
(1969) 04 RAJ CK 0013
In the Rajasthan High Court

Ramchander and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-04-1969

Acts Referred:

Arms Act, 1959 — Section 25, 27

Penal Code, 1860 (IPC) — Section 300, 302, 307, 324, 34

Citation : (1970) CriLJ 653

Hon'ble Judges : L.S. Mehta, J;L.N. Chhangani, J

Bench : Division Bench

Judgement

L.S. Mehta, J.—By his judgment, dated September 24, 1966, Sessions Judge. Ganganagar, convicted the accused Ramchander u/s 302, read with Section 34, I.P.C., and sentenced him to imprisonment for life. He was also convicted u/s 307, Indian Penal Code, and sentenced to rigorous imprisonment for five years. Both the sentences were ordered to run concurrently. By the same judgment, Budhram was convicted u/s 302, I.P.C., and sentenced to imprisonment for life. He was also convicted u/s 307, read with Section 34. Indian Penal Code, and sentenced to suffer rigorous imprisonment for five years, Both the sentences were directed to run concurrently.

2. Prosecution story can be summarised in this way. There were two faction in the village Lalewala, Police Station, Padampur, District Ganganagar. The accused Budhram and Ramchander belonged to one faction. Jeeraj and others owed allegiance to the other rival group. It is alleged that Budhram and Ramchander gave false evidence against Jee-raj and others in some litigation. On December 29, 1965, P.W. 5 Hansraj s/o. Bagrawat, a relation of Jeeraj, and P.W. 6 Jagdish s/o. Jeeraj left their fields at about 3 p.m. with their camels, loaded with sugar-canes and when they passed in front of Ramchander's house, his son Budhram and his wife rebuked them and asked them as to how they could venture to pass that way. Both the persons told Budhram and his mother that they had every right to make use of the public way. This was followed by further altercations between Budhram and his mother on the one side and Hansraj and Jagdish on

the other. In the course of quarrel, Hansraj was beaten. He sustained eight injuries, which were simple in nature. Jagdish too hit Budhram's mother with a sugarcane, which he was holding in his hand. Thereafter, Jeeraj, his son Shanker, Bagrawat and his son Hanuman left their fields for their village Lalewala at about 4-30 p.m.

On their reaching the vicinity of the house of Hazari, they heard a gun fire from behind. They turned back to discern as to what the matter was. They noticed that Ramchander and Budhram stood at a distance of about thirty steps from them. Budhram was armed with a double barrel gun. Ramchander was equipped with a single barrel gun. Budhram then immediately fired and hit Shanker, The victim sustained an injury on his forehead, as a result of which he, after falling down, expired instantaneously. Subsequently Ramchander also fired his gun, hitting Bagrawat and his son Hanuman. Hanuman received injuries on his right shoulder. Bagrawat sustained injuries near his neck. Soon after Jeeraj raised an alarm. Ramjas came from the side of a "Digi". Brijlal and Sohanlal also arrived there. The accused persons then ran away towards their house. First information report of the occurrence was lodged by Jeeraj that very day at about 8-30 p.m., with the Police Station Padampur which is at a distance of about 17 miles away from the spot of occurrence. On receipt of the report a case was registered under Sections 302 and 307, I.P.C. and investigation followed. The police prepared site plan, Ex. P. 2; description memo of the corpse of the deceased Shanker Ex. P. 4; description memo of the spot Ex. P. 8; seizure memo of the 12 bore gun Ex. P. 11 information memo regarding the recovery of another 12 bore gun Ex. P. 12; and its recovery memo Ex. P. 13 Bagrawat was examined by the Medical Officer, General Hospital, Ganganagar, Dr. S. N, Vyas, P. W. 11, on December 29, 1965. Following injuries were found on his person:

1. Oval lacerated gun shot wound 4" x 1/3" on the left side neck and space between it and the tip of left shoulder region, the margins were inverted.
2. Oval lacerated gun shot wound on 1/2" x 1/2" on the left side neck between it and the tip of the left shoulder region 3" x 3" to the injury No. 1 with overt margins.

Hanuman was also examined by the above-named Doctor on the aforesaid date and the following injuries were noticed on his person:

- 1, Oval lacerated gun shot wound 1/3" x 1/3" on the right shoulder region with inverted margins. The shirt over the wound was torn.
2. Oval lacerated gun shot wound 1/2" x 4" on posterior aspect of the right shoulder region 3 1/2" behind injury No. 1 with overt margins.

Autopsy of the dead body of Shanker was carried out by Dr. Kamal Nayan, P. W. 12, Medical Officer, State Dispensary, Ghamurwali. The dead body had had the following injury.

2" x 2" punctured wound piercing the skull at the inner angle of the left eyebrow.

According to the Doctor, that injury was a gun shot one. The skull at the bottom of the said wound was fractured. The wound had gone into the cranial cavity and bullet was found lying in that cavity near the occipital bone. Membrane of brain at the site of the bullet entrance was punctured, below the wound in the skull at the exit behind the left cerebral hemisphere. Bullet had passed through the whole antero posterior length of the left cerebral hemisphere causing laceration and haemorrhage. In the opinion of the Doctor the death was due to shock, caused by the injury to the brain, as a result of the bullet passing through the brain substance. After necessary investigation the accused Ramchander and Budhram were challaned by the police in the Court of Sub-Divisional Magistrate, Karanpur.

The said Magistrate conducted inquiry in accordance with the provisions of Section 207-A, Criminal P. C. and committed the accused to the Court of Sessions Judge, Ganganagar, to face trial under as. 302 and 307 read with Section 34, I. P. C. for having committed the murder of Shanker by shooting him dead and for having made an attempt to commit murder on the lives of Hanuman and Bagrawat by causing gun shot injuries to them. Commitment of Ramchander u/s 25 and that of Budhram u/s 27 of the Indian Arms Act was also made. The two accused denied to have committed the offences alleged to have been committed by them by the prosecution. In support of its case, the prosecution examined 12 witnesses in his statement, recorded u/s 342, Criminal P. C., Budhram said that he was not present on the spot at the time of occurrence. He pleaded alibi. The other accused Ramchander stated that at about 5.30 p. m., on the date of the incident, Bagrawat, Hanuman, Shanker, Ramjas and Hansraj came to him. Bagrawat and Ramjas were armed with guns and the others were in possession of Gandasis and when they were about 80 steps away from his house, Bagrawat threw a challenge at him and fired his gun. Thereafter Ramjas also fired his gun. The accused then picked-up his gun and put the same on the wall and fired at from both the barrels. Budhram was not present at that time at his residence. His wife was, however, there. He then ran away to 58 L. N, B. in the night the police reached the spot and he surrendered himself to it. The trial Court disbelieved the explanation furnished by Ramchander and, relying upon the prosecution evidence, convicted and sentenced both the accused, as stated above.

3. Aggrieved against the above verdict, the two accused have filed the present appeals. Contention of learned Counsel for the appellants is two fold. His first complaint is that when the complainants' party wanted to assault the accused with weapons, it was Ramchander, who armed with a licensed double barrel gun, fired it in exercise of the right of private defence and that Budhram has been falsely implicated in the case for having murdered Shanker. That plea, according to learned Counsel, taken by the accused Ramchander both in the committing and in the trial Courts has been consistent and the same should not have been lightly brushed aside by the Court below. Learned Counsel's another grievance is that the trial Court went wrong in applying the provisions of Section 34 to the

case of Ramchander in respect of the offence u/s 302, I. P. C. and to the case of Budhram for offence u/s 307, I. P. C.

4. As for the first point, it is true that Ramchander stated before the committing Court that Bagrawat and Ramjas were armed with guns. Jagdish, Hanuman and Hansraj were in possession of Gandasis. Hansraj, Jagdish, Hanuman and Ramjas came to his house to assault him at about 4 p. m. Budhram was not present then His wife inflicted a lathi blow to Hansraj and let loose his dog. Subsequently Shanker, Hanuman, Bagrawat, Ramjas and Hansraj again came to his house. Bagrawat shouted that he would put an end to his life and fired at him. Then Ramjas also fired his gun. Thereafter he picked up his gun for which his son had obtained a licence and warned Bagrawat's party to refrain from proceeding further. The complainants' party, instead of withdrawing, again fired at him. Thereupon he also fired his gun twice and ran away. In the trial Court the plea taken by the accused Ramchander was that at about 4 p. m., he and his wife were at his house. Jagdish and Hansraj came there. His dog began to bark. He then came out and Hansraj began to grapple with him. He had a stick in his hand and he hit Hansraj with it. Then both of them went away saying that they would see to it. At about 5.30 p. m., Bagrawat, Hanuman, Shanker Hansraj and Ramjas again came. Bagrawat, and Ramjas were armed with guns. Others were having Gandasis. Bagrawat threw a challenge and fired his gun. Thereafter Ramjas also fired his gun. He then picked up his own gun and when the assailants proceeded further towards him and when Bagrawat again fired his gun, he too fired his double berrel gun. At that time Budhram was not present at his house. He then ran away to 58 L. N. B. In the committing Court the accused stated that at the initial stage Hanuman, Ramjas, Jagdish, and Hansraj came to his house at about 4 p. m. and assaulted him. In the trial Court the accused stated that only Jagdish and Hansraj came to him at about 4 p. m. In the committing Court the accused said that his wife hit Hansraj with a lathi, but before the trial Court he said that he had struck a lathi blow to Hans Raj. In the committing Court the accused said the Bagrawat threw a challenge when he again came and said that he would be put to death. There is no such mention in his statement before the trial Court. In the trial Court he said that Bagrawat threw a challenge and fired his gun. In the committing Court he said that on the second visit of the complainants' party he told Bagrawat and others to withdraw. But there is no such mention in his statement before the trial Court. He did not state before the committing Court that Bagrawat made the second fire, but in the trial Court he said so. In the light of material differences in the two statements, it is difficult to conclude that Ramchander took consistent plea throughout. Ramchander, besides producing himself into the witness box, as D. W. 1, has not led any. evidence in support of his plea. The prosecution examined P. W. 1 Jeeraj; P. W. 2, Hanuman; P. W. 3, Ramjas and P. W. 4, Bagrawat. Of these witnesses, Hanuman and Bagrawat were hit on the spot.

5. According to the Doctor, S.N. Vyas, P. W. 11, Bagrawat received two gun-shot injuries and so also Hanuman. Their presence on the spot, therefore, cannot be

doubted. Jeeraj, P. W. 1, Hamuman; P. W. 2 and Bagrawat, P. W. 4 owed allegiance to one party. This fact is mentioned even in the first information report, wherein it is given that Budhram and Ramchander belonged to the opposite camp and they purjured against the informant. There is no specific allegation against Ramjas, P. W. 3. He belongs to a different village Ridmalsar. His fields are towards the east of Lalewala. When he was returning from his fields at about 5 p. m. he found that Jeeraj, Hanuman, Shanker and Bagrawat were standing near the house of Hazari. He heard a gun fire and went near Jeeraj and others. Budhram was armed with a double barrel gun and Ramchander with a single barrel gun. Budhram fired and hit Shanker, as a result of which the latter fell down on the spot. Then Ramchander also resorted to firing and hit Bagrawat and Hanuman. He was about ten steps away from Shanker when he was hit. Jeeraj, P. W. 1, has stated on oath that Ramjas is not his relative. Hanuman, P. W. 2 has said that Hetram is his real brother . Ramjas's sister's daughter was married to Hetram. Thus, according to Hanuman, Ramjas is his distant relation. Nothing has been made out in the cross-examination of the prosecution witnesses from which it can be inferred that Ramjas bore any ill will or enmity against the accused persons. He may be a distant relation of Hanuman, but that does not detract from the value to be attached to his evidence. He might be interested in seeing that the real culprits of the crime are convicted. But it cannot be expected of him to adopt a course by which some innocent person would be substituted for the person who actually perpetrated the crime and that too when no enmity, as such, has been proved to have existed between the witness and the accused a: would induce him to give false evidence As has been observed in *Bhupendra Singh Vs. The State of Punjab*, , he feelings might be strongest against the real culprits but on account of this fact the evidence of an interested witness cannot be discarded on the mere ground of his having close interest in the complainants" party.

6. The statement of Ramjas, P. W. 3, gets full corroboration from the testimony of Jeerai. P. W. 1 who lodged the first information report Ex. P.1 soon after the occurrence, Hanuman, P. W. 2 who was injured on the spot and Bagrawat, P. W. 4 who also sustained two gun shot wounds on the scene of the crime. According to these three witnesses, Jeeraj, his son Shanker, and Bagrawat, his son Hanuman, Jagdish son of Jeeraj and Hansraj, son of Bagrawat, had gone to the field of Bagrawat. Hansraj and Jagdish left the field earlier. The remaining persons left the agricultural land at about 4.30 p. m. for village Lalewala and when they reached the house of Harari, they heard a gun fire from behind. The witnesses turned back and noticed that Budhram and Ramchander were standing with guns in their hands. Budhram was having a double barrel gun and Ramchander was in possession of a single barrel gun. Budhram fired at Shanker, who was hit on the forehead and died on the spot. Ramchander then fired his gun which hit both Bagrawat and Hanuman. Then the accused ran away towards their house. The statement of the witness Jeeraj is further corroborated by the first information report filed at the police station, Padampur, on December 29, 1965, at 8-30 p.

m. that is within 3i hours of the time of the occurrence.

The police station, Padmpur, is at a distance of about 17 miles away from Lalewala. The testimony of the above named witnesses also gets corroboration from the medical evidence, Dr. Kamal Nayan, P. W. 12, conducted the autopsy of the dead body of Shanker. He noticed 2" x 2" punctured wound, piercing the skull at the inner angle of the left eye brow. The skull at the bottom of the wound was fractured. The wound had gone into the cranial cavity and a bullet was found lying in the cranial cavity near the occipital bone. Membrane of brain at the site of the bullet entrance were punctured below the wound. Bullet had passed through the whole antero posterior length of the left cerebral hemisphere causing laceration and haemorrhage. In the opinion of the Doctor the death was due to shock caused by the injury of the brain as a result of the bullet passing through the brain substance.

7. Learned Counsel for the appellants has strenuously argued that when Ramchander was in possession of a double barrel gun, he could have fired it from both the barrels one after the other and there was no earthly reason why Budhram should also pick up another gun and fire it at the complainants' party. This fact, no doubt, has been stated by Ramchander, but that statement is negated by the above prosecution eyewitness account, in which the trial Court placed complete reliance. The appellate Court should not ordinarily interfere with the trial Court's opinion as to the credibility of a witness, as the trial Judge alone knows the demeanour of the witness; he alone can appreciate the manner in which the questions were answered, whether with honest candour or with doubtful plausibility, and whether after careful thought, or with reckless glibness; and he alone can form a reliable opinion as to whether the witness had emerged with credit from cross-examination: vide AIR 1943 159 (Privy Council) Having regard to the fact that the above 1970 Cri.L.J 42. named four witnesses divulged consistent story in regard to the occurrence, it would be improper to travel in the realm of conjectures and surmises and reach the conclusion that the story as unfolded by the prosecution witnesses is not immune from doubt and that the inconsistent plea taken by the accused Ramchander is credible. The version of the accused Ramchander is further belied by the circumstance that the actual fight took place not exactly on the front portion of his house, but at a distance of about 68 steps away from his house vide Exs. P. 2 and P. 8. If the things had taken place as deposed by the accused Ramchander, he would not have gone to chak No. 58, L. N. P. after the incident, but he would have gone to the police station concerned to make report.

8. The testimony of the four witnesses, Jeeraj. P. W. 1, Hanuman, P. W. 2, Ramjas, P. W. 3 and Bagrawat, P. W. 4, further gets support from P. W. 5, Hansraj, son of Bagrawat and P. W. 6, Jagdish, son of Jeeraj. They have stated that both of them left their fields on camels at about 3 p.m. Their camels were loaded with sugarcane. When they reached the frontage of the house of Budhram, Budhram and his mother came out, they told them as to how they

happened to pass that way. Their reply was that it was the public way. Budhram, then hit Hansraj. In retaliation Hansraj also hit Budhram's mother with a sugarcane. Jagdish ran away to Ridmalsar. Hansraj was examined by Dr. Kamal Nayan, P, W. 12, who certified that he had noticed eight injuries on his person.

9. It is also plain from the medical evidence that the injury which Shanker had received and which was 2" x 2" on his forehead was caused by a bullet. Wounds, which Hanuman and Bagrawat received, were pellet injuries. First fire was made with bullet, which hit Shanker and shot him dead. The second gun fire was made with pellets by Ramchander. There is no reason why the veracity of the four witnesses should be doubted in this regard. It is true that the twelve bore double barrel gun was licensed in the name of Budhram and he used it. It is also correct that the recovery of the double barrel gun was effected through Ramchander; but that would not throw any suspicion on the prosecution story. The reason is simple. Both the son and the father, Budhram and Ramchander, lived jointly and it was within the knowledge of Ramchander where his son had put the double barrel gun. In the earliest version of the occurrence, as contained in the first information report, it is also mentioned that both the accused had individually fired their guns. We are, therefore, inclined to accept the finding of the trial Court that double barrel gun was used by Budhram, with which he shot dead Shanker, and that Ramchander handled the single barrel gun, with which he hit Hanuman and Bagrawat.

10. Coming now to the applicability of common intention within the meaning of Section 34, Indian Penal Code, implies a pre-arranged plan. To convict the accused of a crime with the help of Sec, 34, I. P. C. the burden is upon the prosecution to prove that the criminal act was done in concert pursuant to the pre-arranged plan. It is no doubt difficult, if not impossible to procure direct evidence to establish the intention of an accused person. Intention has to be inferred from his act or conduct or other relevant circumstances of the case. There is also a distinction between the same or similar intention and common intention and an inference of common intention within the meaning of the term in Section 34, I. P. C, should not be reached, unless it is a necessary inference deducible from the circumstances of the case; vide AIR 1945 118 (Privy Council) Where, as here there is no indication whatever of premeditation or of a pre-arranged plan, the mere fact that the two accused were seen at the spot or that the two accused fired as a result of which one died and two others received simple injuries could not be held sufficient to prove or to infer a common intention. Common intention referred to in Section 34 pre-supposes a prior meeting of the minds. This does not mean that there must be a long interval of time between the formation of the common intention and the doing of the act. It is also not necessary to adduce direct evidence of the common intention. The common intention may conveniently be inferred from the surrounding circumstances and the conduct of the parties. The existence of the common intention shared by the accused persons is, on ultimate analysis, a question of fact. At any rate, the crucial circumstance is that the plan must precede the act

constituting the offence.

11. In this case there is no evidence on the record from which inference can be drawn with regard to the pre-arranged plan or prior concert. A Court cannot obviously make out a case for the prosecution in regard to which there is no basis. The two accused certainly were on the spot at the time of the firing, but this fact alone by itself cannot be held sufficient to prove the common intention. It can well be that one of the accused persons suddenly fired at Shanker and shot him dead without common intention. This possibility has not been eliminated by any positive evidence on the record. In such a situation the other accused could not have been convicted of the offence of murder with the help of Section 34, I. P. C. It seems to us that the trial Court has failed to appreciate this aspect of the case. Its verdict in regard to the applicability of Section 34, I. P. C. has to be modified inasmuch as accused Ramchander could not have been convicted u/s 302, read with Section 34, I. P. C. It was only Budhram, who alone was guilty of the offence u/s 302, I. P. C. Budhram also could not have been convicted u/s 307, read with Section 34, Indian Penal Code. Both the accused are guilty of the offences committed by them individually.

12. Now the question remains as to under what section of the Indian Penal Code Ramchander is to be convicted. From the evidence on the record it is abundantly apparent that Ramchander fired his gun and hit Hanuman and Bagrawat. This is borne out by the evidence of the above-named four witnesses as also by the medical evidence discussed above. It is a common ground that the act for which Ramchander has been convicted u/s 307, Penal Code, consisted of causing injuries to Hanuman and Bagrawat, with gun shots. Learned Counsel for the appellants contends that as the injuries were of a simple nature and, as they were not such as were in the ordinary course of nature likely to result in death of the two victims, offence falls not u/s 307, but u/s 324, Penal Code. According to learned Counsel, before a person can be found guilty of an offence of attempt to commit murder, the burden is upon the prosecution to prove that the actual act which Ramchander is shown to have committed was such as would in the ordinary course of nature have resulted in death. In this connection, it may be pointed out that it was no doubt held in *Reg. v. F. Cassidy* (1867) 4 Bom HCR 17 which was followed in *Martu v. Emperor* (1913) 15 Bom LR 991 that for a person to be convicted u/s 307, Penal Code, the act done must be an act done in such circumstances that death might be caused if the act took effect, that is to say, the act must be capable of causing death in the natural and ordinary course of things. These decisions, however, were not followed by the same High Court in the case of *Wasudeo Balwant Gogte v. Emperor* AIR 1932 Bom 279. In that case Beaumont, C. J., referring to Cassidy's case, 1867 4 BHCR 17 observed:

But equally certain is it that no death will result if the accused fires a revolver at his enemy in such circumstances that in fact, whether through defect of aim, or the activity of the target, the bullet and the intended victim will not meet. If however, Section 307 does not cover the case of a man who fires a gun at his

enemy with intent to kill him but misses his aim, it is difficult to see how the section can ever have any operation.

Again in *Queen Empress v. Niddha* ILR (1892) All 58, it was held that:

But if you have an act done with a sufficiently guilty intention and knowledge and in circumstances which do not from their nature afford a defence to a charge of murder and if the act is of such a nature as would have caused death in the usual course of events but for something beyond the accused's control which prevented that result, then it seems to me that the case falls within Section 307.

Both these cases came up for consideration by their Lordships of the Supreme Court in *Om Parkash Vs. The State of Punjab*, In that case though Cassidy's case was not expressly dissented from, the actual view taken by their Lordships of the Supreme Court was more in consonance with the one taken by Beaumont, C. J. in *Gogte's case* AIR 1932 Bom 279 (Supra) and the view taken by the Allahabad High Court in *Niddha's case*. In *Gogte's case* AIR 1932 Bom 279 no injury was in fact occasioned to the victim, Sir Earnest Hotson, the then Acting Governor, due to certain obstruction. Even so, the assailant Gogte was held by the Court guilty u/s 307. as his act of firing a shot was committed with a guilty intention and knowledge and in such circumstance that but for the intervening fact it would have amounted to murder in the normal course of events. These cases again received consideration by the Supreme Court in *Sarju Prasad Vs. State of Bihar*, His Lordship Mudholkar, J., speaking for the Court, said:

The mere fact that the injury actually inflicted by the appellant did not cut any vital organ of Shanker Prasad is not by itself sufficient to take the act out of the purview of Section 307.

13. Having said all this, we must point out that the burden is still upon the prosecution to establish that the intention of the appellant Ramchander in causing the particular injury to Hanuman and Bagrawat was of one of the three kinds referred to in Section 300, I. P. C. Unless the prosecution discharges the burden, offence u/s 307, I. P. C. cannot possibly be brought home to the accused. The state of the appellant's mind has to be inferred from the surrounding circumstances. It is in the prosecution evidence that both Hanuman and Bagrawat were not on good terms with the appellant. It is also in the prosecution evidence that before the occurrence Hansraj and Jagdish had had altercations with Budhram and his mother and when Hansraj was beaten, he also retaliated and beat Budhram's mother with a sugarcane. For the determination of the existence of a motive, this happening is a relevant circumstance. In cases of attempt to commit murder by firearm, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence and once he fires and something happens to prevent the shot taking serious turn, offence u/s 307, I. P. C. is brought home. If a person fires at another, it would ordinarily mean that he wants to kill that person. The fact that the person fired

at was not killed does not necessarily mean that he had no intention to kill that man. A person may at times be excited and for that reason he may not be able to hit properly, or the aim may be missed because the person aimed at may move aside. That does not however, mean that Section 307, I. P. C. will have no application to a case like this. We, therefore, hold that the conviction of the accused Ramchander u/s 307, I. P. C, made by the trial Court, is correct.

14. In the result, we partly accept the appeal of Budhram and, while maintaining his conviction u/s 302 and the sentence of imprisonment for life awarded to him on that count, we set aside his conviction u/s 307/34, I. P. C, and the sentence of rigorous imprisonment for five years. We also partly accept the appeal of Ramchander and, while, maintaining his conviction u/s 307, Indian Penal Code, and the sentence of rigorous imprisonment for five years, we set aside his conviction and the sentence of life imprisonment u/s 302, read with Section 34, I. P. C.