Ravi Kumar vs State Of Punjab on 4 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1929, 2005 (9) SCC 315, 2005 AIR SCW 1359, 2005 (1) CALCRILR 524, 2005 ALL MR(CRI) 1815, 2005 (2) SCALE 534, 2005 (5) SRJ 85, 2005 (1) UJ (SC) 558, 2006 (1) SCC(CRI) 738, (2005) 28 ALLINDCAS 96 (SC), (2005) 3 JT 62 (SC), 2005 CALCRILR 1 524, 2005 (28) ALLINDCAS 96, 2005 (2) SLT 759, (2004) 4 PAT LJR 761, (2006) SC CR R 915, (2004) 4 RECCRIR 514, (2005) 2 SUPREME 402, (2005) 1 ALLCRIR 1082, (2005) 2 SCALE 534, (2005) 52 ALLCRIC 40, (2005) 1 CRIMES 373, (2005) 1 CHANDCRIC 243, (2005) 2 CURCRIR 1, (2005) 2 EASTCRIC 135, (2005) 2 MADLW(CRI) 815, (2005) 30 OCR 759, (2005) 2 RAJ CRI C 353, (2005) 2 RECCRIR 72, (2005) 2 SCJ 505, (2006) 1 CURLJ(CCR) 515, AIRONLINE 2005 SC 1071

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (crl.)  377 of 2005

PETITIONER:
Ravi Kumar

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 04/03/2005

BENCH:
Arijit Pasayat & S.H. Kapadia

JUDGMENT:
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JUDGMENT ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court affirming the conviction of the appellant (hereinafter referred to as the `accused') under Section 302 of the Indian Penal Code, 1860 (in short the `IPC') and sentence of imprisonment for life and fine imposed with default stipulation.

The prosecution version in a nutshell is as follows:

On May 29, 1996 a quarrel had taken place between Hans Raj (hereinafter referred to as the `deceased') and accused Ravi Kumar, who was then servant of one Gandharav Singh over a very trivial matter. Deceased reported the incident to his brother Mohan Lal (PW-3) and Ram Lubhaya. On May 30, 1996 at about 7 p.m. when the three brothers were present in the Hada Rori of village Jadla, Gandharav Singh called deceased to get the dispute settled with his servant accused-Ravi Kumar. Mohan Lal and deceased followed Gandharav Singh to his tubewell. Accused-Ravi Kumar and Bahadur Singh (PW-4) were already present there. Gandharav Singh placed a Dhangu behind him. When the talks were going on, a quarrel between accused-Ravi Kumar and deceased again ensued. Accused-Ravi Kumar picked up the Dhangu placed behind Gandharav Singh and gave two blows on the head of deceased. Deceased fell down. Mohan Lal (PW-3) raised an alarm. In the meantime Ram Lubhaya also reached there. Accused-Ravi Kumar then made good his escape. Deceased was taken to the Primary Health Centre, Jadla by Mohan Lal (PW-3) and Ram Lubhaya. After giving first aid, deceased was referred to Civil Hospital, Nawanshahr.

Dr. Harbans Lal Mann (PW-1) medico-legally examined the deceased at 9.05 a.m. on May 30, 1996. The doctor found two injuries - (i) incised wound on the right side of the scalp and (ii) swelling on the occipital frontal region. Both the injuries were kept under observation. Deceased was unfit to make a statement and was referred to the P.G.I., Chandigarh. Deceased was admitted to P.G.I., Chandigarh, at about 10.20 a.m. on May 30, 1996. A.S.I. Harbhajan Singh, Police Post P.G.I., Chandigarh (PW-2) moved an application (Ex. PC) in order to know if deceased was fit to make a statement. The doctor at the P.G.I. made the endorsement (Ex. PC/1) and declared the deceased unfit to make a statement. Deceased ultimately died at 1.15 p.m. on May 30, 1996.

After the death of deceased, his brother Mohan Lal (PW-3) proceeded to Police Station, Nawanshahr, to lodge the FIR. S.I. Surjit Kumar (PW-7) met him at the chowk on Chandigarh Road, Nawanshahr. The S.I. recorded his statement (Ex.PH) and after making endorsement (Ex.PH/1), it was dispatched to Police Station, Nawanshahr, where formal first information report (Ex. PH/2) was recorded.

The accused was arrested on 6th June, 1996 at the bus stand of the village Virowal. He made a disclosure statement, pursuant to which the Dhangu which was stated to be weapon of assault was recovered. On completion of investigation charge sheet was placed. Charge for offence punishable under Section 302 IPC was framed. "Accused pleaded innocence. Eight witnesses were examined to further the prosecution version. During trial accused took the plea that the prosecution version needs to be rejected as there was delay in lodging the FIR and submission of the special report to the Illaqa Magistrate, unlikely presence of the witnesses at the scene of occurrence and their interestedness, non-examination of Gandharv Singh though he was claimed to be an eye witness and inconsistency between the medical and oral evidence. The

trial court considered the evidence of the witnesses and found substance in their testimony. It was noted that there was no unusual or unexplained delay in lodging the FIR. Similar was the case with the dispatch of the special report to the Illaqa Magistrate. It was noted that non examination of Gandharav Singh is really of no consequence as he being the master of the accused-appellant would not have come out with the truth. The evidence disclosed that the initial fight was between the accused and the deceased and the accused assaulted the deceased when quarrel ensued during the talks for sorting out the difference. There was also no inconsistency between the medical and oral evidence. There was no reason for the witnesses to falsely implicate the accused persons.

The appeal before the High Court was dismissed by rejecting the pleas which were reiterated.

In support of the appeal, learned counsel for the appellant submitted that the doctor has found an incised wound which could not have been possible with the weapon i.e. Dhangu which was claimed to have been used. In any event, the assaults took place in the course of quarrel and, therefore, Section 302 is ruled out, and Exception 4 of Section 300 IPC applies. There was inordinate delay in lodging the FIR and sending the special report to the Illaqa Magistrate.

Learned counsel for the respondent-State on the other hand supported the judgment of the High Court and submitted that after detailed analysis the Courts have found the accused guilty. There is no infirmity in the conclusions; hence there is no reason to warrant any interference.

The plea which was urged with some amount of vehemence was that there was unreasonable delay in lodging the FIR and sending the special report to the Illaqa Magistrate.

As the evidence on record shows the occurrence took place around 7 A.M. on 30th May, 1996. In the said occurrence the deceased was seriously injured. Therefore, the first priority of his brothers i.e. Mohan Lal (PW-3) and Ram Lubhaya was to provide immediate medical aid so that his life could be saved. He was immediately taken to the primary health centre, Jadla and thereafter was taken to the Civil Hospital, Nawanshahr. There the doctor after examining him found the condition to be serious and referred the patient to the PGI at Chandigarh where he ultimately died at 1.15 P.M. After his death, PW-3 lodged first information report at the police station, Nawanshahr shortly thereafter, after making arrangements for his funeral. The distance between the hospital and the Police Station is few kilometers. The special report was received by the Illaqa Magistrate shortly after the mid night. The sequence of events as is evident from the record shows that there was no unreasonable delay in lodging the FIR as the first effort of his brothers was to take the deceased to different hospitals for medical aid. As has been rightly observed by the courts below the first

priority of the family members was to save the life of the deceased. Similarly, there is no unexplained delay in sending the special report because of special magistrate, as the distance between the Police Station and the place where the Illaqa Magistrate was stationed was not small.

In Ram Jag and Ors. v. The State of U.P., AIR (1974) SC 606, it was observed as follows:

"Whether the delay is so long as to throw a cloud of suspicion on the deeds of prosecution case must depend upon a variety of factors. Even a long delay can be condoned if the witnesses have no motive for implicating the accused. On the other hand, prompt filing of the reports is not an unmistakable guarantee of the truthfulness of the version of the prosecution.

It is true that witnesses cannot be called upon to explain every hour's delay in filing information and a common sense view has to be taken in ascertaining whether the First Information Report was lodged after an undue delay so as to afford enough scope for manipulating evidence."

As observed by this Court in Pala Singh and Anr. v. State of Punjab, AIR (1972) SC 2679, some delay in receipt of the special report by the Illaqa Magistrate does not make the investigation tainted. Similar was the view expressed in Sarwan Singh and Ors. v. State of Punjab, AIR (1976) SC 2304. It was held that delay in dispatch of the First Information Report is not a substance which can throw out the prosecution case in its entirety.

The trial court and the High Court, therefore, rightly held that there was no delay in either lodging the FIR or sending the special report to the Illaqa Magistrate.

The First Information Report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer-in-charge of the Police Station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. The registration of the FIR empowers the officer- in-charge of the Police Station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of such offence. After recording the FIR, the officer-in-charge of the Police Station is obliged to proceed in person or depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in that behalf to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Indian Evidence Act, 1872 (in short the `Evidence Act') or to contradict him under Section 145 of that Act. It can

neither be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed.

Sending the copy of the special report to the Magistrate as required under Section 157 of the Cr.P.C. is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the Court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 Cr.P.C. is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not.

It was highlighted by learned counsel for the appellant that the injury which proved fatal was an incised wound and considering the prosecution version that he was holding a Dhangu, such injury was not possible.

This plea is untenable. The doctor who examined the deceased had clearly stated that the blow given by the Dhangu on hard portion of the body could cause incised wound. Reference may be made to Modi's Text Book of Medical Jurisprudence and Toxicology (Sixteenth Edition). At page 224 it has been mentioned that occasionally on wounds produced by a blunt weapon or by a fall the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eye brow, illiac crest, shin, etc. or by a fall on the knee or elbow when the limb is flexed. The edges of such wounds would be found irregular with a certain amount of bruising. The doctor, as noted above, has categorically stated that the injury was possible, in view of what has been stated by Modi in his Text, by use of the Dhangu on the hard portion of the body. Therefore, there is no inconsistency between the medical evidence and the ocular evidence. In any event where the ocular evidence is cogent, credible, the medical evidence to the contrary cannot corrode the evidentiary value of the former. (See State of U.P. v. Krishna Gopal and Ors., AIR (1988) SC 2154).

The residuary plea relates to the applicability of Exception 4 of Section 300 IPC.

For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A `sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the `fight' occurring in Exception 4 to Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is no possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression `undue advantage' as used in the provision means `unfair advantage'.

Considering the factual background it will be appropriate to convict the appellant under Section 304 Part II IPC, instead of Section 302 IPC as has been done by the trial court and affirmed by the High Court. Custodial sentence of eight years would meet the ends of justice.

The appeal is allowed to the aforesaid extent.