

Roop Chand Vs State

Criminal Appeal No. 644 of 1980

Court: Allahabad High Court

Date of Decision: March 11, 1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 32(1)#Penal Code, 1860 (IPC) â€”
Section 302, 307

Citation: (1996) 20 ACR 477

Hon'ble Judges: R.N. Ray, J; N.L. Ganguly, J

Bench: Division Bench

Advocate: Vishnu Chandra Srivastava, for the Appellant; G.A., for the Respondent

Judgement

R.N. Ray, J.

The Appellant Roop Chand preferred this appeal being aggrieved by the judgment and order of sentence passed in Session

Trial No. A-129/79, u/s 302, I.P.C. The learned Sessions Judge, Sri P. C. Saxena has convicted him for the offence u/s 302, I.P.C. and was

further pleased to sentence him to suffer R.I. for life.

2. The prosecution story runs as follows:

The Appellant owns an "Atta Chakki" and some time before the incident, he had got the grinding stones of the said Chakki repaired by the

deceased for which Rs. 30 was settled as labour charges. Out of the said amount Rs. 10 only was paid to the deceased and on 27.10.78 at about

8.45 p.m., when the deceased went to the Appellant to demand the balance amount of Rs. 20, the Appellant assaulted him with a knife in front of

the betel shop of Shyam Lal. The place of occurrence is situated Just in front of Sadar Hospital, Pilibhit and so the deceased immediately was

taken, in injured condition, to that hospital where he was medically examined by Dr. O.P. Warankar (P.W. 7). Mangali Prasad (P.W. 2) is the son

of the deceased. At about 9 O'clock when he came out of his house, he heard some passers-by talking that some body had been assaulted with

knife in Chowk. On hearing this, he went there and he came to know that the victim had been already removed to the hospital. Then he went to the

hospital and on his surprise, he found that the person who received injuries was his father who had received a knife injury in his abdomen. The

deceased was in senses at that time and being interrogated by the P.W. 2 Mangali Prasad, the victim told that he had been assaulted by Roop

Chand and the incident took place when he went to demand the balance amount of his labour charge. According to the prosecution, this incident

had been witnessed by P. Ws. Munna Lal and Ram Bharosey who were also present in the hospital at the time when Mangali Prasad (P.W. 2)

reached there and met his father. The Mangali Prasad got a written report of the incident prepared by Ram Naresh in the hospital itself and

subsequently he lodged the report at the police station. In this report, he narrated the incident as told by his father. On the basis of this written

information, the formal F.I.R. was lodged and the investigation of the case was entrusted to S.I. Surendra Pal Singh (P.W. 5). The papers for the

investigation were delivered to S.I. Sri S.P. Singh at about 10.45 p.m. On receiving the papers, P.W. 5 proceeded to the hospital and reached

there at about 11.00 p.m. The deceased was admitted in the medical ward of the hospital and S.I. Sri S.P. Singh recorded the statements of the

deceased in the case diary. Some time after this interrogation, doctors advised that the deceased be taken for further treatment to Bareilly and

Mangali Prasad became busy in making arrangement for his father's treatment at Bareilly and so P.W. 5 could not interrogate P.W. 2 at that time.

However, P.W. 5 visited the spot in the next morning at about 7.00 a.m. and inspected the place of occurrence and with the assistance of Munna

Lal, one of the eye witnesses, he prepared site plan. He also interrogated Munna Lal. The investigation of the case was, however, entrusted to S.I.

Paras Ram Singh on 30.9.78 because he was senior to S.I., S.P. Singh. Sri Paras Ram Singh (P.W. 4) interrogated Mangali Prasad and another

eye witness Ram Bharosey on 2.10.78 and after complying all other formalities, he submitted charge sheet u/s 302, I.P.C. on 4.11.78. It is

evidenced that the deceased was taken to the district hospital at Bareilly and he succumbed to his injuries in the said hospital on 29.10.78. The

inquest was done on the dead body by S.I. Km Usha Saxena of police station Kotwali Bareilly and the post-mortem examination was conducted

by Dr. Harit (P.W. 9) of the district hospital, Bareilly. The accused-Appellant pleaded not guilty to the charge framed against him and claimed to

be tried.

3. In all, prosecution has examined nine witnesses. P.W. 2, Mangali Prasad, informant was not an eye-witness but the prosecution relied upon his

testimony on the ground that the deceased had narrated the incident to this witness soon after the occurrence and in that narration, the accused-

Appellant was named as sole assailant. P.W. 1, Munna Lal, and P.W. 3 Ram Bharosey did not support the prosecution case and they were

declared hostile and were cross-examined by the prosecution. The prosecution also relied upon 15 documents which have been marked as Ext.

Ka-1 to Ext. Ka-15. Ext. Ka-1 is the written report lodged by the P.W. 2 at the police station and Ext. Ka-8 is the carbon copy of the G.D. The

case was originally registered u/s 307, I.P.C but later on when the deceased died, it was converted u/s 302, I.P.C.

4. Now, the whole case hinges upon evidence of P.W. 2 and P.W. 5 (S.I. Surendra Pal Singh). The learned court below relied upon the evidence

of P.W. 2, Mangali Prasad and P.W. 5, S.I., Surendra Pal Singh. The alleged dying declaration was recorded by S.I. Surendra Pal Singh (P.W.

5) which was not signed by the deceased and it was not signed by any of the witnesses. In the hospital, the doctor was available but the P.W. 5

did not feel it necessary to get signature of the doctor on that statement made by the deceased. The explanation given by the P.W. 5 was that he

thought that the deceased would survive and so initially, it was a case u/s 307, I.P.C. P.W. 5 followed the procedure of recording statement u/s

161, Code of Criminal Procedure. It has been contended by the prosecution that the evidence of P.W. 5 could not be brushed aside simply

because he happened to be one of the I.O's to this case as the prosecution did not allege any animosity of P.W. 5 with the accused-AppellantIn

this connection, the learned A. G.A. referred two decisions as reported in State of Kerala Vs. M.M. Mathew and Another, and State of Gujarat v.

Raghunath 1985 SCC 304.

5. The learned Counsel for Appellant submitted that this alleged dying declaration though admissible u/s 32(1) of the Code of Criminal Procedure

but should not be considered as unimpeachable document. It was not recorded in the question-answer form. Moreover, in the hospital the doctor

was available, the nurse was present but it was not recorded in their presence. It is the evidence of P.W. 5, Surendra Pal Singh, that a nurse was

present but her signature was not taken on that statement. Said nurse was not interrogated or made a prosecution witness. There is no signature or

thumb impression of the deceased on the statement and the explanations given by P.W. 5 do not inspire confidence. From the F.I.R., we find that

P.W. 2 reached the place of occurrence which was close to his residence and seeing his father in injured condition, he took him on his rickshaw

and rushed to the hospital but during evidence on oath, he stated that his father was already admitted in the hospital and he had been there out of

curiosity and he found his father there in injured condition and P.W. 2 made enquiries relating to assailant of his father and the deceased narrated

the incident to him and named the assailant.

6. Mangali Prasad (P.W. 2) stated that accused-Appellant inflicted knife injury when his father went to demand the balance amount of his labour

charge. P.W. 2 was a rickshaw puller so it was but natural that at that time, he was pulling rickshaw or even assuming that rickshaw was very

much available to P.W. 2 at his residence which was hardly 100 steps off from the place of alleged incident, he rushed to hospital with his injured

father by that rickshaw. P.W. 1. Munna Lal and P.W. 3 Ram Bharosey did not support the prosecution case. Deceased did not name his assailant

to doctor at the hospital. From the post-mortem examination, It is learnt that the deceased received anti-mortem injury and as per doctor, who

held the post-mortem examination, the deceased died due to the injury Inflicted on him with a sharp cutting pointed weapon and the doctor further

opined such injury could have been made by a knife provided it weighed about 400 gms. because there was laceration also in the injury. The

evidence of recovery of the alleged incriminating knife does not inspire confidence. On scrutiny of the evidence on record, we get that it was taken

out from an open place which was accessible to all. Though it appeared to be blood-stained but no report has been received from the serologist.

As per prosecution case, before that Pan shop of Munna Lal incident took place and Munna Lal saw the accused to inflict injury on the abdomen

on the deceased by a knife and as a result, deceased fell down on the ground. No blood-stained earth had been collected by the I.O. from the

place of occurrence to fix the place of occurrence and substantiate prosecution case.

7. It is found in evidence of P.W. 2. Mangali Prasad and P.W. 5, S.I., Surendra Pal Singh regarding narration of the incident by the deceased

himself. We think that it is not safe to award conviction upon relying those evidence for the reasons as given above. Learned A.G.A. Sri K.C.

Saxena admitted that in view of the materials on the record, accused-Appellant may be entitled to benefit of doubt. We are also of the opinion that

in the facts and circumstances as stated above and for the reasons given above, we hold that the accused is entitled to get benefit of doubt.

8. Accordingly, the appeal stands allowed. The judgment and order of sentence of learned court below are hereby set aside. The accused-

Appellant is acquitted from the charge of the offence u/s 302, I.P.C. Sureties are discharged from the bail bonds. The material exhibits be disposed

of as per Rules.

9. N.L. Ganguly, J. - I agree.