Ramesh Raut Vs State of Bihar

Court: Patna High Court

Date of Decision: Dec. 15, 1976

Acts Referred: Penal Code, 1860 (IPC) â€" Section 300, 302, 304, 97, 99

Citation: (1977) PLJR 503

Hon'ble Judges: Muneshwari Sahay, J; D.P. Sinha, J

Bench: Division Bench

Advocate: Nageshwar Prasad, Subodh Kumar Sinha, P.K. Verma and Sarda Nand Jha, for the Appellant; Vinod Chandra, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Sinha, J.
Ramesh Raut, the appellant, has been convicted u/s 302 of the Indian Penal Code and sentenced to undergo rigorous

Imprisonment for life by the Sessions Judge of Saran, for having intentionally caused the death of Lachhuman Raut on the 9th March, 1970 at

about 7 P.M. in village Dhanawara, tola Simra, within the jurisdiction of Basantpur police station, in the district of Saran. The short facts of the

prosecution case are as follows: At about 7 P.M. on the 9th March, 1970 Halimat Raut, the informant (P.W. 5) was sitting by the fire-side at his

house while Lachhuman Raut, the deceased was milking a she-buffalo there. Just then Chanradeep Raut (P.W. 2), a son of the said Lachhuman

Raut, came there and informed them that a motor-car had trespassed through their field causing damage to the wheat crop. Halimat Raut and the

deceased then started for the field to seethe damage. On the way, they met Mahendra Raut (P.W. 1) a nephew of their"s and they all went to the

field and saw the damage. From there they went to the house of Gorakh Raut, the father of appellant. Lachhuman demanded of him as to why the

vehicle had been brought through the Rabi field when there was already a passage set apart for the purpose. An altercation followed in which

tempers rose high and Gorakh ordered assault whereupon the appellant, who had in the meantime armed himself with a bhala, gave a blow with

the bhala on the chest of Lachhuman as a result of which he fell down and died then and there. It was alleged that about a year before the

occurrence there was a litigation between the deceased and Gorakh Raut in respect of land and the rasta. Information of the occurrence was

lodged by Halimat (P.W. 5) at Basantpur police station which is at a distance of about six miles from the place of occurrence, at about 11.30 P.M.

on the same day (vide F.I.R. Ext. 2/1). The police registered a case and after investigation sent up the appellant, his brother Bindeshwari, his father

Gorakh Raut and one Ambika Raut, a relation of their"s for trial, While the appellant was convicted and sentenced as already stated the remaining

three were acquitted.

2. The defence of the appellant and the co-accused was one of alibi. It had been suggested to P.W. 1 that the prosecution party had attached the

Jeepwalas (the driver and the khalashi) for having damaged its wheat crop and the Jeepwalas had inflicted the bhala blow as a result of which

Lachhuman had died.

3. Mr. Nageshwar Prasad, eminent counsel appearing on behalf of the appellant, raised the following contentions: The prosecution case with

regard to the giving of order by Gorakh Raut was not accepted by the court and Gorakh Raut was acquitted. Similarly, Bindeshwari and Ambika

were also acquitted as the allegation that they had wielded lathis was not accented. There were only two eye witnesses, namely, Mahendra Raut

(P.W. 1) and Halimat, the informant (P.W. 5). The evidence shows that Mahendra Raut is a nephew of Halimat and the deceased. There was

documentary evidence of enmity between the family of the informant and Gorakh as such their evidence should not have been accented. The

defence version was probable and the trial court should have accepted it. The circumstances showed that the appellant had no intention to cause

death as such the offence alleged to have been committed by him was not one of murder, Lastly, it was argued that the evidence and the

circumstances Indicated that the act of the appellants fell within the Fourth exception to Section 300 of the Indian Penal Code and as such the

offence committed by him was one of culpable homicide not amounting to murder, punishable u/s 304 Part II of the Indian Penal Code.

4. The following facts proved to the satisfaction of the trial court are not in dispute. The assault on the deceased had taken place a little after the

arrival of the Jeep at the Darwaza of Gorakh Raut While coming to his Darwaja the Jeep had caused damage to the wheat crops standing in the

field of the deceased. The assault took place at about the time alleged by the prosecution and it took place almost adjacent north of the verandah

of Gorakh"s house which faces west, where the dead body of Lachhuman was lying.

5. There are two eye witnesses to the occurrence. They are Mahendra Raut (P.W. 1) and Halimat the informant (P.W. 5). The account of the

occurrence given by both these witnesses is substantially the same as has been stated earlier. We were taken through the evidence of the witnesses

but nothing was pointed out to indicate that the said witnesses had not told truth or that their evidence was not above suspicion. Mahendra Raut

(P.W. 1) sad Halimat (P.W. 5) had both accompanied the deceased to the wheat field and from there to the house of Gorakh. The evidence

shows that the houses of the deceased Mahendra Raut and Gorakh Raut are situate in the same locality and are quite close to each other. In the

circumstances it was not surprising that Mahendra Raut had also accompanied the deceased and Halimat. His field had also been damaged by the

wheels of the Jeep.

6. It was argued that the evidence of Mahendra (P.W. 1) and Halimat (P.W. 5) should not have been accepted because they had made statements

contrary to what they had stated before the Investigating Officer (P.W. 1). The contradictions referred to by the counsel were that, at the trial,

Mahendra Raut had stated that when there took place exchange of abuses between deceased and Gorakh Raut, Gorakh Raut''s son, Bindeshwari

(acquitted) and Ambika (acquitted) a relation of Gorakh Raut''s, wielded their lathis against the deceased, Mahendra and also against him (P.W. 1)

but the lathi did not fall on them. Halimat (P.W. 5) had stated that after the altercation took place, Gorakh Raut ordered assault and thereupon the

accused persons wielded their lathis against the deceased but the lathis did not fall on him. It was said that they had made no such statements

before the Investigating Officer (P.W. 10). This appears to be so but if at all those omissions considered to be contradictories these contradictions

do not appear to be of a material nature. It would, however, appear that there is no allegation that the said co-accused had caused any hurt to any

one by their lathis. In the circumstances, the mere fact that the trial court had not accepted the evidence of the said witnesses with regard to the

wielding of the lathis by the co-accused, cannot by itself, render their evidence unacceptable also with regard to the act of the appellant. It is open

to a court to accept that part of the evidence of a witness which, for reasons to be stated by him, appears to be true and to reject the other part

which does not appear to be true beyond reasonable doubt. If, however, the part rejected relates to the substratum or the main part of the

prosecution case then the evidence of the witness should not be accented for convicting the accused. In case, however, it relates only to the

embellishment part or to an in significant or minor part of the prosecution case, it cannot operate to destroy that portion of the evidence of the

witness which is otherwise acceptable with regard to the main part or the substratum of the prosecution case. The learned trial court was justified in

the particular circumstance of this case in not giving any weight to the contradictions pointed out in the evidence of the two eye witnesses for the

reasons mentioned by him.

7. The evidence of Mahendra Raut (P.W. 1) is corroborated by that of Sheonandan Pandey (P.W. 6) who was the chowkidar of Dhanawara at

the relevant time. He has stated that at about 8 P.M. Mahendra Raut (P.W. 1) came to his house and told him that Ramesh Raut, the appellant had

assaulted Lachhuman (deceased) as a result of which he had died. Thereupon he went to the Darwaza of Gorakh Raut accompanied by Mahendra

(P.W. 1) and saw the dead body of Lachhuman lying on the northern Sahan of Gorakh Raut''s house. There was a wound on the chest from which

blood was oozing out. Halimat (P.W. 5) and one Lachhuman Mistry (not examined) were present there. Thereafter he (P.W. 6), Mahendra (P.W.

1) and Halimat (P.W. 5) proceeded to Basantpur police station where the Officer Incharge (P.W. 10) recorded the statement of Halimat (Ext.

2/1). The occurrence took place at 7 P.M. and Mahendra (P.W. 1) had given an account of it to the chowkidar (P.W. 6) at about 8 P.M. Thus

Mahendra had given the gist of the prosecution version very soon after the occurrence. The evidence of the Chowkidar shows that his house is at a

distance of about half a mile from that of Gorakh Raut. It must have taken about 30-40 minutes for covering the distance both ways and a few

minutes must have been spent by Mahendra in talking to the chowkidar before starting from his place to Gorakh Raul''s house. The first information

report (Ext. 2/1) had also been lodged quite promptly. The thana was at a distance of about six miles from the place of occurrence and the first

information report was lodged at 11-30 P.M. The gist of that report was also the same as had been given by Mahendra to the Chowkidar (P.W.

6).

8. Another important circumstance which has to be kept in mind is that the Chowkidar (P.W. 6) was examined then and there at the thana, i.e.

immediately after the first information was recorded by P.W. 10 and there is no allegation that there was any contradiction between his evidence at

the trial and the statements made by him before the Investigating Officer (P.W. 10).

9. There was no doubt enmity existing between the prosecution party and Gorakh Raut and even at the time of the occurrence a case was pending

between the deceased and Gorakh Raut. In fact, it was on account of this enmity that the quarrel with regard to the damage caused by the Jeep

took a serious turn. The facts that the bride of his son had just been brought in the Jeep and she was to be received in his house with ceremonies

befitting the occasion and that the quarrel had been raised at such an auspicious time had added to the gravity of the situation and whipped up the

tempers of Gorakh Raut and the appellant as a result of which the incident took place, as shown by the evidence are not in dispute.

10. The plea of alibi which had been set up by all the accused persons and has been rejected by the trial Judge for a very valid reason was rightly

not pressed before this court as the same does not appear to be true. The allegation that the assault had been committed by the Jeep walas and not

by the appellant was, however, pressed by the learned counsel for the appellant. It was argued that the ire and wrath of the prosecution party must

have been directed towards the driver and the khalasi of the Jeep and toward the Jeep itself and that when the Jeepwalas found that their Jeep

would be destroyed and that they themselves would be assaulted, they took out a bhala from the Jeep and gave a blow with it to Lachhuman on

his chest as a result of which he died. There is absolutely no evidence in support of this allegation and the suggestion appears to be highly

improbable. The prosecution party knew quite well that the fault was not of the driver of the Jeep in trespassing through the field of the deceased

and thereby destroying his wheat crop. They did know that the person responsible was Gorakh himself because it was at his instance that the Jeep

had gone through the field to his Darwaza. In the circumstances, it would not have been natural on their part to pick up a quarrel with the Jeep

walas leaving out the main person responsible for the damage. In this behalf the evidence of Chandradeep (son of the deceased) may be noticed.

He has stated that while he was returning home at about sun-set time from village Majharia after attending an Astajam (Kirtan), he saw the Jeep

returning from the house of Gorakh through his field and the field of Mahendra (P.W. 1) and then he first reported the matter to Mahendra whose

house fell on the way to his house and then to his father (the deceased) and Halimat (P.W. 5). Thus the Jeep had already left the Darwaza of

Gorakh before the prosecution party arrived there. It may be mentioned that Chandradeep (P.W. 2) did not accompany Mahendra, Halimat and

the deceased to the house of Gorakh Raut and it appears that after having passed on the information to Mahendra and his father (the deceased) he

stayed at home which is very close to Gorakh"s house. Thus it is quite clear from the evidence of Chandradeep (P.W. 2) that the Jeep was not

there at the Darwaza of Gorakh Raut at the time the incident took place. It was pointed out that P.W. 1 had stated that when be went to see the

damage in the field, the Jeep was standing on the cremation ground and that the same was evidence of Halimat (P.W. 5). The cremation ground is

west of the house of Gorakh Raut at some distance from it intervened by some fields and it is to the west of the field in which damage had been

caused. In the circumstances, the fact that the Jeep, after having returned from Gorakh Raut''s house was standing in the cremation ground, does

not in any way indicate that the occurrence had not taken place at the Darwaza of Gorakh or that the bhala blow had been given by the Jeepwalas.

It has not been disputed that the occurrence took place adjacent to the house of Gorakh, at the place where the dead-body of Lachhuman was

lying. Bhala is not such a weapon as may ordinarily be carried in a Jeep. I have not the least hesitation in rejecting the suggestion of the defence as

improbable and absurd.

11. The contention that the prosecution case with regard to the giving of order for assault by Gorakh and the participation in the occurrence by the

persons acquitted having been disbelieved, the appellant should not have been convicted on the evidence of the same two eye witnesses, is also

not sound. It would appear that none of the co-accused was alleged to have caused any hurt either to the deceased or to Halimat (P.W. 5) or

Mahendra (P.W. 1). It has already been pointed out that the allegation that Ambika and Bindeshwari had hurled their lathis but missed their marks

was at best only an useless embellishment of the prosecution case and it did not in any way affect the core of the case. In the circumstances not

much can be made of the fact of acquittal of Gorakh, Ambika and Bindeshwari.

12. The decision in the case of (1) Karunakaran Vs. State of Tamil Nadu, and those of in the cases of (2) Prem Singh Vs. State of Punjab, and (3)

Balaka Singh and Others Vs. The State of Punjab, were cited in support of the contention that since the evidence of the two eye witnesses had not

been accepted by the trial court in respect of three co-accused who had consequently been acquitted, their evidence should not have been

accepted in so far as the appellant is concerned. It would appear that the observations made in those cases had been made in view of the peculiar

facts of those cases and the Supreme Court did not lay down an inflexible rule in this behalf. In Karunakaran''s case the testimony of the sole

witness had been rejected against the co-accused and on his testimony sentence of death had been awarded against the appellant. In the said

circumstances it had been observed that the finding that the witness was not truthful with regard to the co-accused had degraded him from the

status of an absolutely reliable witness. In that case the witness had been held to be untruthful because he had been persuaded to substitute three of

the prosecution witnesses of his deceased brother as chasing the assailant and, therefore, it was held that he was definitely an obliging witness and

could it all be trustworthy. No such consideration can arise in this case.

13. In Prem Singh''s case also, as in this case, there were two eye witnesses who had been disbelieved with respect to four co-accused and it had

been held that the conviction of the appellant based on the evidence of the same two eye witnesses was improper. Both the witnesses had stated

that spear injuries had been caused to two of the victims of the prosecution party by four other co-accused but the medical evidence revealed that

there were no such injuries. It was in the said circumstances that their evidence was found by the Supreme Court to be unrealiable not only in

respect of the co-accused but also in respect of the appellant. Another reason for not accepting their evidence was that according to one of the

prosecution witness there were two teachers present at the time of the incident who could have given evidence as independent witnesses but

neither of them was examined by the prosecution. It was in those circumstances that the Supreme Court did not consider it safe to convict the

appellant on the basis of the evidence of the two eye witnesses.

14. In Balaka Singh''s case of the eye witnesses were found to have given parrot-like version of the entire case regarding assault on the deceased

by the various accused persons and they all, with one voice and with complete unanimity, implicated even the four accused persons acquitted by

the High Court, equally with the appellants, making absolutely no distinction between one and the other. It was further found that the prosecution

case against the appellant and the four acquitted accused was so inextricably mixed up that it was not possible to sever the one from the other and

to separate the grain from the chaff. It was because of those circumstances that the evidence of the eye witnesses who had bitter enmity on account

of their implication in a previous murder case, had been rejected by the Supreme Court.

15. It would appear that in the present case the circumstances were quite different and the trial court had not come to the conclusion that the

acquitted accused were not present at the scene of the occurrence. The accusation against them was merely that they had hurled lathis but had

failed to cause any injury to any one of the prosecution party. It has already been found that the evidence of the eye witness with regard to the

acquitted accused did not affect in any manner the core of the prosecution case and there is nothing in this case like the weighty circumstances on

the basis of which the evidence of the eye witnesses had been rejected by the Supreme Court in the above three case. The observations of the

Supreme Court or the High Court are made in the background of the facts and circumstances of the cases before them and the general

probabilities and they are not meant to be applied blindfoldly in all situations howsoever peculiar or different they may be. The evidence of the

witnesses has always to be judged in the light of the facts and circumstances of the case and the broad probabilities and with reference to their

antecedents and particularly on the intrinsic worth of their evidence. Assessment of evidence of witnesses cannot be made on the basis of rigid

obstructions.

16. Mr. Nageshwar Prasad also contended, though not seriously that it was at best a case in which the appellant could be said to have only

exceeded the right, of private defence in as much as the prosecution party had gone to Gorakh''s Darwaza and kicked up a cow which might have

greatly annoyed Gorakh and the appellant and that the said act of their''s amounted to criminal trespass giving rise to a right of private defence. This

argument is not acceptable. The crops of the deceased and Mahendra had been damaged by the Jeep in its passage to and from the Darwaza of

Gorakh as such the deceased, Mahendra (P.W. 1) and Halimat (P.W. 5) were justified in going to his Darwaza and lodging a legitimate protest. It

was certainly not their intention to commit any offence by going to his Darwaza or to intimidate, insult or to cause annoyance to Gorakh or the

appellant or any of the other members of his family. In the circumstances they cannot be said to have committed criminal trespass. Moreover, the

right of private defence is available to a person under the provisions of Section 97 of the Indian Penal Code. That Section provides that every

person has a right subject to the restrictions contained in Section 99 to defend-

First--His own body, and, the body of any other person, against any offence affecting the human body;

Secondly--The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the

definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

It is quite manifest from the said provisions that the right is available to a person for defending his own body, the body of any other person against

any offence affecting to human body and also for defending the property of himself or any other person against any of the acts mentioned above. In

this case there was no question of any exercise of the right of private defence of body. The prosecution party did not carry any weapon and there

is no evidence to show that any assault was made or attempted by the deceased or by any of the others of his party. Similarly, there was no

question of any invasion by the prosecution party on any property, moveable or immoveable, belonging to or in possession of Gorakh or the

appellant or of any of the other co-accused. In the circumstances the contention raised by the learned counsel must be rejected.

17. Lastly, it had been argued by the learned counsel that the case was covered by the Fourth exception to Section 300 of the Indian Penal Code.

It is not in dispute that the deceased died as a result of the bhala blow given on his chest. The Medical Officer who had held the autopsy had found

a punctured wound 2"" x Ã¯Â¿Â½"" x chest cavity deep in the front of the chest, lying transversely in the left eternal line cutting through the sternum. On

dissection, he noticed that the tissues had been infiltrated with blood and blood clots were also present. The punctured wound was placed

transversely in the anterior pericardium corresponding to the external wound. The cavity of the pericardium was full of blood and blood clots. The

right ventricle of the heart had been pierced through the whole of its thickness. The Medical Officer was of the view that death had been caused as

a result of the above injury which appeared to have been caused by a sharp piercing instrument like a bhala. In his opinion, the injury was sufficient

to cause death in the ordinary course of nature. No other inference is possible. There is no evidence to show that the appellant wanted to strike on

some other part of the body of the deceased and that the bhala fell accidentally on the chest. In the circumstances, it would be reasonable to infer

that he had caused that very injury intentionally which had been found objectively by the Medical Officer to be sufficient to cause death in the

ordinary coarse of nature. As such even if it be assumed that he did not intend to cause death by giving the blow on the chest since he did intend to

cause the injury in question and no other injury and the injury had been found sufficient to cause death in the ordinary course of nature, the act

clearly fell under clause Thirdly of Section 300 of the Indian Penal Code unless it could be shown that the act was covered by the Fourth exception

to that Section.

18. The Fourth exception provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of

passion upon sudden quarrel and without the offender''s having taken undue advantage in a cruel or unusual manner. There is an Explanation

appended to that exception which provides that it is immaterial in such cases which party offers provocation or commits the first assault. It has

already been pointed out that there is nothing to show that the deceased or any of his companions carried any weapon. The quarrel was no doubt

sudden but there was no fight and it cannot be said that the appellant did not take undue advantage and that he did not act with cruelty in delivering

so severe a blow with a bhala on an unarmed person on a vital part of his body. In the circumstances, I am unable to agree to the contention of the

learned counsel that that appellant was protected by the Fourth exception. The offence committed was clearly one of murder and the appellant had

been rightly convicted of that offence. Accordingly, the appeal is dismissed.

Muneshwari Sahay, J.

I agree.