
(2008) 04 RAJ CK 0134
In the Rajasthan High Court

Banwari Lal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374, 397, 401
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2008) CriLJ 3256

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Chandra Sharma, J.—Since the controversy involved in all the three matters such as criminal appeal, criminal revision and leave to appeal, arise out of the same FIR number and same judgment, hence, all the above three matters are being decided by this common judgment.

2. By filing instant criminal appeal u/s 374, Cr.P.C, the accused appellants have challenged the judgment of conviction and sentence dated 18-1-2002 passed by learned Additional District & Sessions Judge (Fast Track) Kota (learned "trial Court") in Sessions Case No. 45/2001, whereby it convicted as under:

Accused appellant No. 1 Banwari Lal:

307, IPC:

10 Years Simple Imprisonment and a fine of Rs. 2,000/-. In default of payment of fine, each accused appellants shall further undergo two months" simple imprisonment.

326, IPC:

Ten Years Rigorous Imprisonment and a fine of Rs. 500/-. In default of payment of fine, each accused appellants shall further undergo 15 days" simple imprisonment.

324, IPC:

Rigorous Imprisonment for one and a half year.

323, IPC:

Rigorous Imprisonment for five months.

ACCUSED APPELLANTS Nos. 2 & 3 BHAWANI SHANKER BRIJESH KUMAR:

307/34, IPC:

10 Years Simple Imprisonment and a fine of Rs. 2,000/-. In default of payment of fine, each accused appellants shall further undergo two months" simple imprisonment.

326/34, IPC:

Ten Years Rigorous Imprisonment and a fine of Rs. 500/-. In default of payment of fine, each accused appellants shall further undergo 15 days" simple imprisonment.

324/34, IPC:

Rigorous Imprisonment for one and a half years.

323/34, IPC:

Rigorous Imprisonment for five months.

All sentences were ordered to run concurrently.

3. By filing criminal revision u/s 397 read with Section 401, Cr.P.C. the complainant petitioner Mr. Suresh Kumar Nagar, prayed for quashing and setting aside the judgment dated 18-1-2002 passed by the learned District & Sessions Judge No. 1 (Fast Track) in Sessions Case No. 45/2001, whereby accused respondents namely; Mangi Lal, Satyanarain and Ram Swaroop s/o Ram Karan have been acquitted from the offence under Sections 307/34, 326/34, 324/34 and 323, IPC as also they may be held guilty and be punished suitably for the aforesaid offences. It is pertinent to mention here that by typographical error, the name of accused appellant Brijesh Kumar has been mentioned and instead of name of Brijesh Kumar, name of Ramswaroop should have been mentioned, as is clear from the Judgment passed by the learned trial Court.

4. By filing leave to appeal u/s 378(i)(iii) by the State of Rajasthan against accused respondents Nos. 1 to 6, the appellant State of Rajasthan, has prayed for conviction and sentence of accused appellants Banwari, Brijesh and Bhawani Shanker for the offence u/s 395, IPC and the accused respondents Mangilal, Satyanarain and Ramswaroop for the offence Under Sections 307/34, 326/34, 324/34 and 323, IPC.

5. Brief facts of the case as per criminal appeal filed by the accused appellants

are that complainant Suresh Kumar Nagar (P.W. 1) gave a parchabayan Ex.P1 on 20-8-1997 and on the basis of that parcha-bayan the present FIR was registered at P.S. Sangod District Kota. As per the parchabayan on 20-8-1997 at about 7.00 p.m. the named six accused persons with various weapons like Dhariya, Lakdi and iron pipes gave beating to him near the well of Shokat which is situated in between Nahariya and Shyampura village. As per the parchabayan, the complainant mentioned that he was returning to Shyampura after taking kerosene from Village Danaheda in a tractor. It was mentioned that Brijesh was having an iron pipe, Satya Narain and Bhawani Shanker were having lakdies and Banwari, Ram Nath and Govind were having Dhariyas. It was also mentioned that when he was coming on tractor the accused persons stopped him and asked him to come down from the tractor and started giving beating to him. It was mentioned that one chain of two and half tolas of gold and one wrist watch were also snatched by the accused persons. Afterwards Jagdis, Kamal, Bhawani Shanker and other villagers came there who first took him to the village and then got him admitted in the hospital at Sangod. It was mentioned that at that time nobody was present. The Police on the basis of this parchabayan registered a case for the offence under Sections 147, 148, 149, 341, 323, 307 and 379, IPC and commenced investigation.

The police after investigation submitted challan against the accused persons for the aforesaid offences.

6. The learned trial Court framed the charges against the accused persons. They pleaded not guilty and claimed trial in the matter.

7. The prosecution in support of its case produced as many as 15 witnesses and certain documents were exhibited, Thereafter, the statements of the accused appellants u/s 313, Cr. P.C. were recorded. The accused appellants in support of their case produced two witnesses namely; D.W. 1 Shyam Babu and D.W. 2 Govind Lal.

8. The learned trial Court after hearing both the parties convicted and sentenced the accused appellants vide judgment dt. 18-1-2002 as mentioned above. The accused appellants being aggrieved with the impugned judgment of conviction and sentence has preferred the instant criminal appeal.

As per injury report of Suresh, P.W. 15 Dr. Rakesh Sharma, examined him and he found following injuries on his person:

(Vernacular matter omitted....Ed.)

9. Learned Counsel for the accused appellants submits that the complainant Suresh Kumar in his examination-in-chief has stated the date of occurrence is 20-7-1997, whereas he has specifically mentioned the date of FIR as "20-8-1997". The relevant portion of statement given by Suresh Kumar is reproduced as under:

(Vernacular matter omitted....Ed.)

10. He further submits that the P.W. 5 Bhawani Shankar stated in his cross-examination that he cannot say that which of the accused appellant caused injuries on the person of injured Suresh and on which part. P.W. 2 Prem Shanker, P.W. 4 Jagdish, P.W. 5 Bhawani Shanker, P.W. 7 Dhanraj and P.W. 8 Kamal Kant were not present when the occurrence took place. P.W. 2 Prem Shanker has stated in his statement as under:

(Vernacular matter omitted....Ed.)

11. The bare perusal of Ex.P1 clearly goes to show that Jagdish, Kamal Kant and Bhawani Shanker and other villagers came there afterwards, took him to the village and from there he was taken to the hospital. The occurrence took place on the way and not in the village. P.W. 7 Dhanraj was not present at the time of occurrence and his name has not been mentioned in the FIR as witness. Thus, his presence at the place of occurrence is doubtful. The prosecution has failed to produce Radiologist in regard to x-ray. The injury No. 1 sustained by injured Suresh Kumar Nagar, cannot be said to be "dangerous to life". According to him the knife was recovered from Banwari and "gupti" and "stick" was recovered from Brijesh & Bhawani Shanker. According to the statement of doctor, the injury No. 1 is sufficient to cause of death and dangerous to life and injury No. 12 is grievous in nature and both the injuries are from knife. Rest of the injuries are simple in nature.

12. In defence the accused appellants produced D.W. 2 Govind Lal. This witness in-examination in-chief has stated as under:

(Vernacular matter omitted....Ed.)

13. Prosecution witnesses have made "contradictions and improvements in their testimony and only on the basis of statements of these witnesses, the accused appellants cannot be convicted and sentenced.

14. Per contra Mr. Shailesh Prakash Sharma, learned Counsel for the complainant and Mr. B. N. Sandhu, learned PP submits that there were three eye-witnesses namely P.W. 4 Jagdish, P.W. 5 Bhawani Shankar, P.W. 7 Dhanraj and P.W. 1 Suresh (injured), who have seen the occurrence. The learned trial Court has rightly convicted and sentenced the accused appellants (in the criminal appeal) but it wrongly acquitted accused respondents namely Mangi Lal, Satya Narain and Ram Swaroop (as mentioned in criminal revision) and looking to the evidence available on record, Mangi Lal, Satyana Narain and Ram Swaroop, ought to have been convicted by the learned trial Court, for which they have been acquitted.

15. Mr. Vaibhav Gehlot, learned Counsel for the accused appellants has placed reliance upon a judgment delivered in SB Criminal Revision Pet. No. 648/2003, Narain Das v. State of Rajasthan, decided on 20-4-2004, reported in 2005 Cri. LJ 110, "wherein in head note it has been held that trial Judge acquitted accused from the offence u/s 325. IPC on the ground that since Radiologist was not

produced for evidence. therefore, in absence of that it could not be concluded that injured received grievous injuries. Held accused persons were rightly acquitted by learned trial Court from offence u/s 325, IPC."

16. I have heard learned Counsel for the "accused appellants as well as learned PP for the State and carefully gone through the entire material made available to me including the judgment cited by Mr. Vaibhav Gehlot.

17. A bare perusal of the evidence clearly reveal that the prosecution witnesses have made improvements and contradictions in their testimony regarding place of occurrence as also eye witnesses of the occurrence. In this case, the prosecution has failed to produce. Radiologist for examination P.W. 15 Dr. Rakesh Sharma, in his opinion, opined that injury No. 1 was dangerous to life and injury No. 12 was serious in nature and remaining injuries were simple in nature. In view of above, the impugned judgment passed by learned trial Court, in my considered view, requires modification.

18. So far as relief in criminal leave to appeal filed by the State and criminal revision filed by the complainant is concerned, it do not require any interference of this Court. The same are dismissed.

19. Taking into consideration entire facts and circumstances of the case, I am of the opinion that the ends of justice would be met if the sentence awarded to the accused appellant Banwari Lal is reduced to 7 (seven) years from 10 (ten) years.

Conviction of appellants Bhawani Shanker and Brijesh Kumar is maintained under Sections 324/34 and 323/34, IPC and instead of directing to suffer imprisonment, I deem it proper to sentence them to the period already undergone by them in confinement. I, however, acquit them of the charges Under Sections 307/34 and 326/34, IPC. The appellants are already on bail, they need not to surrender and their bail bonds stand discharged.

20. The impugned judgment of the trial Judge shall stand modified as indicated above.