
(2000) 04 AHC CK 0003
In the Allahabad High Court
Case No : Criminal Appeal No. 1018 of 1993

Rama Shanker and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 17-04-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (2000) CriLJ 3830

Hon'ble Judges : R.R.K. Trivedi, J;M.C. Jain, J

Bench : Division Bench

Advocate : N.N. Singh and P.N. Misra, for the Appellant; A.G.A. and D.S. Tewari, for the Respondent

Judgement

M.C. Jain, J.—This appeal has been filed by five appellants 1. Rama Shankar, 2. Doodh Nath, 3. Ram Jeet, 4. Ram Janam and 5. Baijnath against the judgment and order dated 29th May, 1993 passed by Sri S. M. Pandey, the then Special Judge/Additional Sessions Judge, Ballia in Sessions Trial No. 159 of 1985. Rama Shanker and Ram Jeet have been convicted u/s 302, I.P.C. and sentenced to life imprisonment and the remaining three have been convicted and sentenced to life imprisonment u/s 302, I.P.C. read with Section 149, I.P.C. The accused-appellants-Rama Shankar, Ram Jeet and Ram Janam have further been convicted u/s 148, I.P.C. and each of them has been sentenced to rigorous imprisonment for two years. The remaining accused-appellants have been convicted u/s 147, I.P.C. and each of them has been sentenced to one year's rigorous imprisonment. The accused-appellant-Doodh Nath has been convicted u/s 323, I.P.C. and sentenced to nine months' rigorous imprisonment whereas the remaining accused-appellants have been convicted u/s 323 read with Section 149, I.P.C. and each of them has been sentenced to six months' rigorous imprisonment. All the substantive sentences have been ordered to run concurrently.

2. Along with the accused-appellants five others, namely, Keshav, Deep Chand,

Ramesh, Prem Chand and Shyamu were also tried but they were acquitted. The lives of two persons, namely, Ramesh and Nayak had been cut short in this incident and the informant Ram Awadh P.W. 1 had sustained injuries. The incident took place on 17-6-1985 at about 8.30 a.m. in village Khuta Bahorwa, Police Station Bhimpura, District Ballia. The First Information Report was lodged by the injured Ram Awadh P.W. 1 at 10.05 a.m. The distance of the Police Station from the place of occurrence was three miles.

3. The prosecution case as emerging from the First Information Report and the evidence adduced in the Court was that the informant Ram Awadh had his agricultural field in the north eastern side of his house and well in which he had sown paddy seed the day preceding the day of incident. On the day of the incident at about 7.30 a.m., the son of accused-Baijnath threw brick bats and pieces of stones in his said field. Ram Awadh P.W. 1 was standing at his well at that time and he asked Baijnath's son not to do so. Thereupon, all the accused persons rushed up and started assaulting him. Rama Shankar, Ram Jeet and Ram Janam appellants were armed with Pharsas. Prem Chand and Shyamu (acquitted) were armed with spears. The rest had lathis. His son Ramesh and brother Nayak came to his rescue. Rama Shankar assaulted Ramesh with Pharsa and cut his arm. Ram Jeet assaulted Nayak with Pharsa and his arm was also cut. Doodh Nath assaulted Ram Awadh with lathi. The remaining accused persons also alleged participated in the assault. He ran inside his house but the accused persons reached there too with their weapons. The incident was witnessed by Pati Ram, Nanku and several others of the village. The woman-folk and children of his family also threw brick bats and stone ballasts on the accused persons. The accused persons left the scene. The badly injured Ramesh and Nayak were placed on cots and Ram Awadh P.W. 1 took them to the Police Station. There he lodged the First Information Report Ex. Ka 1. The injured were sent to the hospital for medical examination and treatment. Thereafter, Ramesh and Nayak were taken to Ballia because of their serious condition. Ramesh died before reaching Ballia, Nayak was alive till he was taken to District hospital, Ballia but he also died of the injuries in the evening. Consequent upon the death of Ramesh and Nayak the case was converted, inter alia, u/s 304, I.P.C.

4. It would be relevant here to state that Nayak was examined at P.H.C. Nagra by Dr. R. C. Prasad P.W. 5 on 17-6-1985 at 12.10 p.m. The following injuries were found on his person :

1. Incised wound on the left side of shoulder measuring about 15 cm. x 8 cm. x bone deep. Margins irregular and cutting of particular joint of scapula. There was also cutting of veins and nerves, oozing fresh blood.
2. Abrasion on the right side of upper thigh measuring about 3 cm. x 15 cm., colour red extending downwards medially.
3. Abrasion on the lower part of chin measuring about 4 cm x 2 cm., colour red, 10 cm. below the lip.

4. Contusion on the left side of lip just below the eyelid measuring about 3 cm. x 1 cm. colour red.

5. Injury No. 1 was caused by sharp-edged weapon whereas the rest had been caused by hard and blunt object. The patient was serious and was referred to District Hospital, Ballia for expert treatment.

6. Ramesh was examined by the same doctor on 17-6-1985 at 12 O'clock noon. The following injuries were found on his person vide Ex. Ka 15 :

1. Incised wound on the right shoulder measuring about 12 cm. x 8 cm. x 12 cm. deep oozing fresh blood. Complete cutting of clavicle right side and spine of scapula. There was also puncture of artery, veins and nerves. Plenty of blood oozing, margins regular.

2. Abrasion on the right side of thigh medial aspect measuring about 6 cm. x 2 cm., colour red.

3. Complaint of pain on the right shoulder.

4. Red contusion 10 cm. x 3 cm. left side of chest.

5. Abrasion on left side of abdomen 1" x 1", 7.5 cm.

7. Injury No. 1 had been caused by sharp- edged weapon and the rest by hard and blunt object. He was also serious and was referred to District Hospital, Ballia. Dr. R. C. Prasad, P.W. 5 also examined the injuries on Ram Awadh P.W. 1 on 17-6-1985 at about 12.40 O'clock noon. On his person, he found only one incised wound measuring about 6 cm. x 1 cm. x 1 cm. deep, margins regular situated on the left side of palm between left index finger and thumb, oozing fresh blood. According to the Doctor, it had been caused by sharp-edged weapon but was simple.

8. Consequent upon the death of Ramesh and Nayak, post-mortem over their dead bodies had been conducted by Dr. S. P. Narain, P.W. 6 on 18-6-1985 at 3 p.m. and 4. p.m. respectively. The outcome of postmortem of each of them may be noted.

9. Ramesh was aged about 32 years. The following ante-mortem injuries were found on his person :

1. Incised wound 20 cm. x 5 cm. x bone deep up to clavicle and 1st rib on the right side top of shoulder near mid point of clavicle cut through and through and 1st rib partly cut by incised wound. Margins clean and regular. It was extending from lower border of clavicle to upper part of scapula.

2. Incised wound 20 cm. x 5 cm. x bone deep up to clavicle and great vessels of neck, medial to injury No. 1. Margins clean and regular, lateral and meeting with lateral edge of injury No. 1, placed obliquely towards neck.

3. Contusion 10 cm. x 2 cm. on left side chest placed obliquely on 6th, 7th and

8th rib.

4. Contusion 8 cm. 2 cm. on right front of thigh.

10. According to the Doctor, the death had occurred due to shock and haemorrhage as a result of ante-mortem injuries No. 1 and 2.

11. Nayak was aged about 55 years and the following ante-mortem injuries were found on his person :

1. Contusion 2 cm. x 2 cm. on left side face below eye.

2. Contusion 3 cm. x 2 cm. on front of neck at the level of laryngeal prominence.

3. linear abrasion 3 cm. x .25 cm. on left side neck.

4. Incised wound 15 cm. x 10 cm. x should joint, deep on left top of shoulder. Margins regular, joint cavity open.

5. Incised wound on the inner part of incised wound No. 4, 5 cm. x 1 cm. on left head of humerus. Chip of bone head detached. Margins regular.

6. Contusion 4 cm. x 2 cm. on left side back at the level of 7-8 rib near mid axillary bone.

7. Contusion 6 cm. x 2 cm. on left side front of thigh near knee.

12. The death had occurred due to shock and haemorrhage as a result of ante-mortem injuries.

13. The cross F.I.R. had also been lodged by accused-appellant-Rama Shankar in which also the incident was said to have taken place on 17-6-1985 at about 8.30 a.m. over the dispute of land. He named Ram Awadh P.W. 1, Pati Ram P.W. 2, Sati Ram, Govind son of Ram Awadh P.W. 1 and Nakharu as being the assailants causing injuries to him, Ram Janam and his uncle Himachal by lathis and spears. It would also be appropriate to state here that their injuries had also been examined at P.H.C. Nagara by Dr. R. C. Prasad, P.W. 5. Ram Janam was examined at 3.30 p.m., Rama Shankar was examined at 3.45 p.m. and Himachal was examined the same day at 4 p.m. Their injury reports are Ex. Kha 3 to Kha 5 respectively.

14. An abrasion with traumatic swelling on left sided of skull 15 cm. above and post to left ear, measuring 2 cm. x 1 cm. and an abrasion on the left forearm 3 cm. x 1 cm. were found on the person of Ram Janam. These injuries were simple and had been caused by blunt object.

15. Injuries of Rama Shankar were lacerated wound on the skull measuring 3 cm. x 1 cm., 2 cm. above left ear and contusion on the left shoulder 6 cm. x 2 cm. Both the injuries were simple and had been caused by blunt object.

16. The injury of Himachal was a compound fracture of first phalanx of right index finger with dislocation of first and middle phalanx together with lacerated

wound measuring 3 cm. x 2 cm. It had been caused by blunt object. It was grievous X-ray was advised.

17. Subsequently, Himachal who was aged about 60 years died for some other reason on or about 25-6-1985. But his death is not at all related to this incident.

18. The investigation followed as usual whereafter charge-sheet was laid and ten persons named above were booked for trial. At the trial, the prosecution examined six witnesses besides relying on documentary evidence. No oral evidence was tendered by the accused persons. Out of the witnesses examined by the prosecution, Ram Awadh P.W. 1 and Pati Ram P.W. 2 were the eyewitnesses whereas the rest were Doctors and Investigating Officers. The trial resulted in the conviction of the five accused-appellants who have been sentenced as detailed hereinabove.

19. We have heard Sri P. N. Misra, learned counsel for the appellants and learned A.G.A. in opposition of the appeal who supported the impugned judgment. The submission from the side of accused-appellants is that the prosecution did not explain the injuries sustained on the side of the accused and that the prosecution side was the aggressor. It has been urged that the accused only acted in self-defence. Therefore, they cannot be deemed to have committed any offence within the ambit of law. We intend to examine the worth of these arguments in the subsequent discussion having regard to the evidence adduced at the trial and the attending circumstances.

20. To begin with, the incident is admitted to both the parties. The time of the incident is also the same as per the First Information Report Ex. Ka 1 as well as according to cross First Information Report made by the accused-appellant-Rama Shankar that the incident took place at about 8.30 a.m. We, however, note that in the cross F.I.R. Ex. Kha-1 the place of occurrence has not been mentioned. It is also a fact that the defence chose not to adduce any evidence to back their defence case. However, it is not of much consequence because the law is settled that the plea of self-defence raised by the accused can be tested on the basis of evidence of the prosecution even if the accused does not lead any evidence in defence. In the cross F.I.R. lodged by the accused-Rama Shankar, the present informant Ram Awadh P.W. 1 and Pati Ram P.W. 2 have been named as accused, meaning thereby that their presence at the spot is admitted. They are the only eye-witnesses examined by the prosecution. Therefore, their evidence has to be scrutinised as to what extent the same could be relied upon. It has come down from the testimony of Ram Awadh P.W. 1 that the accused persons wanted to forcibly occupy his land in the western side of the house of one of them Baijnath. Reference may be made to the site plan prepared by the Investigating Officer which shows that there is some open land which is in the eastern side of the house of complainant Ram Awadh P.W. 1 and in the western side of the house of accused-appellant-Baijnath. Really speaking, the said land is surrounded by the houses and hutments of both the sides. In the north of this land is the field in which Ram Awadh P.W. 1 had allegedly sown seeds of paddy the previous day. It

was in this field that Baijnath's son had allegedly thrown brick-bats and stones immediately before the incident and that became the cause of incident when Ram Awadh P.W. 1 asked him not to do so. It is, however, apparent from careful scrutiny of testimony of Ram Awadh P.W. 1 that there was dispute between the parties in respect of plot No. 81. It appears that the land described aforesaid is the part of plot No. 81. and the field of paddy of Ram Awadh P.W. 1, existing in the northern side of the said land also forms part of the said plot No. 81. Ram Awadh P.W. 1 has stated that in part of his Arajai there is Abadi in which his Naad, Charan, pegs etc. exist where he tethers his cattle and the part of it is in the form of agricultural field. The site plan shows the existence of pegs, Charni, etc. on the land described above which is surrounded by the houses of both the parties and their hutments. On judicially weighing the evidence of Ram Awadh P.W. 1 we form the opinion that the incident occurred all of a sudden and the bone of the contention was the dispute between the parties in respect of land aforesaid. The Investigating Officer had found physical evidence of the incident having taken place over the said land and blood had been found by him at two places there, marked as "X" and "A." Point "X" has been shown as the place where Nayak had fallen down on receiving Pharsa blow of Ram Jeet. Point "A" has been shown as the place where Ramesh had fallen down after receiving Pharsa blow at the hands of Rama Shankar accused. Point "A" is shown to be just in front of Kuttcha house of Ram Awadh P.W. 1. However, there is not even an iota of evidence or circumstances to accept that the prosecution side was the aggressor. Of course, the fight started all of a sudden but the aggressor was not the prosecution side but the accused side.

21. The contention from the side of the defence is also liable to be rejected that the prosecution did not explain the injuries on the side of the accused. True, no injury on the side of the accused was mentioned in the First Information Report but regard has to be had that in giving an account of an incident a person ordinarily feels reluctant or hesitation in disclosing at the stage of making report that he or men of his party also caused injury to the other side though it might have been justified by reason of having been done in exercise of right of private defence. But we find that in his testimony before the Court Ram Awadh P.W. 1 deposed that the women-folk and children of his house had also thrown brick-bats towards the accused. To the same effect is the statement of Pati Ram P.W. 2 that certain injuries sustained on the side of accused in the manner aforesaid.

22. The argument of the learned counsel for the accused-appellants is that there is no explanation as to the injuries of Himachal. It has to be noted that Himachal is not an accused in the First Information Report lodged by Ram Awadh P.W. 1. We should also point out that as observed by the Apex Court in the case of State of Himachal Pradesh Vs. Rakesh Kumar and Others, the prosecution is not bound to explain each and every injury on the side of the accused irrespective of the nature of injury and in respect of some minor injury. It follows that if no explanation is offered in respect of insignificant, superficial or minor injuries on the side of the accused, the prosecution case would not fail on that score. In the

present case, the prosecution has tendered plausible and acceptable explanation as to how the accused-Ram Janam and Rama Shankar sustained injuries. It may also be stated at the risk of repetition that as per Ex. Kha 3 the injuries of Ram Janam were only two abrasions. The injuries of Rama Shankar consisted of a lacerated wound of the dimension of 3 cm. x 1 cm. and one contusion. Obviously, they were not significant or serious injuries. Nevertheless, the prosecution has tendered plausible explanation for such injuries. As regards Himachal, the own case set up by the accused in the cross F.I.R. was that he was just an intervener. As per the cross-F.I.R. Pati Ram P.W. 2 had struck a spear blow on the left hand of Himachal causing injury to him. The said fact stated in the cross-F.I.R. is not at all supported by the injury report of Himachal which is Ex. Kha-5. He had suffered compound fracture of first phalanx of right index finger with dislocation of first and middle phalanx together with lacerated wound measuring about 3 cm. x 2 cm. This Injury had been caused by blunt object. Spear is a sharp-edged weapon which could not cause such an injury. There could be the possibility of his having suffered such injury by throwing brick-bats by the womenfolk and children of the family of Ram Awadh P.W. 1 in defence. It would be recalled that Ramesh had been struck the Pharsa" blow by Rama Shankar at point "A" which was just in front of Kachcha house of Ram Awadh. So, being an intervener Himachal could have received the injury found on his person while the inmates of the family of Ram Awadh re-sorted to self-defence to repel the attack made from the side of the accused. Had Himachal been also an assailant included amongst other accused, there is no reason as to why he would have been spared from being named as such in the First Information Report made by Ram Awadh P.W. 1. The resultant effect is that the defence does not get any point by arguing that the injuries on the side of the accused have not been explained.

23. We note from the testimony of Ram Awadh P.W. 1 and Pati Ram P.W. 2 that specific role of assault had been assigned only to three accused, namely, Rama Shankar, Ram Jeet and Doodh Nath. Rama Shankar allegedly struck a Pharsa blow on Ramesh (deceased); Ram Jeet struck a Pharsa blow on Nayak (deceased) and Doodh Nath struck a lathi blow on one of them Ram Awadh P. W. 1. Ramesh and Nayak had received one Pharsa blow each but this part of the testimony of Ram Awadh P.W. 1 and Pati Ram P.W. 2 cannot be believed that Doodh Nath had struck a lathi blow on one of them Ram Awadh. The reason is that the injury found on his person was an incised wound on left side of palm which had been caused by a sharp-edged weapon. Therefore, on considering the evidence of the two eye-witnesses it is rendered doubtful that Doodh Nath had actually struck a lathi blow on Ram Awadh. It appears to us that close relations and sympathizers of both the sides had collected at the spot at the time of the incident including Ram Janam and Himachal but the actual assailants were only Rama Shankar and Ram Jeet. The learned trial Judge convicted the other three accused-appellants-Doodh Nath, Ram Janam and Baijnath on insufficient evidence. May be that they were there as interveners but that could not render

them liable for criminal offence committed by Pharsa wielding accused-appellants- Rama Shankar and Ram Jeet. The possibility could be there that Ram Awadh P.W. 1 also sustained an incised wound on his left palm by wielding of Pharsas by Rama Shankar and Ram Jeet. The benefit is to go to Doodh Nath as it is not proved that he caused injury to Ram Awadh P.W. 1. It is also not established that the five accused-appellants had formed any unlawful assembly. What has been established by the evidence on record is that a sudden fight took place between the two sides in which Rama Shankar and Ram Jeet wielded Pharsas. Rama Shankar caused fatal injury to Ramesh and Ram Jeet caused fatal injury to Nayak. The enmity between the two sides is an admitted fact. The experience shows that there is a tendency on the part of the prosecution to exaggerate the guilt of the other side and to rope in some innocent persons who are either close relatives/sympathizers of the actual assailants or happened to be at the spot simply as interveners. But it is the duty of the Court to separate the chaff from the grain by scrutinising the evidence brought on record in a judicial way without, of course, reconstructing an altogether new story.

24. On sifting the evidence our finding is that only Rama Shankar and Ram Jeet were the actual assailants. The conviction of the remaining three accused-appellants- Doodh Nath, Ram Jeet and Baijnath is not at all sustainable.

25. We should now address ourselves as to what offence did Rama Shankar and Ram Jeet commit within dragnet of law. They are liable for their individual acts. The death of Ramesh is attributable to the Pharsa blow inflicted by the Rama Shankar and the death of Nayak is attributable to the Pharsa blow wielded by Ram Jeet. We have mentioned above that it was a sudden fight without any premeditation. It was in the heat of passion upon a sudden quarrel that these two accused-appellants wielded Pharsas. The offence, in our opinion, is covered by Exception 4 of Section 300, I.P.C. To state this another way, each of them committed an offence of culpable homicide not amounting to murder. We are of the definite view that the offence committed by them is punishable u/s under Part I of Section 304, I.P.C. We should say a few words to make our meaning clear. A single Pharsa blow was given by each of them, Ramesh received single Pharsa blow at the hands of Rama Shankar whereas Nayak received a single Pharsa blow at the hands of Ram Jeet. Everyone is supposed to know the natural consequence of his act and his intention is to be gathered from the act performed. Each of them caused such forceful Pharsa blow which was likely to cause death of the victims. Therefore, it has to be taken that the act was done by each of them with the intention to cause such a bodily injury as was likely to cause death.

26. We are of the opinion that the ends of justice would be met by awarding ten years" rigorous imprisonment to Rama Shankar and Ram Jeet each u/s 304, Part I, I.P.C. The remaining three accused-appellants namely, Doodh Nath, Ram Janam and Baijnath deserve to be acquitted as the possibility cannot be ruled out that they were simply there at the place of occurrence as interveners. The

benefit of such a fluid state has to be afforded to them.

27. To terminate the discussion, we partly allow this appeal. The impugned judgment and order are modified in the following way.

28. The conviction of accused-appellants-Rama Shankar and Ram Jeet is converted only u/s 304, Part I, I.P.C. Each of them is sentenced to undergo rigorous imprisonment for ten years u/s 304, Part I, I.P.C. They are on bail. Their bail is cancelled. The Chief Judicial Magistrate, Ballia is directed to get the accused-appellants arrested and to commit them to prison to serve out the sentence.

29. The accused-appellants, Doodh Nath, Ram Janam and Baijnath are acquitted of the charges framed against them. They are on bail. They need not surrender. Their personal bonds and bail bonds are hereby cancelled and sureties discharged.

30. Let a copy of this judgment along with the record of the case be immediately sent to the Court below for needful compliance under intimation to this Court within two months positively.