Supreme Court of India
Rana Partap And Ors. vs State Of Haryana on 12 May, 1983
Equivalent citations: AIR 1983 SC 680, 1983 CriLJ 1272, 1983 (2) Crimes 342 SC, 1983 (1) SCALE 780, (1983) 3 SCC 327
Author: C Reddy
Bench: D Desai, O C Reddy
JUDGMENT Chinnappa Reddy, J.

1. Rana Partap, Manmohan alias Pappi and Sat Pal were tried by the learned Sessions Judge, Karnal--Manmohan for an offence under Section 302 IPC and Rana Partap and Sat Pal for an offence under Section 302 read with Section 34 IPC. They were acquitted by the learned Sessions Judge, but on appeal by the State, the order of acquittal was reversed and they were convicted under Section 302 and Section 302 read with Section 34 and sentenced to suffer imprisonment for life. They have preferred this appeal under the Supreme Court Enlargement of Jurisdiction (criminal) Act.

2. Shri A.N. Mulla and Shri Kohli, learned Counsels for the appellants read to us, in extenso, the evidence of all the material witnesses as also the judgments of the learned Sessions Judge and the High Court. They also addressed to us elaborate arguments. We are satisfied that the High Court did not overstep the bounds of their jurisdiction or side-step the principles to be observed in dealing with appeals against orders of acquittal. We are also satisfied that the learned Sessions Judge was patently in error in acquitting the accused and that he entertained doubts where none existed. The High Court was quite right in reversing the judgment of the learned Sessions Judge as wholly unreasonable. Shri Mulla repeated all the points upon which the learned Sessions Judge relied to reject the case of the prosecution. Everyone of these points is so trivial that neither singly nor cumulatively can they be considered sufficient to discard the testimony of the prosecution witnesses. We consider that it would be a vain exercise in futility to ostentatiously consider each one of these inconsequential contentions only to reject them out of hand. We may however, mention a ground or two to illustrate the superficial approach and the unreal appreciation of evidence by the learned Sessions Judge.

3. There were three eye witnesses. One was the brother of the deceased and the other two were a milk vendor of a neighbouring village, who was carrying milk to the dairy and a vegetable and fruit hawker, who was pushing his laden cart along the road. The learned Sessions Judge and the learned Counsel described both the independent witnesses as chance witnesses implying thereby that their evidence was suspicious and their presence at the scene doubtful. We do not understand the expression 'chance witnesses'. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that that they are mere chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal

and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street is to abandon good sense and take too shallow a view of the evidence.

4. Another reason given by the learned Sessions Judge to discard the evidence of the milk vendor was that he did not produce the receipt for payment of octroi duty for bringing the milk into the town and that he also admitted that the business was being carried on in the name of his father. The reasoning is so ridiculous as to make further comment unnecessary. What is worse is that even the evidence of the witnesses examined by the accused shows that octroi duty was paid that day in the name of the father; thus virtually corroborating the evidence of the witness.

5. The evidence of the vegetable and fruit hawker was rejected on the ground that he admitted that he was not in the habit of shouting while pushing the cart and selling the vegetables and fruit. As we said, comment will be waste of words.

6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

7. The learned Sessions Judge also commented on the delay in the special report reaching the Magistrate and inferred therefrom that the First Information Report must have been prepared much later than when way stated to have been prepared. There is no basis for this inference. The First Information Report was given at 7.00 P.M. The special report which was prepared thereafter was despatched to the Magistrate at Karnal, 13 miles away, by Special Messenger. It reached the Magistrate at 3.30 A.M. One must make some allowances for delays arising in the course of the ordinary conduct of human business. After the First Information Report is given, some time must have been taken to prepare the special report. A special messenger must have been sent fur. Instructions must have been given. He must have made some preparations to go upon the journey, perhaps have a meal and a change of dress. If he was travelling by some vehicle, there must have been some further delay to arrange for a vehicle. After reaching Karnal, the messenger must have made some other arrangements to go from the place where the vehicle must have stopped to the residence of the Magistrate. As it was in the night, he must have spent some time making enquiries to find out the house of the Magistrate. One can think of many other causes which might be responsible for the time that elapsed between 7.00 P.M. and 3.00 A.M. One cannot say that there was any appreciable delay. The argument was that there was a train which left Shahabad for Karnal at 8.00 P.M. and the messenger would have travelled by that train. That is easier said than done. The messenger would have been able to catch the train if he had rushed and dashed to the Railway

Station immediately after the report was handed over to him. But we must make some allowances for the preparation that he might have to make for the journey. When the Sub Inspector was in the witness box, he was not cross examined as to why he did not arrange for the messenger to go by train immediately. We do not think that there was and delay in the special report reaching the Magistrate or that there was any justification for inferring that the First Information Report must have been given much later.

8. The learned Sessions Judge, and the High Court too, commented that the arrest of Sat Pal was shrouded in suspicion. The Sub Inspector of Police claimed that he arrested Sat Pal in the night when he was trying to hide behind some Jhuggis. The learned Sessions Judge thought that this could not be true since Sat Pal had gone to the hospital and had got himself examined by the doctor at 6.25 P.M. We are unable to agree with the learned Sessions Judge and the High Court that there was anything suspicious about the arrest of Sat Pal. The doctor deposed that after Sat Pal was medically examined, he was discharged from the hospital. There was, therefore, nothing suspicious if he was arrested later in the night when he was trying to hide himself from the police.

9. We have mentioned a few circumstances to indicate how unreasonable a view the learned Sessions Judge had taken. The High Court was, therefore, perfectly justified in reversing the order of acquittal. We do not think it is necessary to dictate further upon the subject. We do not have the slightest doubt that Rana Pratap and Sat Pal caught the deceased ond held him and that Manmohan stabbed him.

10. In our view, the only question worthy of consideration in this case is whether Rana Pratap and Sat Pal can be said to have shared a common intention with Manmohan to kill the deceased so as to be liable for the offence under Section 302 read with Section 34 IPC. The case of the prosecution was that there was ill-feeling between Manmohan and the deceased as the deceased was demanding from Manmohan money which was due to him and in that connection, he had abused and slapped him a few days earlier. On the day of occurrence, which was a Sunday, the deceased and his brother, Yash Pal, PW-3, were going towards their shops in order to clean them. On the way they were met by Manmohan, Rana Partap and Sat Pal. who came from the opposite direction. Manmohan shouted that he would teach a lesson to the deceased who had insulted him. Thereupon Rana Partap and Sat Pal caught hold of him and Manmohan gave him stab injuries on the right side of the abdomen, left side of the chest and left shoulder. Yesh Pal brother of the deceased then took out his belt which he was wearing around his waist and attacked the accused with it. P.Ws 4 and 5, a milk vendor and a vegetable and fruit hawker, who also witnessed the occurrence, threw brick-bats at the accused. The accused left the deceased and ran away. The deceased was then taken to the hospital where he died later. Yash Pal, PW-3 went to the Police Station and gave the First Information Report.

11. The evidence, while it discloses that there was some previous trouble between the deceased and Manmohan, does not disclose any special ill-feeling between the deceased and Rana Partap and Sat Pal. But the circumstance that the three accused came together, and that two of them held deceased while the third one stabbed him clearly indicates that they shared some common intention. The question is whether the common intention was to do away with the deceased ? The evidence is not very clear whether Rana Partap and Sat Pal continued to hold the deceased even after Manmohan

started stabbing him. Neither Rana Partap nor Sat Pal is alleged to have said anything to indicate that they wanted the deceased to be done away with. Manmohan himself did not say that he was going to finish the deceased. He only said that he wanted to teach him a lesson. In the circumstances, we are unable to hold that the only inference possible is that Rana Partap and Sat Pal shared the common intention with Manmohan to kill the deceased. No doubt they held the deceased and this facilitated the stabbing by Manmohan. But there is nothing whatever to indicate that they knew that Manmohan would cause fatal injuries to the deceased, though they must have anticipated that he would cause grievous injuries. It is one of those borderline cases where one may with equal justification infer that the common intention was to commit murder or to cause grievous injury. But the benefit of any such doubt must go to the accused. In the circumstances, we conclude, but not with out hesitation, that the common intention of the accused has not been established, beyond reasonable doubt, to be to cause the death of the deceased. But it certainly was to cause grievous injuries to the deceased. The conviction of Rana Partap and Sat Pal under Section 302 read with Section 34 and the sentence of life imprisonment are therefore set aside and instead they are convicted under Section 326 read with Section 34 and sentenced to suffer rigorous imprisonment for a period of five years each. So far Manmohan is concerned, the three stab injuries inflicted by him are sufficient in the ordinary cause of nature to cause death. His conviction and sentence are confirmed.