

**Rameshwar. Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/912140](http://sooperkanoon.com/912140)

**Court :** Allahabad

**Decided On :** Jul-03-2010

**Judge :** Yatindra Singh ; Surendra Singh,J.J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304, 325 part-I,II Read with Section 34 ; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 313 ;

**Appeal No. :** CRIMINAL APPEAL No. - 2384 of 1982.

**Appellant :** Rameshwar.

**Respondent :** State of U.P.

**Advocate for Def. :** A.G.A, Adv.

**Advocate for Pet/Ap. :** V.P.Varshney ; Sanjay Srivastava, Adv.

**Judgement :**

1. This is a criminal appeal against the judgment of the Sessions Judge, Moradabad dated 17.9.1982 passed in session trial No.271 of 1981.

THE FACTS

2. An incident happened at 11:30 hours on 24.6.1980. In this incident one Dan Singh (the Deceased) was killed. Sompal Singh (the Informant) is Samadhi of the Deceased. He lodged the FIR at 13:15 hours. It was registered as Case Crime No.233 of 1980 under Section 302 IPC, Police Station Didauli, District Moradabad.

3. The allegation in the FIR are as follows;

i. Rameshwar (the Appellant) had taken Rs.1754/- from the Deceased. The Deceased asked the Appellant to return the money several times.

ii. At about 11:30 hours, the Deceased had gone to the house of the Appellant to ask him to return the money. When he asked for money, the Appellant and his son Umesh (both are referred to as the Accused) hit the Deceased with lathis.

iii. The Appellant hit the Deceased on his head. His son Umesh also hit on the body of the Deceased.

4. The police investigated the case and submitted the charge sheet. The case was committed to the sessions court and was numbered as Sessions Trial No.271 of 1981.

5. The Sessions Judge framed charge on 10.8.1981. Both the accused were charged under Section 302 read with Section 34 IPC. 2

6. Among others, the prosecution filed the following documents:

i. FIR (Ex Ka-3);

ii. Copy of report (Ex Ka-1);

iii. Recovery memo of blood stained and plain earth (Ex Ka-9);

iv. Memo of General Diary (Ex Ka-10);

v. Postmortem report of the Deceased (Ex Ka-2);

7. The statement of the accused was recorded under Section 313 Cr PC on 10.8.1982. They denied taking of any loan from the Deceased or their involvement in the incident. They stated that they were implicated due to enmity.

8. The prosecution examined the following witnesses;

i. Sompal Singh (PW-1): Informant, an eyewitness;

ii. Shiv Raj Singh(PW-2): Eyewitness;

iii. Dr Lalit Kumar Anand (PW-3): Doctor, conducted the post mortem.

iv. Chandrapal Singh (PW 4): Eyewitness;

v. Bramha Nand (PW 5): Affidavit of the constable who carried the dead body for the postmortem;

vi. Ashok Pal Singh ( PW 6): Eyewitness;

vii. Bhagwat Singh (PW 7): Head Constable, prepared the chick; KC Sharma (PW 8): Investigating Officer (IO).

9. The Sessions Judge by this judgement dated 17.9.1982 convicted the Appellant under Section 302 IPC and Umesh under Section 325 read with Section 34 IPC. The Appellant was sentenced to imprisonment for life whereas Umesh was directed to be released on probation of good conduct for a period of one year. Hence present appeal by the Appellant.

#### POINTS FOR DETERMINATION

10. We have heard Sri Arun Kumar Singh as friend of the Court for the

Appellant, and Sri AK Shukla, AGA for the State. The following points arise for determination in the case:

(i) Whether the Appellant participated in the incident.

(ii) If the answer to the preceding point is in affirmative then what offence has he committed;

(iii) If the Appellant is guilty then what punishment should be awarded to him 31st

#### POINT: APPELLANT PARTICIPATED

11. To prove its case, the prosecution produced seven witnesses and filed affidavit of the constable who carried the dead body for post mortem. Out of these persons,

four are eyewitnesses, and rest of them are witnesses of formal nature.

12. In the site-plan (Ext. Ka-11) it has been shown that the Appellant's house is about 15 paces from the Gher of the Deceased and the house of the Deceased is next to the Gher.

13. The Informant (PW 1) deposed that:

i. He is Samadhi of the Deceased;

ii. His daughter is married to the son of the Deceased;

iii. He normally comes to the house of the Deceased to help him in his agricultural work.

This is how he has explained his presence. It is not unusual. His presence on the spot cannot be doubted.

14. Shiv Raj Singh (PW 2), Chandra Pal Singh (PW 4), and Ashok Pal Singh (PW 6) are the other eyewitnesses. The oral testimony is that they are neighbors of the Deceased. Their presence at the time of the incident is natural and there is nothing to doubt their presence on the spot.

15. The eye witnesses have deposed that the Appellant had given blow to the Deceased on his head. There is nothing to disbelieve their oral evidence.

16. In our opinion, the prosecution has proved beyond reasonable doubt that the Appellant had participated in the incident and gave blow on the head. 2nd & 3rd POINTS: APPELLANT GUILTY U/S 304 Part-II IPC.

17. The prosecution version in the FIR is that the Deceased had given Rs.1745/- as loan to the Appellant and he had gone there to collect the same, when he was given latthi blows.

18. The scuffle was over the loan. The Informant (PW 1) is the Samadhi of the Deceased. He is relative of the Deceased. The other eye-witnesses, namely, Shiv Raj Singh (PW 2), Chandra Pal Singh (PW 4) and Ashok Pal Singh (PW 6) are

neighbours of the Deceased. They have deposed that there was altercation on the Chabutara of the Appellant and then the Deceased was hit by the Appellant.

19. Shiv Raj Singh (PW 2) deposed that the Deceased was asking the Appellant for the loan and there was also a Panchayat in this regard. However, there is dispute whether any such loan was given. The Appellant denied taking any loan in his statement u/s 313 Cr PC.

20. There is no evidence that any loan was given by the Deceased to the Appellant. The Informant (PW 1) deposed that the alleged loan was not given in his presence. After death of the Deceased, no suit for recovery of loan was filed. There is no documentary evidence to show that any loan was given to the Appellant. The altercation and then scuffle between the parties was regarding the loan for which there is no evidence.

21. The ante mortem injuries in the post mortem report are as follows;

(i). Abrasion 7.0 cm x 6.0 cm, vertical on the front of face of head, 1.0 cm above the root of nose.

(ii). Lacerated wound 3 cm x 0.5 cm x 0.5 cm deep (bone deep) vertical on the mid line of front part of head torn, everted margins 0.5 cm above injury no.1. Parietal bone fractured, 3 cm x 0.5 cm depressed vertical underneath the injury found.

(iii). Abrasion 1.5 cm x 0.5 cm oblique on the left side of front surface of neck 2.0 cm above the medial end of left clavicle bone.

(iv). Abrasion 1.0 cm x 1.0 cm on the outer surface of left knee joint.

(v). Abrasion 1.0 cm x 1.0 cm on the outer surface of lower part of left lower leg 2.0 cm above the left ankle joint.

(vi). Contusion 5.0 cm x 1.5 cm horizontal on the outer surface of left lower leg 14.5 cm above injury no.5.

(vii). Abrasion 1.0 cm x 1.0 cm on the back surface of base of left middle finger.

22. Dr Lalit Kumar Anand (PW 3) conducted the postmortem. He has deposed that injury no.(ii) is on the head and was cause of his death and the other injuries could be caused by falling on the ground.

23. The reading of the FIR and the oral evidence shows that only one blow was given on the head. There is no evidence of premeditation to commit the murder. It appears that latthi blow was given in the sudden fight over the alleged loan in the heat of passion upon a sudden quarrel without taking undue advantage. This quarrel was about the loan that was denied by the Appellant.

24. Considering the evidence on record, in our opinion, the Appellant is guilty under Section 304 part-II IPC rather than under Section 302 IPC.. He is sentenced to ten years rigorous imprisonment.

## **CONCLUSION**

25. Our conclusions are as follows;

(i) The Appellant participated in the incident and is guilty;

(ii). The conviction of the Appellant is altered from Section 302 IPC to Section 304 Part-I IPC.

(iii). He is awarded 10 years' rigorous imprisonment.

26. In view of our conclusions, the appeal against the judgement dated 17.9.1982 in ST no 271 of 1981, District Moradabad is partly allowed. The Appellant is on bail. His bail is cancelled. He will be taken into custody to serve out remaining part of the sentence.

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