Supreme Court of India
Ramesh Kumar vs State Of Bihar And Others on 4 August, 1993
Equivalent citations: AIR 1993 SC 2317, 1993 CriLJ 3137, 1993 (2) Crimes 1191 SC, JT 1993 (4) SC 463, 1993 (3) SCALE 309, 1994 Supp (1) SCC 116, 1993 Supp 1 SCR 472
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Bench: . A Anand, N Singh
ORDER A.S. Anand, J.

1. On 10th October 1970, in village Changel, District Muzafferpur, Harbansh Narain Lal Das, lather of the appellant herein, was murdered and respondents Ram Briksh Rai, Giani Mandal and Mohinder Baitha along with Kusheshwar Rai (since deceased) were tried for the said offence of murder under Section 302/34 IPC. The learned Additional Sessions Judge by his judgment dated 31.3.1973 convicted the three respondents herein for the offence under Section 302/34 IPC and sentenced each one of them to suffer rigorous imprisonment for life. Giani Mandal, respondent No. 2 was also convicted for an offence under Section 379 of the Code for stealing certain articles from the person of the deceased. However, no separate sentence was awarded for this offence. The respondents preferred an appeal against their conviction and sentence in the High Court of Judicature at Patna. The High Court after reappraisal of the entire evidence on record concurred with the findings recorded by the Trial Court as regard the guilt of the respondents. In the words of the High Court:

From the scrutiny of the evidence discussed above, we feel no hesitation in coming to the conclusion that the prosecution story revealed by the two witnesses and corroborated by the other witnesses, namely, Mohan Jha (PWI), Yashoda Devi (PW7), and the village Chowkidar (PW10) as well as the evidence of the Investigation Officer and the doctor is fully established beyond all reasonable douts.

However, the High Court found that the conviction of the respondents for an offence under Section 302/34 IPC, in the facts and circumstances of the case, was not justified and that the respondents could he convicted only for an offence under Section 304/Part II read with Section 34 IPC. The conviction was, by the judgment of the High Court dated 28.1.1977. accordingly altered and the sentence for imprisonment for life was substituted by a sentence of seven years rigorous imprisonment. The conviction of Giani Mandal for the offence under Section 379 was maintained but again no separate sentence was awarded for the same.

2. Aggrieved by the judgment of the High Court, the appellant, son of the deceased, filed a special leave petition in this Court in 1984 after nearly seven years of the order of the High Court and 81 days, even after the High Court declined to grant a certificate of fitness applied for in 1984 itself, for filing an appeal to the Supreme Court. Alongwith the special leave petition, an application for condonation of delay was also filed on 15.1.1985. This Court by an order dated 17.1.1985, condoned the delay and granted special leave to appeal. That is how the appeal is before us.

3. The appellant has argued his case in person. He placed the facts of the case before us with clarity. It was submitted by him that in the facts and circumstances of the case, the High Court erred in modifying the conviction from an offence under Section 302/34 IPC to the one under Section

304/Part II/34 IPC. He took us through the relevant portion of the evidence on the record. According to the appellant, the respondents surprised the deceased, who was going to his paddy fields and alter relieving him of a loaded pistol, assaulted him with first blows, slaps and kicks and then the neck of the deceased was tied with a rope and he was dragged with a premeditated intention to kill him. The appellant submitted that the murder was a gruesome one and since the method of "hanging" was used, the respondents had shared the common intention to commit the murder of the deceased and they should not only have been convicted for an offence under Section 302/34 IPC but also awarded the capital punishment of death. The respondents on the other hand have submitted through their learned Counsel that from the established circumstances on the record, intention on the part of the accused to commit the murder of the deceased is not at all discernable.

4. As already noticed, the occurrence took place in 1970 and the conviction by the Trial Court was recorded in 1973 and modified by the High Court in 1977. The sentence had been reduced by The High Court from that of life imprisonment to seven years rigorous imprisonment, after altering the conviction from the one under Section 302/34 IPC to the one under Section 304 part/34 IPC. The respondents had in all probability under gone their entire sentence and would have been released from custody, if not required in any other case, even prior to the filing of the special leave petition in this Court in 1984. These are some of the factors which the Court will have to take into consideration while appreciating the submissions made by the appellant.

5. There is no doubt that the respondents alongwith Kusheshwar Rai (since deceased) assaulted the deceased on the fateful day. The prosecution has successfully established on the record that the respondents 1 to 3 committed the crime and we agree with the findings to that effect as recorded by both the courts below. The question, however, is whether the offence committed by the accused falls under Section 302/34 IPC as found by the Trial Court or under Section 304/Part 11 read with Section 34 IPC as found by the High Court.

6. It is found from the evidence on the record, that Ram Briksh Rai respondent No. 1 is alleged to have been armed with a lathi and rope while Giani Mandal, respondent No. 2, is stated to have been in possession of a knife, with which he cut the belt to remove the pistol from the person of the deceased. The accused were therefore in possession of a loaded fire arm also. According to the medical evidence of Dr. T.P. Sahi, PW12 and the post mortem report, no injury had been caused to Ihe deceased either with the lathi or with a knife or with the pistol. The respondents, therefore, did not use any of the weapons with which they were armed. Cause of death, according to the medical evidence, was shock and haemorrhage associated with strangulation as a result of the injury on the chest and the neck. According to the prosecution witnesses, who have been believed by both the courts below, injuries were caused to the deceased only by kicks and fist lows. Keeping in view the ocular testimony and the medical evidence, we find it difficult to hold that the accused respondents had intended lo cause the injuries on the deceased which were sufficient in ordinary course of nature to cause his death. Had the accused shared the common intention to cause the death of the deceased, nothing prevented them from using the pistol. The courts have to take into consideration all the attendant circumstances while considering the question of offence. The fact that neither the knife nor the lathi nor the pistol was used, even though the deceased was lonesome and was

attacked by four young persons, would go to show that in all probabilities the respondents did not intend to cause death of the deceased and that they wanted to severely assault him only. The facts proved by the prosecution and the established circumstances on the record go to show that the case does not fall within the ambit of any of the four clauses of the definition of murder contained in Section 300 IPC. However, in causing the injuries as have been noticed in the postmortem report, the respondents must be attributed the knowledge that by their acts they were likely to cause the death of the deceased, though without any intention to cause his death or to cause such bodily injury as is likely to cause his death. The offence, in this case, would therefore be 'culpable homicide not amounting to murder' as per the third clause of Section 299 IPC punishable under Section 304/Part 11/34 IPC and, therefore, the judgment of the High Court in so far as it records the conviction of the respondents under, Section 304 Part II read with Section 34 IPC is concerned, it does not call for any interference at our hands. Coming now to the question of sentence. The High Court has awarded 7 years RI. Keeping in view the nature, of the assault and the attendant circumstances on the record, that sentence appears to us to be rather lenient and calls for an enhancement. However, keeping in view the fact that respondents 1 to 3 would have undergone the 7 years sentence almost a decade ago, we do not propose to enhance the substantive sentence of 7 years RI but in the peculiar facts and circumstances of this case, we are or the opinion, that the ends of justice would be met, if respondents 1 to 3 are also sentenced to pay fine. We, accordingly, enhance the sentence on each one of the three respondents from 7 years RI to 7 years RI and a fine of Rs. 2,500 each. In default of payment of fine, each of the three respondents shall suffer further RI for six months. The total fine (Rs. 7,500) when realized shall be paid to the appellant.

7. With the above modification of the sentence, the appeal is partly allowed.