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**(2004) 12 AHC CK 0202**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Criminal Appeal No. 487 of 1996

Ram Anjore

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Dec. 16, 2004

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 154
- Penal Code, 1860 (IPC) - Section 302, 304(2)

**Citation:** (2005) 2 ACR 1500

**Hon'ble Judges:** Kamal Kishore, J

**Bench:** Single Bench

**Advocate:** Anil Kumar Tripathi, for the Appellant; G.A., for the Respondent

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**Judgement**

Kamal Kishore, J.

This is the criminal appeal against the judgment and order dated 8.11.1996, passed by Sri R. P. Yadav, the then learned Sessions Judge, Sultanpur in S.T. No. 323 of 1992, convicting the accused-Appellant, Ram Anjore u/s 304, Part-II of I.P.C. and sentencing him to undergo three years R.I.

2. The case of the prosecution in brief is that the accused-Appellant, Ram Anjore is the younger brother of the deceased Lalloo. They all are the residents of village Kaulapur hamlet of Kahoo, which is situated within the limit of Police Station, Sangrampur at a distance of about one kilometre from the police station. At the relevant time, Sri Harijan is said to have been living out of the village in connection with earning his livelihood. Smt. Rangeela and Lalloo, deceased were living in the village. It is in the evidence of P.W. 1, Smt. Rangeela that the ancestral house of Lalloo deceased and accused-Appellant, Ram Anjore is to the south of the Harijan colony built for Sri Lalloo deceased. The accused-Appellant, Ram Anjore had also been provided a Pukki Kothari in Harijan colony. To the east of this Pakki Kothari of the accused-Appellant, there is the field belonging to deceased Lalloo. It is alleged

by the prosecution that on 1.2.1992 between 7.00 a.m. to 8.00 a.m., Lalloo deceased was repairing ridge (Mend) of his field and was placing some earth on the Mend by cutting the same from the field. Accused objected to it, whereupon some altercation ensued between the two brothers. Gaya Prasad (P.W. 4), Pradhan, Badri Prasad (P.W. 2) and Ram Asrey Yadav who had been passing through the nearby road came to the spot and tried to intervene. In the meantime, accused-Appellant, Ram Anjore is alleged to have given a lathi blow over the head of the deceased with the result it was bleeding. He was medically treated by a Harijan Doctor of Kalikan, but died at about midnight. The F.I.R. regarding the occurrence was lodged and Mr. N. U. Farooqui (P.W. 5), the then Station Officer of Police Station Sangrampur, has submitted charge-sheet against the accused-Appellant, Ram Anjore, after completing the investigation.

3. I have heard the learned Counsel for the parties and have gone through the record.

4. It has been argued by the learned Counsel for the accused-Appellant that the F.I.R. regarding the occurrence has been lodged on the next day i.e. 2.2.1992 while the occurrence took place on 1.2.1992 at about 7.00 to 8.00 a.m., hence, the F.I.R. of the occurrence is delayed one. In the instant case, the delay stands fully explained. It is in the evidence of the prosecution witnesses that after accused-Appellant Ram Anjore had given the deceased a lathi blow, he was asked by the witnesses to arrange for the medical aid to the deceased to which he had agreed. He called the doctor from Kalikan who bandaged his injury and gave medicine, but he vomited. It is clear from the circumstances that the complainant never wanted to report the matter to the police and that must have been so on account of the relationship of the deceased and the accused-Appellant, Ram Anjore and the circumstances of the poor lady who was alone in the house. She stated that she had been busy in attending the deceased and looking after him and she informed the Pradhan only after the death of the deceased in the night. It appears that this incident would have gone unreported had the deceased not died. There seems to be no intention on the part of the complainant or any of the witnesses to implicate the accused in this case. What transpires from the circumstances is that they had never any intention to report the matter to the police, but it became obligatory for them only after the death of the deceased because in that event, there was no alternative left to them, so the delay in this matter which occurred in lodging of the report is so naturally explained that I have, no hesitation in accepting the same as true.

5. In the instant case, the prosecution has examined the informant, Smt. Rangeela as P.W. 1, Badri Prasad as P.W. 2 and Gaya Prasad as P.W. 4 as the witnesses of fact. It has been argued by the learned Counsel for the accused-Appellant that none of the witnesses has sustained any injury, which creates doubt regarding their presence at the scene of occurrence. This argument advanced by the learned Counsel is not tenable. Various persons react differently in similar circumstance and it is

difficult to probe into the minds of the accused as to how they will act in a particular way. In a case of like nature where the witnesses had not received any injury, it was held by the Hon"ble Supreme Court in the ruling in Ram Pratap v. State 1983 SCC 601 and Molu and Ors. v. State of Haryana 1976 Cri LJ 1995, that the fact that the witness did not receive any injury could not be a valid ground for rejecting testimony of the witness. In the ruling in Hardev Singh v. Harbhej Singh AIR 1997 SCW 203, it has been held that non-intervention of relatives during assault on the victims to protect them is of no consequence when the assailants are armed with deadly weapons and the victims and their relatives are totally unarmed. Thus, the said argument of the learned Counsel, to the contrary, is not tenable under the circumstances of the present case in view of the aforesaid rulings of the Hon"ble Supreme Court.

6. The witnesses have deposed that the deceased Lalloo Ram died as a result of single blow inflicted by him on the head of the deceased Lalloo Ram. The prosecution has examined Dr. S. P. Kasaudhan as P.W. 3, who has prepared the post-mortem report. According to which, the deceased had died as a result of single lacerated wound on the right side of skull. Thus, the testimony of the eye witnesses examined by the prosecution finds support from the medical evidence also and their testimony cannot be discarded since the same finds support from the medical evidence, as has been held by the Hon"ble Supreme Court in the ruling in Shyam Balu Chaucley v. State 1976 Cri. AR 49. The same view has been followed by the Hon"ble Supreme Court in subsequent ruling also in Gauri Shanker Sharma v. State of U.P. 1990 ACR 446 (SC) : 1991 SCC 67.

7. Lastly, it has been argued by the learned A.G.A. that since the charge has been framed for the offence punishable u/s 302, I.P.C., the Court below has erred in convicting the accused-Appellant Ram Anjore for the offence punishable u/s 304, Part-II of I.P.C. sentencing the Appellant-Ram Anjore with three years R.I only. This argument advanced by the learned A.G.A. is not tenable. Admittedly, the deceased, Lalloo Ram was aged about 80 years. According to the Medical Jurisprudence, the skull bone becomes brittle when the victim is aged about 80 years. The P.W. 4, Gaya Prasad states in his very examination-in-chief that the accused-Appellant, Ram Anjore had merely a small danda in his hand, by which, he had inflicted one blow on the head of the deceased. Thus, there seems to be no intention to commit the murder of the deceased, Lalloo Ram. The accused-Appellant Ram Anjore seems to have no mens rea i.e., criminal intention, which plays an important role in criminal jurisprudence. Under these circumstances, I find that the learned court below was justified in sentencing the accused-Appellant, Ram Anjore for three years R.I. only for the offence punishable u/s 304, Part-II of I.P.C. The arguments to the contrary are not tenable.

8. The appeal is devoid of merit and is hereby dismissed.