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**(1953) 06 GAU CK 0007**  
**In the Gauhati High Court**

Ramdayal Chamar

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision :** 12-06-1953

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 109, 304, 323

**Citation :** AIR 1954 Guw 157 : (1954) CriLJ 1206

**Hon'ble Judges :** Sarjoo Prosad, C.J.;Deka, J

**Bench :** Division Bench

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## Judgement

Deka J.

1. The appellant, Ramdayal Chamar, was charged u/s 304, I. P. C, with respect to the death of one Gandaria Chamar of Badlipar Tea Estate on the night of 26-11-1950 the assault having taken place at about 7 or 8 p. m. Another person Ramdas Chamar was also jointly tried with Ramdayal on a charge of abetment of culpable homicide (under Section 304/109, I.P.C.) and u/s 323, I. P, C, for voluntarily causing hurt to Pauchu, the son of Gandaria on the night of occurrence. The Jury returned a verdict of not guilty against Ramdas Chamar with regard to both the charges framed against him but they returned a verdict of guilty against the appellant Ramdayal Chamar u/s 304 (Part I), I.P.C. The learned Additional Assistant Sessions Judge, U. A. D. accepted the unanimous verdict of the Jury and convicted Ramdayal Chamar u/s 304 (Part I), I.P.C. and sentenced him to six years" rigorous imprisonment. The appeal is against this conviction and sentence.

2. The prosecution case is that Gandaria Chamar and accused Ramdas Chamar are neighbours and on the evening of 26-11-50, Gandaria went to Ramkisen's house, - Ramkisen being the father of accused Ramdas and complained to him that his pigs had damaged Gandaria's paddy. At this, there was an altercation between accused Ramdas and Gandaria and Pauchu, P. W. 1, on hearing a "hulla" hurriedly went to Ramkisen's courtyard and there he saw accused Ramdayal dealing a blow on the head of Gandaria with the blunt edge of a hoe,

Ramdayal was the son-in-law of Ramkisen and the brother-in-law of Ramdas. Gandaria fell down unconscious on receiving the blow. Pauchu alleges that Ramdas assaulted him too, taut seeing his father seriously injured, he went to Ahlad Chowkidar (P. W. 4) at once and reported to him about the occurrence. Ahlad Chowkidar came immediately and found Gandaria lying unconscious in the courtyard of Ramdas and with a bleeding injury on his head.

On being informed about the occurrence by Ahlad and Pauchu, the garden doctor came and removed the injured to the Garden Hospital and during the course of the night, Gandaria expired as a result of the injury received on his head. On the following morning, the Manager of Badlipar Tea Estate sent a report to the Dergaon Police station on the basis of which a case u/s 304, I.P.C. was registered and after completion of the investigation, both Ramdas and Ramdayal were sent up for trial on a charge u/s 304, I.P.C. The committing Court framed a charge u/s 304, I.P.C. against accused Ramdayal and against Ramdas one u/s 304/109, I.P.C. and another u/s 323, I.P.C. The Sessions Court tried the accused of the charges as framed against each of them by the Committing Court.

3. Both the accused pleaded not guilty and denied any assault on Gandaria or on Pauchu. The defence, suggestion, however, was that the deceased Gandaria received the head injury by a fall on a piece of brick lying in the courtyard of Ramkisen but they did not seriously question the story of an altercation. The nature of the injury as deposed to by the doctor was one lacerated wound 1 1/2" x 3/4" bone exposed and causing fracture of right perital bone on the head and there was an abrasion on the buttock. The scalp was injured at the site of the injury and there was fracture of the right side of the occipital bone. Brain was also injured under the injury on the scalp. In the opinion of the doctor, the death was as a result of the head injury.

4. Mr. Goswami for the appellant contended that the charge to the jury contained several misdirections and one of them was that the evidence in the case was not properly placed before the jury by the learned Additional Assistant Sessions Judge and as a matter of fact, there was no evidence to justify the conviction of the accused. He further contended that it was a misdirection to place before the Jury the statement of P, W. 3 recorded in the committing Court which was damaging to the accused inasmuch as she was not asked nor warned about the same when she was being examined in the Court of Session. In the Sessions Court this witness said that it was Ramdas whom she saw assaulting Gandaria and not Ramdayal, but in the committing Court, she deposed to have seen Ramdayal striking her father-in-law, Gandaria with a hoe. The evidence was undoubtedly tendered u/s 238, Criminal P. C., but she ought to have been given a chance to offer her own explanation for the variation in the statement. At least it ought to have been pointed out to the jury that she was not dependable as a witness as she made divergent statements in the two Courts on a material point, Another contention of Mr. Goswami was that P. W. 1, Pauchu was the only witness and the doctor deposed that he was found to be under the influence of

liquor and therefore, the jury ought to have been told that they ought to put very little reliance on what he deposed to have seen. This fact of course was placed before the jury.

5. We have read the charge and we are satisfied that the charge is defective in more than one respect. The learned Additional Assistant Sessions Judge began by saying that

At the outset, I must tell you that there is no sufficient evidence to convict accused Ramdas Chamar u/s 304, I.P.C. read with Section 109, I.P.C. So you can leave the case of Ramdas u/s 304, I.P.C. read with Section 109, I.P.C. out of your consideration and you will be justified in acquitting accused Ramdas Chamar u/s 304/109, I.P.C.

The Judge can only direct the Jury to return a verdict of not guilty in a case where there is no evidence but in case of there being some evidence, - irrespective of its quality or quantity, the matter should be left to the jury to judge about the effect of such evidence in relation to the accused. It will be a meaningless formula for a Judge to recite before the jury that "I am no Judge of facts" - but the judge should behave that way - and should express his opinion on facts as opinion. P. W. 3 said that she saw Ramdas striking Gandaria. Whatever her evidence is worth it ought to have gone to the Jury against Ramdas. The F.I.R. or the "chit" that was sent to the Police by P. W. 2 the Garden Manager On 27-11-50 read as follows:

Yesterday, a man Gandaria Chamar died in hospital. There has been a quarrel between Gandaria and Ramkissen's son and they had come to blows. Would you please send an-officer to investigate the matter?

6. Ramdas was Ramkisen's son. Ramdas was therefore, indirectly implicated and P. W. 4 Ahlad Mali Chowkidar also says that Pauchu on the night of the occurrence, appeared at his house and reported that his father Gandaria was assaulted by accused Ramdayal and Ramdas. It is, therefore, clear that there was some evidence against Ramdas with regard to the assault on Gandaria and it was for the Jury to assess his liability and not the Judge. The Judge, was therefore, manifestly wrong in asking the Jury to return a verdict of not guilty u/s 304/109, I.P.C. against Ramdas which would indirectly amount to shifting the whole burden of the crime to Ramdayal and the charge was defective in that way.

7. He further misdirected the Jury in telling them that Ahlad, P. W. 4 deposed in Court that Pauchu told him that accused Ramdayal assaulted Gandaria, On the other hand, his statement was that Pauchu accused both, Ramdayal and Ramdas of assaulting Gandaria and he did not tell him that Ramdayal had hit his father on the head with a hoe. Ahlad said that after the doctor had come and taken the injured Gandaria to hospital, Pauchu told him that his father was assaulted by accused Ramdayal during the course of altercation over the damage done to Gandaria's crops by Ramdas's pigs. It is a fact that there was no other independent evidence as to the assault on Gandaria except what Pauchu himself

had deposed and his wife's support to his testimony is very half-hearted. It is not denied that Ahlad Chowkidar was immediately reported to after the occurrence and he came to the place of occurrence and took necessary steps.

The letter of the Garden Manager to the Thana Officer is not very explicit where, of course, he says that he made no enquiry before he sent the report, but wrote to the Thana what he learnt from Ahlad. Ramdayal's name was neither mentioned nor suggested therein and that fact ought to have been placed before the Jury in the absence of which accused Ramdayal's case has been prejudiced to some extent, Taking all these factors into consideration along with the objections to the charge raised by Mr. Goswami, we are satisfied that there are some misdirections in the charge as a result of which it might be argued that the jury had been induced to return as verdict which they would not have if the facts were properly placed before them. Reading the charge as a whole, we are far from satisfied that the learned Judge took sufficient pains to place the case before the jury in its proper perspective.

8. In the Privy Council case of - AIR 1946 82 (Privy Council) it was considered whether when a misdirection vitiates a charge, the Court of appeal should remand the case to the lower court for a proper trial in cases tried with the help of a jury or should consider the evidence itself and it was held that the court of appeal is not bound to order retrial in all cases, but the court of Appeal itself can, where there has been a serious misdirection or non-direction, consider the evidence and maintain the conviction if the evidence clearly establishes the guilt of the accused. It has been further held by the Supreme Court in the case of - "Mushtak Hussein V. State of Bombay" AIR 1953 SC 283 , that the statute law in India in certain circumstances permits an appeal against a jury's verdict and authorises the appellate Court to substitute its own verdict on its own consideration of the evidence and we have accordingly considered the point whether the case should be remanded for a retrial or we should consider the evidence for ourselves and decide whether the accused has been rightly convicted,

We are satisfied from the evidence on record that the accused had taken part in the matter of an assault on Gandaria and it is very likely that Ramdas was also a party to the assault. The whole thing seems to be something of a drunken brawl, it being in evidence that the deceased Gandaria was under the influence of liquor, so was Pauchu. Ramdas also sustained certain in-juries and the F.I.R. indicates that the quarrel was between Ramdas's party and Gandaria's party. In case Ramdas committed the injury, there was no reason to implicate Ramdayal and since that has been the story consistently put up by the prosecution, and believed by the jury in spite of the discrepancies in the case, we are inclined to think that Ramdayal had caused the head injury on Gandaria but he had no intention of causing such injury which might result in death, but under the circumstances, it can be presumed that he knew that such an injury was likely to cause death in the natural course of things and he ought to have, therefore,

been convicted u/s 304 Part II, I.P.C.

Considering the circumstances in which the assault took place and the status in society from which the accused come, we are of opinion that a lighter sentence would serve the ends of justice. We accordingly, alter the conviction of the accused to one u/s 304, part II, I, P. C. and the sentence is reduced to three years" rigorous imprisonment. With the modification indicated above, the appeal is dismissed.

Sarjoo Prosad, C.J.

9. I agree to the order proposed.