
(2003) 11 AHC CK 0210

Allahabad High Court

Case No: Criminal A. No. 2145 of 1981

Ramadhar and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 28, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 300, 302, 304, 325, 34

Citation: (2004) CriLJ 2378

Hon'ble Judges: Onkareshwar Bhatt, J; M.C. Jain, J

Bench: Division Bench

Advocate: S.N. Mulla, A.N. Mulla, Manoj Prasad, R.S. Maurya and C.K. Parikh, for the Appellant; A.G.A., for the Respondent

Final Decision: Partly Allowed

Judgement

M. C. Jain, J.

The appellants Ramadhar, Panna Lal and Faujdar are real brothers being sons of Sugriv and have filed this appeal against the judgment and order dated 19-9-1981 passed by Sri D. N. Sharma, the then III Additional Sessions Judge, Varanasi in S. T. No. 367 of 1980. Ramadhar has been convicted u/s 302 I. P. C. and sentenced to life imprisonment. The other two appellants have been convicted u/s 325 I. P. C. read with Section 34 I. P. C. and each of them has been sentenced to three years rigorous imprisonment.

2. The incident took place on 8-8-1978 at about 7.00 P. M. in village Sonahul, Police Station Chakia, District Varanasi (now district Chandauli). The F. I. R. was lodged the same night at 9.10 P.M. by Chhedi P.W. 1, eye-witness cousin of the deceased.

3. The prosecution case was that the accused appellants as also the deceased Ram Sevak and complainant were the residents of the same village and two sides were cousin inter se also. Smt. Binki was the wife of the complainant. Chhedi and Dhankali PW-3 was the mother of the deceased Ram Sewak. The main door of the

house of the complainant opened towards north in front of which there ran a lane about five feet wide from east to west. The house of the accused was situated in the neighbourhood of the complainant's house and there existed a well towards the west of the complainant's house at a distance of about 10 paces. Thakur Basant Singh had his cultivation and Chhauni in village Sonahul. At the time of the occurrence, the agricultural labourers were on strike and were demanding higher wages. Therefore, the labourers were not working for Thakur Basant Singh. However, despite the strike, deceased Ram Sewak occasionally used to help Thakur Basant Singh in his cultivation. For that reason, all the accused persons bore grudge against him. On 8-8-1978 at about 5.00 P. M. an altercation took place between the deceased Ram Sewak and accused Ramadhar, the latter asking the former as to why he was working in Thakur Basant Singh's field and the former retorting back that he could not earn his livelihood without doing so. On returning back home, the deceased told about the altercation to his cousin complainant Chhedi PW 1. The same day at about 7.00 P.M., The deceased Ram Sewak was going towards well to feed his bullocks. Ramadhar arrived there with a lathi and threatened to kill him. In the mean time, Faujdar and Panna Lal also arrived at the scene armed with lathis. Panna Lal exhorted Ramadhar to kill the deceased. Panna Lal plied lathi on Ram Sewak, who, however, escaped unhurt, and then Ramadhar struck a lathi blow on the head of the deceased who raised hue and cry. Besides complainant Chhedi PW-1 who was present at the time of the occurrence, Smt. Dhankali PW 3 and Smt. Binki arrived at the spot, both of them tried to come to the rescue of Ram Sewak, but were hit. with lathi by Faujdar. Ram Kishun PW-2, Mohan and Jhilmil appeared at the scene of occurrence on hearing the commotion and saw the incident. A lantern was glowing at the scene of occurrence at the time of incident. A glowing lantern was also there at the house of the accused Faujdar. The injured persons were taken to Police Station Chakia wherefrom they were sent to P. H. C. Chakia for medical examination. The complainant also proceeded to Police Station Chakia where he lodged the F. I. R. and the case was registered under Sections 308/323 I.P.C. Ram Sewak was admitted in P. H. C. Chakia and succumbed to his injuries the next day on 9-8-1978 at 8.30 A. M. On getting information in this behalf, the case was converted into one u/s 304 I.P.C. The investigation was taken up by S. I. Prem Kumar Rai PW 7.

4. At the time of initial medical examination of Ram Sewak (deceased) on 8-8-1978 at 9.30 P. M. Dr. Sugriv PW-5 found lacerated wound 3 cm x 1/2 cm x 1/2cm deep with traumatic swelling 7 cm. x 4 1/2 cm. on left side of parietal region, 8 cm. above left ear. Bleeding was present. The injury had been caused by some blunt object.

5. The injury found on the person of Dhankali PW 3 on 8-8-1978 at 9.45 P. M. was an abrasion 1 cm. with traumatic swelling, 5 cm. x 5 cm. on the right side of the forehead, 3 1/2 cm. above right eye-brow from which blood was oozing out. It was simple injury caused by blunt object.

6. On the person of Binki at the time of her medical examination on 8-8-1978 at about 11.00 P. M. the injuries found were lacerated wound 1 1/2 cm. x 1/2 cm. skin deep on outer part of left wrist and an abrasion 1 cm. x 1/2 cm. on the lower part and outer part of left forearm. Both these injuries were simple and caused by some blunt object.

7. Consequent upon the death of Ram Sewak, the post mortem over his dead body was conducted by Dr. P.N. Gupta PW 4 on 10-8-1978 at 3.15 P. M. He was about 18 years of age and 11 1/2 days had passed since he died. The fatal injury was lacerated wound 4 cm. x 1 1/2 cm. x skull deep, 7 cm. from left eye-brow and 9 cm. from left ear. Besides, there were multiple abrasions in an area of 4 cm. x 4 cm. over right elbow.

8. On internal examination, left frontal bone of skull was found fractured. There was haematoma in an area of 10 cm. x 11 cm. on left side of cerebrum. Membranes were congested on left side. There was depression on left side of brain matter due to haematoma. Death had occurred due to coma as a result of skull injury.

9. The accused -appellants denied the prosecution case and attributed their false implication to enmity. Their defence was of denial simplicitor. The accused-appellant Ramadhar also claimed to have sustained Injuries in the occurrence. It was alleged that immediately after the incident, he had left for the Police Station to lodge a report, but he was detained there and was thrown behind the bars. The prosecution did not offer any explanation for his Injuries as contended by the defence. Ramadhar accused-appellant was also got examined by the police on 9-8-1978 at 1.35 P. M. He had sustained a lacerated wound 1 cm. x 1/2 cm. and 1/2 cm. deep outer front and left side of head. Clot was present in the wound which had dried. There were also three abrasions with traumatic swelling on the outer part of the left elbow. Scabs were present on left shoulder joint and on right shoulder.

10. The prosecution, besides relying on formal evidence relating to medical aspect and investigation, depended on the ocular testimony of Chhedi PW-1, Ram Kishun PW-2 and Dhankali PW-3.

11. We have heard Sri C. K. Parikh learned counsel for the appellants and learned A. G. A. from the side of the State. The record of the lower court is before us which we have carefully perused. While the appellants have challenged their conviction on the ground that the genesis of the incident was concealed by the prosecution and it even failed to explain the injuries of one of them, Ramadhar. Learned A. G. A., on the other hand, has supported the conviction and sentences recorded by the lower court on the reasoning adopted by the trial Judge.

12. To begin with, the medical evidence adduced by the prosecution fully established that Ram Sewak died homicidal death resultant of the blunt weapon injury sustained by him on his head.

13. The point for determination is as to whether all or any of the accused appellants were the perpetrators of the crime and, if so, what offence came to be committed within the ambit of law.

14. So far as the accused-appellants Panna Lal and Faujdar are concerned (who have been convicted u/s 325 I.P.C. read with Section 34 I. P. C. and sentenced to three years rigorous imprisonment), their alleged participation in the crime is not free from doubt as we find on careful analysis of the evidence adduced on record. The case of the prosecution was that the assault on the deceased was preceded by an altercation between him and the accused respondent Ramadhar who allegedly gave him lathi blow on the head. At that time, the two accused-appellants Panna Lal and Faujdar were not in the company of Ramadhar. The three accused-appellants are real brothers being the sons of Sugriv and are also the cousin brothers of the complainant, Chhedi PW 1 and the deceased Ram Sewak. As per the testimony of Chhedi PW 1, informant, the house of the accused-appellants was situated near his house in the eastern side. The house of the deceased was across the lane in the northern side. Quite often one finds the tendency to falsely rope in some other members of the family of the opponents, though not involved in the crime. Exaggeration of the part played by the other side in an Incident is also quite common. Therefore, the Court has to be circumspect in appreciation of the evidence. Chhedi PW-1 and Dhankali PW-3 stated that Panna Lal exhorted his companions to kill the deceased. Panna Lal and Fauzdar both were also allegedly armed with lathis. Ramadhar who had an altercation with Ram Sewak a little before and was himself armed with lathi which was wielded to strike the victim. Smt. Binki wife of Chhedi PW-1 sustained a lacerated wound of insignificant dimension of 1/2 cm. x 1/2 cm. in the skin deep at the outer part of the left wrist with abrasion of 1 cm. x 1/2 cm. on left forearm, 1 cm. above the lacerated wound. Dhankali PW-3 only sustained one abrasion of 1 cm. x 1/2 cm. with traumatic swelling on the right side of the forehead. She is the mother of the deceased. She, examined as PW-3, stated that on receiving a lathi blow, Ram Sewak had fallen down and she and Binki had rushed up to his rescue. To save him, she held and covered Ram Sewak. Persons around were trying to separate her from Ram Sewak, but she was resisting their attempt. In this process, she sustained injury. Chhedi's wife Binki was hurt in the same manner.

15. Having regard to her such statement and the nature of the injuries sustained by the two ladies, it appears that they came to be hurt in the process of being separated from Ram Sewak whom they wanted to cover and who had fallen down on receiving the lathi blow from Ramadhar. Had Panna Lal and Faujdar being actually present at the spot with lathis, sharing common intention of Ramadhar, they would have ordinarily plied the same causing more injuries to the two ladies and Ram Sewak. On a global consideration we are of the opinion that the participation of Panna Lal and Faujadar in the crime is quite doubtful and benefit of the same should accrue to them. We would acquit them and allow the appeal, so far

as they are concerned.

16. Now, we take up the case of the accused-appellant Ramadhar. He did not deny his presence at the spot. Rather, the plea of self-defence was raised on his behalf at the time of arguments before the lower Court that he acted in the exercise of right of self defence. He filed written statement also before the trial Court that he had sustained injuries in the incident, immediately after the incident he had gone to the Police Station to lodge the F. I. R. his report was not written down and he was put behind the bars, he was medically examined at the instance of the police and the prosecution did not tender any explanation as regards his Injuries. It is trite law that onus rests on the accused to establish his plea of private defence, though it is not as onerous as the burden which lies on the prosecution to establish every ingredient of the offence with which the accused is charged beyond reasonable doubt. It is also well settled that even if the accused does not plead self-defence, it is open to the Court to consider the said plea if the same arises from the material on record. We have stated earlier that Ramadhar was medically examined on 9-8-1978 at 1.35 P. M. at the instance of the police and as per the medical examination report (Ext. Kha-1), a lacerated wound 1 cm. x 1/2 cm. on left side of the head was found on his person with three abrasions. Chhedi PW-1 informant admitted in his testimony before the trial Court that when he reached the Police Station, he found Ramadhar accused to be present there from before. It is significant to point out that there is nothing to indicate that Ram Sewak was armed with any weapon. But at the same time, it is also clear that the prosecution did not disclose the start of the incident and also feigned ignorant about injuries sustained by the accused Ramadhar Chhedi PW-1 stated that when he saw Ramadhar at the Police Station, he did not see any injury on his person. As we mentioned in preceding discussion, the deceased and Ramadhar were cousins. There was no serious enmity between the two. The accused Ramadhar only disapproved the conduct of the deceased Ram Sewak in lending a helping hand to Thakur Basant Singh in his cultivation even though at that time agricultural labourers were on strike pressing for higher wages. A little before the Incident, the two had traded hot words as per the own case of the prosecution. The accused-appellant Ramadhar struck a single lathi blow on the skull of the deceased which proved to be fatal, The blow was not repeated by him even though Ram Sewak was unarmed. The analysis of all the factors leads to the only logical conclusion that in fact there was a sudden quarrel and scuffle between Ramadhar accused appellant and the deceased Ram Sewak. Without any pre-meditation, in the heat of passion, accused appellant Ramadhar struck a blow on the head of the victim which turned out to be fatal. There was necessarily a scuffle between the two and he himself sustained certain injuries. Under the circumstances, the intention of causing murder cannot be imputed to him. Though the accused Ramadhar has not been able to prove his plea of self-defence, but we find the case to be covered under exception (iv) of Section 300 I. P. C. He had no Intention to cause any hurt which was likely to cause his death but his act of giving a single blow on the head of Ram

Sewak shall be deemed to have been done with knowledge that it was likely to cause his death. The offence committed by him is, therefore, found to be covered under Part II of Section 304 I. P. C. Therefore, in respect of him also, we shall allow the appeal in part.

17. In view of the foregoing reasons, we partly allow this appeal.

18. So far as appellants Panna Lal and Fauzdar are concerned, we set aside their conviction and sentence. They are already on bail.

19. We convert the conviction of the accused appellant Ramadhar from Section 302 I. P. C. to Part II of Section 304 I. P. C. and sentence him to two years rigorous Imprisonment and a fine of Rs. 20,000/- (Rupees twenty thousand Only). In default of payment of fine, he shall suffer further two years rigorous imprisonment. The fine shall be paid within three months from today. The fine, if realised, shall be paid to Dhankali PW 3 mother of the deceased as compensation. If she is not alive, the compensation shall be paid to other immediate heir of the deceased Ram Sewak. The bail bonds of accused appellant Ramadhar are cancelled. The Chief Judicial Magistrate, Varanasi shall cause him to be arrested and lodged in Jail to serve out the sentence as directed above.

20. A copy of this Judgment along with record of the case is directed to be immediately sent to Chief Judicial Magistrate, Varanasi who shall ensure that the accused appellant Ramadhar is arrested and lodged in Jail to serve out the sentence imposed on him. The Chief Judicial Magistrate concerned shall report compliance within two months.