by accused Ramswaroop PW 6 Rampratap sustained injuries on account of the shot fired at him by accused Ramdhan. The trial Judge arrived at these conclusions and we have no cogent or convincing reasons to up-set these conclusions. Accused Ramswaroop is, thus, the perpetrator of the murder of Khetpal.

10. Coming to the counter story put forward by accused Ramswaroop we have the least hesitation in rejecting it. In his statement under Section 313 Cr. P.C. accused Ramswaroop stated that Maniram, Rampratap, Budhram and the deceased came to his Dhani and started firing the shots. He sent his daughter-in-law Smt. Rameshwari to find out as to what was the matter. Smt. Rameshwari sustained gunshot injuries. He, therefore, fired shots on the members of the complainant party. It is true that Smt. Rameshwari sustained gun-shot injuries, but there is an explanation as to how she was hit PW 1 Budhram stated that when he was running away, accused Ramswaroop fired a shot at him. This shot hit him and a woman (meaning thereby Smt. Rameshwari), who was coming from the opposite direction. In order to disprove this explanation given by PW 1 Budhram, the best witness could be Smt. Rameshwari. Smt. Rameshwari is the daughter-in-law of accused Ramswaroop. She was not produced in defence by the accused. This failure on the part of the accused discredits the defence version entirely. A similar

situation arose in *Gajendrasingh v. State of Uttar Pradesh* 1975 SCC(Criminal) 499), where a counter version of the assault was advanced by the accused. It was alleged that one woman of their family was hit by a shot fired by a member of the complainant party. However, that woman Smt. Rambeti was not examined. The prosecution did not examine Smt. Rambeti and so also the accused did not examine her in defence. The counter story put forward by the accused was disbelieved because Rambeti was not examined in defence, though the accused could examine her. It was observed:

In our opinion, the non-examination of Smt. Rambeti is the strongest possible circumstance to discredit the defence version, because she alone could have been in the best position to explain whether the injuries were caused as a result of the shot fired by Shyamlal Singh or just accidentally.

The counter story put forward by accused Ramswaroop has, thus, no base and was rightly dismissed by the Court below. The conviction of accused Ram Swaroop under Sections 302, 307 & 307/34, I.P.C. is perfectly justified and calls for no interference.

11. As regards the appellants Sohan Lal and Prithviraj the prosecution case is that Sohan Lal had a lathi and Prithviraj had a Sela. It was at their instigation and exhortation that accused Ram Swaroop and Ramdhan fired the shots. They have been convicted under Sections 302 and 307 with the aid of Sections 34 and 109, I.P.C. The pertinent question, which arises for consideration, is whether accused Sohan Lal and Prithviraj instigated and exhorted accused Ram Swaroop and Ramdhan to fire the guns. It is, no doubt, true that PW 1 Budhram, PW 4 Maniram and PW 6 Rampratap stated that accused Sohan Lal and Prithviraj asked accused Ram Swaroop and Ramdhan to fire their guns. But this part of their evidence does not inspire confidence. In his statement Ex. D. 1 dated September 11, 1973, recorded by Magistrate just after the occurrence in the expectation of his death, PW 6 Rampratap does not speak of any instigation or exhortation given by accused Sohan Lal and Prithviraj. He is absolutely silent in Ex. D 1 about the exhortation and instigation. There was then no need for any instigation or exhortation. Accused Ramswaroop and Ramdhan were armed with guns. The

dispute relating to the taking and diverting the water took place in their presence. There was, therefore, no need on the part of accused Sohanlal & Priihviraj to instigate or exhort them to fire the guns. It is very easy to make the allegation about verbal instigation and exhortation. It is, therefore, required that evidence relating to verbal instigation or exhortation should be thoroughly and closely scrutinized. Evidence of verbal instigation or exhortation has always been treated as weak and unless clear and cogent evidence is available in this respect, the verbal instigation or exhortation should not be accepted.

12. In *Jainul Hague v. State of Bihar* : 1974 CriLJ143 , it was observed:

The evidence of exhortation is, in the very nature of things, a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant.

Evidence of instigation and exhortation is, thus, a weak type of evidence to prove the guilt of the accused under Section 302/34-109 and 307/34-109, I.P.C.

13. Section 34, I.P.C. cannot be applied to convict accused Sohan Lal and Prithviraj simply because of their presence on the spot. Accused Sohan Lal is the father of accused Ramswaroop and Prithviraj. The occurrence took place on the water channels which run adjacent to their fields of Murabba No. 10. Their presence on the spot was, thus, not unnatural and unexpected. One of them had a Sela and the other had a lathi. But they did not wield these weapons and inflicted injuries to none of the complainant party. Their mere presence on the scene of the occurrence is not sufficient to invoke Section 34, I.P.C. against them. The allegation of their giving instigation or exhortation is a brazen lie. The conviction of accused Sohan Lal and Prithviraj under Sections 302 and 307 with the aid and applicability of Section 34 or 109, I.P.C. is unwarranted and unsustainable. They are, therefore, entitled to acquittal.

14. In the result, the appeal of accused Ramdhan stands abated as ordered earlier on February 17, 1982.

15. The appeal of accused Sohan Lal and Prithviraj is allowed. Their convictions and sentences under Sections 302/34, 302/34-109, 307/34 and 307/34-109, I.P.C. are set-aside and they are acquitted of the aforesaid offences. They are already on bail and need not surrender. Their bail bonds shall stand cancelled.

16. The appeal of accused Ramswaroop is dismissed. His convictions and sentences under Sections 302, 307 and 307/34, I.P.C. are maintained. He is on bail and is not present today. He is directed to surrender himself before the learned Additional Sessions Judge, Ganganagar to serve out the unexpired portion of his sentence, failing which the learned Additional Sessions Judge will get him arrested and send him to jail for the aforesaid purpose.

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