
(2011) 07 RAJ CK 0046
In the Rajasthan High Court
Case No : Criminal Appeal No. 697 of 2008

Betha Ram and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 307, 323, 34

Citation : (2012) 1 RLW 348

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Mukhtar Khan, for the Appellant; K.K. Rawal, Public Prosecutor and Bharat Singh, for the Respondent

Judgement

R.S. Chauhan, J.—The appellants are aggrieved by the judgment dated 24.7.2008, passed by the Additional Sessions Judge, Bali, District Pali, whereby the learned Judge has convicted them for offences under Sections 304 Part-II and Section 34 IPC and has sentenced them to seven years of rigorous imprisonment each and has imposed a fine of Rs. 1000/- each and has directed them to undergo three months of simple imprisonment in default thereof. Although this case is listed today for suspension of sentence filed by the appellant No. 1, but with the consent of the learned counsel for the parties, this case is being decided finally.

2. The brief facts of the case are that on 27.6.2006 Bhima Ram, (P.W. 3), lodged a report with the police station wherein he claimed that he and his father had a farm where they had sowed "Gwar". Around 7.00 a.m., his uncle, Behta Ram, appellant No. 1, his son Singha Ram, appellant No. 2, and Mohan Ram, appellant No. 3 started cultivating their field. When his father, Uda Ram, went to their field and tried to stop them, all the appellants started assaulting his father. When he heard his hue and cry, the complainant rushed to rescue his father. He saw that Singa Ram, had an axe, with which he assaulted his father on his legs; Mohan Ram, also had an axe, in his hand, with which he assaulted his father on his

hand; Behta Ram, had a lathi in his hand, with which he assaulted his father on the head.

3. On the basis of this report, a formal FIR was registered for offences under Sections 341, 323, 447, 307/34 IPC. However, with the death of Uda Ram, the offence u/s 302 IPC was added. In order to prove its case, the prosecution examined eighteen witnesses and submitted thirteen documents. In turn, the defence examined two witnesses and submitted few documents. After going through the oral and documentary evidence, the learned Judge convicted and sentenced the appellants as aforementioned. Hence, this appeal before this Court.

4. The learned counsel for the appellant has vehemently raised the following contentions before this Court; firstly the learned Judge has erred in mis-reading the evidence. According to the complainant and other eye witnesses, the deceased had been struck with an axe - a sharp edged weapon. Yet according to the injury report, (Ex. P/34), the deceased did not have a single sharp edged injury on his body. Although, none of the eye witnesses have stated that the assailants had struck from the blunt side of the sharp edged weapon, yet the learned Judge has concluded that since "the witnesses happen to be illiterate villagers, therefore, they would not know the difference between the sharp side of the weapon and the blunt side, Hence, he has erroneously concluded that witnesses really meant that the deceased was struck from the blunt side of the axe." According to the learned counsel, learned Judge has gone out of his way to reconcile the contradiction between the ocular evidence and the medical one. Secondly, since there is a clear-cut contradiction between the medical and ocular evidence, their testimonies have not been corroborated by the medical evidence. In fact, their testimony have been belied by it. Thus, the witnesses are untrustworthy. Thirdly, on the one hand the learned Judge has concluded that there was no occasion for the accused person to exercise their right of private defence, yet on the other hand, he has clearly concluded that they have overstepped their right of private defence. Thus, the impugned judgment is self contradictory. Fourthly, the appellant No. 1, has been behind the bars since 2006, and the appellant No. 2 & 3 have also remained incarcerated for nine months. Even if, the prosecution case were accepted as true, even then appellants have served sufficiently for their crime. Moreover, the appellant No. 1 happens to be seventy years and appellant Nos. 2 & 3 happen to be in their mid-life. Appellant No. 2 & 3 have been out on bail since 2007; both of them have lived a peaceful life. Therefore, no fruitful purpose would be served by keeping appellant No. 1 incarcerated. Furthermore, no fruitful purpose would be served by sending appellant Nos. 2 & 3 behind the bars. Therefore, the learned counsel has prayed that sentence of appellant should be reduced as an undergone.

5. On the other hand, the learned counsel for the complainant has strenuously contended that according to the prosecution, the appellants had come with lethal weapons which they have wielded. Moreover, they had caused fatal injuries. According to the witnesses, appellant No. 1, Behta Ram, was carrying a lathi. The

injuries suffered by the deceased on his head was caused by a blunt weapon. Therefore, the medical evidence corroborates the statements of the witnesses that the deceased had suffered injuries by blunt weapon on his head. Furthermore, the complainant and the accused are related; the appellants attacked their own family members and caused the death of their own brother. Looking to the gravity of the crime, their sentence ought not to be reduced to "as undergone".

6. The learned public prosecutor has echoed the contentions raised by the learned counsel for the complainant.

7. Heard learned counsel for the parties and perused the impugned judgment.

8. According to Bhima Ram, (P.W. 3), Behta Ram had a lathi in his hand with which he assaulted his father, Uda Ram. He further stated that Singa Ram had a kulhari with which he had assaulted his father on the legs. He has further stated that when he went to rescue his father, he was attacked also. He suffered an injury on his head. Having assaulted Uda Ram, the appellants fled from his place. His testimony is further corroborated by Jaggi, (P.W. 7) and Bhanwarlal, (P.W. 8). According to the injury report, (Ex. P/34) all the injuries, on the deceased were caused by blunt weapons. The learned Judge erred in concluding that the witnesses did not know the difference between the sharp-edged side and blunt side of an axe. Considering the fact that witnesses were from the rural area, where axe is often used, such a conclusion is rather curious. In fact, the learned Judge should have considered the fact that the injury on the head was caused by a blunt weapon; the said injury was assigned to appellant No. 1, Behta Ram. Moreover, the learned Judge should have remembered that one of the legal maxims in Criminal Law is (once a liar is not always a liar), Since exaggeration is part of human nature, the said maxim has been applied in our criminal judicial system. Hence, merely because the witnesses had lied about the nature of the injuries inflicted upon Uda Ram, this by itself would not destroy their credibility. Furthermore, the presence of Bhima Ram cannot be doubted as he himself was injured in the case. Therefore, through the witnesses, the prosecution has proved its case that Uda Ram was attacked by the appellants and had sustained injuries.

9. According to the medical evidence and according to the evidence of Dr. Mahendra Dabi (P.W. 12), Dr. Praveen Arora (P.W. 15), Dr. Ramesh Chandra (P.W. 16), and Dr. Ramesh Bairwa (P.W. 18), the cause of death was "the cumulative effect of the injuries suffered by the deceased". Thus, it was a homicidal death. Since it was a cumulative effect of the injuries, the learned Judge was certainly justifying in convicting the appellants u/s 304 IPC. Thus, this Court, has no hesitation in confirming the conviction of the appellants.

10. The question before this Court is with regard to the sentence the appellants should be required to serve for their offences.

11. Considering the fact that the dispute was within the family, considering the fact that the incident had occurred at the spur of the moment, considering the

fact that appellant No. 1, has already served five years of sentence out of total sentence of seven years, considering the fact that appellant No. 2 and 3 have already served a sentence of nine months considering the fact that both these appellants are living as peace-loving, law-abiding citizens, this Court is of the view that their sentences should be reduced to as undergone. Therefore, appellant No. 1, who is presently in Central Jail, shall be set at liberty forthwith, if not required in any other Criminal Case. The bail bonds of appellants No. 2 & 3 stand discharged.

This appeal is, therefore, partly allowed.