
(1995) 10 AHC CK 0003
In the Allahabad High Court
Case No : Criminal Appeal No. 1887 of 1979

Ram Kumar and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-10-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 117, 145, 146
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (1996) 20 ACR 182

Hon'ble Judges : O.P. Jain, J;A.B. Srivastava, J

Bench : Division Bench

Advocate : G.P. Mathur, for the Appellant;

Judgement

A.B. Srivastava, J.—This appeal is directed against judgment and order dated 29.5.1979 of the v. Additional District & Sessions Judge, Moradabad, whereby he convicted the 7 Appellants. While Appellant Ram Kumar has been convicted of the offences under Sections 302, 148 and 323/149 of the I.P.C, Appellants Dal Chand, Babu, Shiv Charan, Ram Singh, Kallu and Govinda have been convicted of the offences under Sections 147 and 323/149, I.P.C. Ram Kumar has been sentenced u/s 302, I.P.C. to imprisonment for life, u/s 148, I.P.C. to R.I. for 6 months, and u/s 323/149, I.P.C. to a fine of Rs. 500, or in default, to undergo simple imprisonment for 2 months. The rest of the Appellants have been sentenced u/s 147, I.P.C. to R.I. for 4 months and u/s 323/149, I.P.C. to pay a fine of Rs. 500, or in default, to undergo simple imprisonment for 2 months each.

2. Appellants Dal Chand and Ram Singh having died pendente lite, the appeal in respect of them stands abated.

3. The prosecution story as set out in the F.I.R. lodged by the first informant Yad Ram (P.W. 1), the grandson of deceased Smt. Ram Dei, and the statements of the eye-witnesses is to the effect that, the house of the first informant is situated in the abadi of village Salarpur Majhi within the jurisdiction of P.S. Didauli, district Moradabad. The said house consisting of 2 rooms faces east, in front of the rooms

there is a Chhappar, and towards further east is the courtyard, which has its opening towards the north. There was going on a dispute about the said house between the family members of the first informant and Appellants Ram Kumar, Dal Chand, Govinda and Ram Singh, and proceedings under Sections 145 and 107/117, Code of Criminal Procedure were going on before the S.D.M., Amroha.

4. Accused-Appellant Dal Chand, Babu, Shiv Charan and Ram Singh are real brothers. The Appellants Ram Kumar, Kallu and Govinda are of the same caste,

5. A day before the incident of murder, Appellants Ram Kumar, Dal Chand. Ram Singh and Govinda along with a lawyer and his clerk, named Sheetal Prasad, came to the house of the first informant and tried to put lock at the room of the said house saying that the lawyer had come with an order of the Court to do so, and despite protests of these persons, forcibly locked the rooms and left. (During the trial the first informant identified the said lawyer as Shri B.P. Sharma, the defence counsel in the trial court). It is further alleged that on the day of occurrence at about midday Appellants Dal Chand, Govinda, Ram Singh and Ram Kumar kept their bullock-cart and engine in the courtyard, and when objected they threatened to teach a lesson to the informant and his family members.

6. On 30.10.1978, a day before the Deepawali festival, at about 8 p.m. the first informant Yad Ram (P.W. 1), his father Natthu (P.W. 2), mother Mannu and grandmother deceased Ramdei, were sitting in the verandah (Chhappar) of their house, Smt. Mannu was cooking food and a Dibia was kept lighted on a niche (cavity in the wall). Ram Kumar with a Hasia (sickle) and Dal Chand, Babu, Shiv Charan, Ram Singh, Kallu and Govinda armed with lathis came there. Dal Chand exhorted his fellow accused persons with the words Mar do Sale Ko, upon this, the people of both the sides started abusing each other and raising alarm, which brought to the scene of occurrence Shiv Lal, Pusey (P.W. 1), Mora, Bihari and Ram Lal (P.W. 7). Ram Kumar gave a blow with the sickle causing injury in the neck to Ramdei who fell and died. Rest of the accused persons started assaulting Natthu and Smt. Mannu by lathis. Meanwhile Smt. Rania, wife of accused Ram Kumar also arrived and started intervening, as a result of which she also got injured. On being rebuked by the witnesses the accused-assailants ran away towards west.

7. The first informant thereafter, along with the village chaukidar and Shiv Lal proceeded to the Police Station Didauli, situated at a distance of about 5 kilometres from the place of occurrence. Reaching there at about 11 p.m. the same night, he orally lodged the First Information Report (Exhibit Ka 1), naming all the 7 accused persons. Head Constable writer Har Dayal Singh (P.W. 6) registered the case under Sections 147, 148, 323 and 302, I.P.C. Investigation of the crime was taken up by S.I. Jai Ram Singh (P.W. 9), then Station Officer, P.S. Didauli. After recording the statements of the witnesses Yad Ram and Shiv Lal, he along with S.I. Ram Kumar (P.W. 3) proceeded to the place of occurrence and started further investigation in the morning of 31.10.1978. While the P.W. 3 Ram Kumar Sharma made inquest of the dead body and prepared the inquest report

(Exhibit Ka 2) and other relevant documents, duly sealed the dead body of Smt. Ramdei and sent it for post-mortem examination through P.W. 5, Constable Ram Bharosey and Constable Rukan Pal. He also took blood stained and unstained earth from the spot of occurrence and prepared its memo. The P.W. 9, S.I. Jai Ram Singh on his part recorded the statement of eye-witnesses, sent the injured for medical examination, prepared site plan of the place of occurrence and gave Dibbi, said to have been lighted at the time of occurrence, in the supurdgi of the first informant.

8. The post-mortem examination of the dead body of Ramdei was conducted by the P.W. 8 Dr. H.S. Ambwani at 4.20 p.m. on 31.10.1978 and he found the following ante-mortem injuries vide his report Exhibit Ka 12:

Incised wound 7 cm x 2 1/2 cm deep upto carotids on the right side horizontally on the neck going towards left side and tapering. The structures underneath cut along with the right carotids. The depth of the wound is more on the right side.

9. Death was stated to be due to Syncope as a result of shock and haemorrhage on account of neck injury of carotids vessel.

10. The same day the P.W. 4 Jai Pal Singh examined Natthu (P.W. 2) who had the following injuries vide Exhibit Ka 9:

1. Lacerated wound 3 x 1/2--cm x 3-cm on the crown of skull.
2. Contusion 3 cm x 2 cm on the back of left knee.
3. An oval abrasion 1 cm x 1 cm on the outer aspect of left elbow.
4. An oval abrasion 1 cm x--cm on the posterior aspect of left elbow.

Injuries 1 and 2 were caused by hard and blunt object, injuries 3 and 4 by friction.

11. Smt. Mannu had the following injury vide Exhibit Ka 10:

1. Vertical lacerated wound 3 1/2--cm x 1 cm x bone deep on the skull at median plain 8" behind the forehead.

The injury was caused by hard arid blunt object.

12. Meanwhile the accused persons having surrendered in the Court were sent to jail, and after concluding the investigation, the Investigating Officer submitted charge-sheet which led to the committal of the accused person to the court of session.

13. All the seven accused persons pleaded not guilty to the charges framed against them and claimed to be tried. They denied having formed an unlawful assembly and having voluntarily caused hurt to Natthu and Srnt. Mannu and committed murder of Smt. Ramdei, in furtherance of the common object of such assembly. They admitted that proceedings under Sections 145 and 107/116,

Code of Criminal Procedure, were going on between the parties and pleaded that the possession over the house where the occurrence took place, was with Ram Kumar, the informant and his family members were not in possession over the same. Further they stated that Advocate B.P. Sharma accompanied by his clerk had visited the house in question as commissioner of the court, and did not put any lock on the said house.

14. Accused-Appellant Babu stated that the informant Yad Ram, along with Gangoo, Natthu, Shiv Lal, Pusey and Mohar Singh were assaulting Smt. Rania, when he went to rescue her, he was also assaulted, and it was Shiv Lal who killed deceased Ramdei. The suggestion made by the defence to the prosecution witnesses in their cross-examination was to the effect that, the house in question had been sold by Natthu, P.W. 2, to accused Ram Kumar who had entered into possession over the same, the dispute regarding possession led to proceedings u/s 145, Code of Criminal Procedure. On the date, and time of occurrence the informant, his father, mother, grandmother and maternal uncle went to forcibly occupy the said house where Ram Kumar, his wife Rania, Budhya and Babu were present. The informant Yad Ram attacked Rania and Babu with lathi and caused injuries to them. Thereafter apprehending that Rania might die of the injuries caused to her, the informant and others of his side including him killed the informant's grandmother Ram Dei to create a defence.

15. The accused persons in this case did not examine any evidence in their defence.

16. The prosecution in support of its contentions examined before the learned Sessions Judge, besides the formal witnesses already referred above, P.W. 1 Yad Ram, P.W. 2 Natthu, and P.W. 7 Ram Lal as eye-witnesses. Yet another eye-witness named in the F.I.R. and the charge-sheet, Pusey was examined as a court-witness (C.W. 1) at the instance of the defence.

17. The learned Sessions Judge on a consideration of the aforesaid evidence came to the conclusion that the complainant party, and not the accused, were in possession of the house in question at the time of the incident, or in any case they were putting up in the verandah adjacent to the rooms, and accused Ram Kumar and his family members were not in possession over the said house. He further found that the said house had been attached in the proceedings u/s 145, Code of Criminal Procedure, and there is nothing to show that the said attachment had been withdrawn and the house released in favour of accused Ram Kumar etc. and that inspite of attachment of the house both the parties were trying to regain the possession. In these circumstances the right of private defence of property was not available to the accused. He disbelieved the defence version that the complainant's side had attacked Ram Kumar and others. He further discarded the defence version that in order to save themselves from the liability of causing injuries to Smt. Rania, the informant and his fellowmen committed the murder of Smt. Ramdei. He held that It were the accused persons who had formed an unlawful assembly, and attacked the members of the

informant's family, in order to dispossess them from the house in question, while accused Ram Kumar was armed with a Hasia (sickle), rest of the accused persons were armed with lathis and in furtherance of the common object of the said assembly, they committed rioting, and voluntarily caused hurt to Natthu and Smt. Mannu. During the course of the incident, accused-Appellant ~ Ram Kumar caused fatal injury to Smt. Ramdei in her neck, as a result of which she died. The other accused persons, however, did not share the common object of committing murder of Smt. Ramdei, which in the circumstances, was the act of Ram Kumar alone, for which his co-accused persons could not be held liable. He accordingly held Ram Kumar guilty of the offences under Sections 148, 323/149 and 302, I.P.C., and rest of the accused persons of offences under Sections 147 and 302/149, I.P.C. and sentenced to various terms of imprisonment and fine as stated above.

18. We have heard Shri Tej Pal, the learned Counsel appearing on behalf of the Appellants and the learned A.G.A. appearing on behalf of the Respondent state and have been taken through the entire evidence on record.

19. Before entering into a discussion on the questions in issue it would be proper to recapitulate in brief the facts about which there is no dispute.

20. It is the common case of the parties, that the relations between the two sides were strained because of the dispute relating to the house, where the incident involving the people of the two sides took place. Admittedly this house belonged to Natthu (P.W. 2), the father of the first informant Yad Ram, and the son of deceased Ramdei. While accused Ram Kumar laid claim over this house on the plea of the same having been sold to him by Natthu, the said claim was disputed by the informant party. Admittedly there does not exist any sale-deed or other document of transfer of this house by Natthu in favour of Appellant Ram Kumar.

21. Further undisputed is the fact that the dispute with regard to the possession of this house, led to proceedings u/s 107/116 as well as 145 and 146, Code of Criminal Procedure. Although the parties have not filed any documentary evidence in regard to it, it has come in the version of both sides that, a few weeks before this incident, the house was locked by the police and the key given to a third person. The said lock, however, did not remain there for long as both sides claim to have entered into possession over the house shortly afterwards.

22. Another undisputed fact, also proved from the unchallenged evidence on record is that, the incident to which this case relates occurred in the Verandah of the house in question at about 8.00 p.m. on 30.10.1978, and that during the course of this incident, death of Ramdei was caused on account of injury in the neck by sharp-edged weapon. It is also not denied that hurt was caused also to Smt. Rania, the wife of Appellant Ram Kumar in this incident.

23. A faint attempt was made during the course of argument on behalf of the Appellants to say that the fatal injury to Smt. Ramdei could not be caused by a

sickle. A perusal of the details of the injury as recorded in the post-mortem examination report, however, does not go to show that the injury of the nature found in the neck of the deceased could not be the result of a blow by sickle. The dimensions of the wound, and the attendant tapering go to clearly show that, it could be caused by a sickle. To the same effect is the statement of the P.W. 8, Dr. H.S. Ambwani who conducted the post-mortem examination and who was not even cross examined on these aspects. No suggestion to the contrary was made even to the informant Yad Ram or the other eye-witnesses of the prosecution on this point; the main thrust of the defence-contention being that, the fatal injury to Smt. Ramdei was caused by her own family members including the first informant. In these circumstances there is no room of doubt about the fact that the death of Smt. Ramdei was a result of injury by a sickle, caused in her neck at about 8.00 p.m. on 30.10.1978 during the course of the incident in question.

24. Now taking up the question as to the factum of hurt being caused to Natthu, the father and Smt. Mannu, the mother of the first informant in this incident, although the same has been challenged by the defence there is cogent evidence to prove that these two persons were also injured during the course of this incident. Besides the statement of the P.W. 1 Yad Ram. P.W. 2 Natthu himself and P.W. 7 Ram Lal, the medical evidence of the P.W. 4 Dr. Ajai Pal, corroborated by the injury reports Exhibits Ka 9 and Ka 10 prove that injuries, simple in nature, by blunt object, were caused to them and the duration of these injuries coincided with the time of occurrence stated by the prosecution.

25. In the background of the above stated facts, admitted and proved, now it has to be considered, whether as contended by the prosecution, and held by the learned Sessions Judge, the accused-Appellants, forming an unlawful assembly, attacked the family members of the informant while they were sitting in the verandah of their house, and in furtherance of the common object of such assembly, voluntarily caused hurt to P.W. 2 Natthu and Smt. Mannu, and one of their member Appellant Ram Kumar armed with a sickle committed murder of Smt. Ramdei, or as pleaded by the defence, the members of the informant party in a bid to occupy the house in question reached there, and attacked accused-Appellant Babu and Smt. Rania from amongst the person present there, and thereafter becoming apprehensive, that Smt. Rania might die of the injuries caused to her, killed Smt. Ramdei with a view to create defence, and pass on the buck to the accused party. This will first require a consideration of the factum of possession over the house in question.

26. There being no documentary evidence available, the question regarding possession over the house in question is to be determined, on oral evidence and circumstances. There not having been brought on record any copy of attachment order of a Magistrate, or attachment memo of the police, by any of the parties, it cannot be held that any attachment u/s 146, Code of Criminal Procedure had been made. What has been stated by the witnesses of fact (P. Ws. 1, 2 and 7) and the replies made by them to the defence suggestions is to the effect that

about a fortnight or so, before the incident of murder, the police had put lock on the rooms on this house and had given the key to one Somepal. According to these witnesses, a few days after locking of the house by the police, the accused party, broke open the lock and tried to occupy the same. On the information of Somepal, police came and put Natthu and his family members in possession. Accused party however, did not relish the same and a day before the incident, Appellants Ram Kumar, Dal Chand, Baboo and Govind along with Advocate Shri B.P. Sharma and his clerk, visited the house in question, and despite objections of the informant and his family members, put lock on the rooms of the house on the plea of there being an order of the Court. The informant and his family members in these circumstances were compelled to put up in the verandah in front of the rooms. The accused persons when specifically questioned on this aspect admitted Shri B.P. Sharma Advocate, who incidentally later happened to be their counsel in the Sessions Trial, to have visited the house in question along with his clerk, but qualified that he had done so as Commissioner of the Court. No order appointing Shri B.P. Sharma as Commissioner, is however, forthcoming to substantiate this contention, and it leads only to the conclusion that the accused party with connivance of an Advocate having no authority, had resorted to strong arm tactics for ousting the informant and his family members from the house in question, which resulted in informant and his family being left only with the occupation over the verandah in front of their house, where the present incident took place.

27. The act of some of the accused persons, of putting a cart and a machine in the sehan of this house in the morning on the date of occurrence, also cannot be taken as a circumstance to prove the claim of the accused-Appellants that Appellant Ram Kumar was in settled possession over the house in question. On the other hand, the resistance offered by Natthu, P.W. 2, and his family members to this act of accused persons, and their contention of some injuries also to have been caused to Natthu and his wife Mannu, in the course of it, goes to show that they were never ousted according to law from the said house, and were very much in possession over the outer verandah and were residing in the same. In arriving at his conclusion in this regard the learned Sessions Judge has also considered relevant circumstances such as absence of the sale-deed, absence of any other house for the informant's family to live in, and the absence of any household effects of the accused persons at the said place, and we are in perfect agreement with the findings of the learned Judge.

28. Now once it is settled from the evidence on record, that the informant and his family members were in lawful occupation of the outer verandah of the house, the title of which also vested in them, the theory of the prosecution that at the time of occurrence i.e. 8 p.m. on 30.10.1978, the accused party without any lawful right reached the said house to assert their possession, which ultimately left Smt. Ramdei dead, becomes fully probable; and there remains no basis for the contention that the people of the accused party were victim of aggression qua this house, or their person, at the hands of the informant party,

much less deceased Smt. Ramdei.

29. As already narrated above, the three eye-witnesses (P. Ws. 1, 2 and 7) examined by the prosecution have corroborated its theory with regard to the members of the accused party coming to the verandah of the house in question where the incident took place, and and same leading to altercation, quarrel and assault, resulting into some injuries to Natthu, Smt. Mannu, Smt. Rania; and in the course of it accused-Appellant Ram Kumar causing death of Smt. Ramdei, aged about 75 years, by causing a sickle injury on her neck. Nothing different has been stated by another eye-witness, named in the F.I.R., Pusey, examined as Court witness at the instance of the defence.

30. In fact the picture emerging on a careful scrutiny of the testimony of these eye-witnesses, the recitals in the F.I R. and the circumstances, is that what in the beginning was a simple trial of strength in the matter of possession of house in question, more precisely, the outer verandah thereof, led to a free fight between some members each of the informant side and the accused side. In the course of such fight, from the informant side Natthu and Smt. Mannu, parents of the informant who (as admitted by P.W. 2 Natthu) had been caused hurt in connection with the placing of the cart and machine in the morning, were further hurt; whereas from the accused side Smt. Rania, wife of Appellant Ram Kumar was also hurt. The fatal injury on the neck of Smt. Ramdei at the hands of Ram Kumar, though caused close on the heels of the above incident, rather as the culminating part of it, it had no nexus to the acts of the other members of the accused party, or to any act on the part of the members of the informant side. There is hardly anything to show that Smt. Ramdei was an active participant in the fighting, or was in any way armed. Her old age (75 years) is itself enough to indicate that she did not have the capacity to act as an aggressor, nor is it the case of the defence that she was responsible for causing hurt to any one on the accused side. It may be that being an old lady, whose house was sought to be taken over by the accused party, she might have used harsh words, or cursed them for their such activity, and the same might have led. or provoked, the Appellant Ram Kumar to silence her by causing injury on her neck, but by no stretch of argument it could be as sought on behalf of the Appellants, justified as an act of self-defence.

31. The plea of the defence about the informant himself having done to death his grandmother Smt. Ramdei, with a view to create defence for themselves, vis-a-vis hurt caused to Smt. Rania, is too fantastic and preposterous to be believed. The learned Sessions Judge rightly discarded the same, and we have no hesitation in rejecting the same.

32. Now these bring us to the question as to what offence, if any, is made out against the accused-Appellants, as a consequence of the acts attributed to them, and found established by the evidence.

33. In this regard in our opinion, the case against rest of the accused persons on

one hand, and accused Ram Kumar on the other, stand on different footing.

34. As regards the charge of rioting and causing hurt as members of unlawful assembly, against the seven accused Appellants, from what has been found above indicating it to be a case of free fight, between some members of each of the two sides, the details of which has not been objectively disclosed by either side, it appears not to be a case of rioting, or voluntarily causing hurt in furtherance of any pre-arranged object to do so. As such the injuries as may have been caused in the incident which took place at 8 p.m. appear to be a result of sudden generation of heat on the spot. The total number of injuries to Natthu and Mannu on the prosecution side, being only four, all being simple in nature, and admittedly according to P.W. 2, some of these having been caused much earlier in the morning, we do not consider it to be a case where the Appellants, or for that matter any one or more of them, could, beyond reasonable doubts, be convicted of the offence under Sections 147, 148 and 323/149 I.P.C. Giving benefit of doubt, their conviction under the aforesaid Sections as recorded by the learned Sessions Judge therefore, deserves to be set aside.

35. As regards the Appellant Ram Kumar, however, it has been amply proved from the evidence and the circumstances that he arrived on the scene of occurrence with a sickle in his hand, and causing of the fatal injury by it to Smt. Ramdei, during the incident by him, was his individual act, unconnected with the act of any other accused-Appellant. The learned Sessions Judge thus was justified in distinguishing his case from rest of the accused persons and holding him alone liable for causing death of Smt. Ramdei.

36. The question, however, is as to whether the offence so committed was of murder, or of culpable homicide not amounting to murder? In our opinion, the facts of this incident considered in the light of the attending circumstances, go to bring the offence committed by Appellant Ram Kumar, in the category of culpable homicide not amounting to murder punishable u/s 304 of the I.P.C. No doubt the injury to Smt. Ramdei was caused by a sharp edged weapon (sickle) on the neck, resulting into the right carotid being cut, there is no evidence to show that Appellant Ram Kumar attempted to repeat the blow. The blow which proved fatal was caused to the deceased in an incident of fighting between some people of the two sides, in which the probability of the deceased, an old lady, cursing the people on the other side cannot, therefore, be ruled out. In such a situation accused Ram Kumar, whose wife also had got injured in this incident, appears to have caused the injury which ultimately proved fatal, to Ramdei with the intention of causing such bodily injury as was likely to cause death, though not necessarily with the intention to cause death. This act of accused thus constitutes an offence punishable u/s 304, Pt. I of the I.P.C. His conviction for the offence u/s 302, I.P.C. recorded by the learned Sessions Judge thus is liable to be altered into one u/s 304, Pt. I of the I.P.C. and he deserves to be sentenced to rigorous imprisonment for a period of 7 years and fine.

37. For the above discussed reasons, therefore, while the appeal in respect of the rest of the Appellants is to be allowed, and their conviction and sentences as recorded by the learned Sessions Judge set aside, the appeal in respect of the Appellant Ram Kumar deserved to be allowed in part and his conviction altered into one for offence u/s 304, Pt. I of the I.P.C.

38. The appeal is thus allowed in part. The conviction of the Appellants Dal Chand, Babu, Shiv Charan, Ram Singh, Kallu and Govinda for the offences under Sections 147 and 323/149. I.P.C. are set aside and they are acquitted of these charges. Two of the Appellants Dal Chand and Ram Singh have since died. The bail bonds of Babu, Shiv Charan, Kallu and Govinda are hereby cancelled and the sureties discharged. They need not surrender.

39. The conviction of the Appellant Ram Kumar under Sections 148 and 323/149, I.P.C. and the sentences awarded thereunder are set aside. His conviction for the offence u/s 302, I.P.C. is altered to one u/s 304, Pt. I., I.P.C. and he is sentenced to rigorous imprisonment for seven years and to pay a fine of Rs. 1,000 or in default to undergo further R.I. for six months. He shall surrender forthwith to serve out the sentence awarded as above. On his surrender to custody, his sureties shall be discharged.