

(2015) 03 RAJ CK 0212
In the Rajasthan High Court
Case No : Criminal Appeal No. 899 of 2005

Bhagwan Singh and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 304

Citation : (2015) 03 RAJ CK 0212

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J; Nisha Gupta, J

Bench : Division Bench

Advocate : B.M. Sharma and Rajneesh Gupta, for the Appellant; N.S. Dhakad, Public Prosecutor, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Kanwaljit Singh Ahluwalia, J.—Bhagwan Singh, Bhim Singh, Vijay Singh, Amar Singh, Banno @ Ramola, Bhanwar, Gordhan, Ram Dayal, Rajole, Jaggo, Sugar Singh, Munshi and Soni, were tried by the court of Additional Sessions Judge (Fast Track) No. 3, Bharatpur, Camp Bayana, Bharatpur, for causing murder of Girdhar and injuries to six witnesses, namely Leela (P.W.3), Geeta (P.W.4), Sua (P.W.5), Maharaj Singh (P.W.6), Mitthu (P.W.8) and Mohan (P.W.9). The trial court held all the appellants guilty of offence under Sections 302/149, 307/149, 341, 323 and 148/149 IPC.

2. Having held the appellants guilty of offences aforesaid, the trial court vide a separate order of even date, sentenced them as under:-

"U/s 302/149 IPC- to undergo life imprisonment and to pay a fine of Rs. 1,000/- each, in default of payment of fine, to further undergo one year R.I.

"U/s 307/149IPC- to undergo five year rigorous imprisonment and to pay a fine of Rs. 1,000/- each, in default of payment of fine, to further undergo one year R.I.

"U/s 341 IPC- to undergo one month R.I.

U/s 323 IPC- to undergo six month R.I.

U/s 148/149 IPC- to undergo one year R.I.

3. In the occurrence, four accused, namely Bhagwan Singh, Gordhan, Soni and Rajole had suffered injuries.

4. The star argument of counsel for the appellants inter alia is that the prosecution has not explained the injuries on the person of the accused and thus, they have suppressed the origin and genesis of the occurrence. Therefore, we should extend complete right of self-defence to the accused.

5. The criminal proceedings were set into motion on the basis of written report (Exhibit-P/1) submitted by Pooran Singh (P.W.1) before Gordhan (P.W.22) SHO, Police Station Kotwali, Bayana, on the basis of which a formal FIR (Exhibit-P/2) was registered.

6. In written report (Exhibit-P/1), Pooran Singh (P.W.1) stated that on 12.8.1999, at about 6:30 - 7:00 o'clock, his wife Chanda, niece Geeta and wives of his brothers namely, Leela and Sua had gone to public well for bringing water. At that time, Soni, Rajaram sons of Sardar, Bhagwan, Jhamoli sons of Khokhal, Vijay Singh, Sugadh Singh s/o Jagan, Punsu s/o Tota, Bheem Singh s/o Laturia, Laturia s/o Jhaptu, Amar Singh s/o Kirodi, Ram Dayal, Bhagwat s/o Kirodi, Banno s/o Jhamoli, Bhanwar s/o Haret, Gordhan, Rajole sons of Bhagwan, Ghasida Akwaam Gujran residents of Gurairi, Police Station Bayana, armed with lathi, Farsi and Dhariya, in order to outrage the modesty of women and cause death, came at the well. Immediately on arrival, they started abusing the ladies and caused injuries to Leela, Chanda, Geeta and Sua. Gordhan snatched ear-ring of Geeta, due to which her ear was torn. Bheem gave a lathi blow on the head of Geeta. Others also caused serious injuries to Leela, Chanda and Sua. Hearing their noise, Girdhar, Mohan, Maharaj Singh, Mitthu and the complainant were attracted to the spot. Then, Rajaram, Soni, Bhagwan, Gordhan, Amar Singh, Banno, Jaggo, Vijay Singh encircled Girdhar and Mohan and gave them beating. The complainant, Mitthu and Maharaj Singh were encircled by Sugadh Singh, Munshi, Bheem Singh, Laturia, Ram Dayal, Bhagwat, Jhamoli, Bhanwar, Rajole, Jagdish and Amar Singh. They also gave them beating. All the above accused have caused injuries to the complainant, Girdhar, Mohan, Maharaj Singh, Mitthu, Leela, Geeta, Chanda and Sua. Considering Mohan and Girdhar as dead, the accused left the spot. The complainant party had received injuries on their person. The occurrence was seen by Amar Singh s/o Kishan, Hargyan, Jagdish Jatav, Ramesh Jatav. The condition of Mohan and Girdhar became precarious. They were sent for treatment to hospital at Bharatpur. The complainant came to the Police Station to lodge the report seeking action against the accused.

7. Having noted the contents of the written report, we shall now notice the medical evidence.

8. Dr. K.G. Mittal (P.W.14) on 12.8.1999, at 10:30 PM, had medico-legally examined Geeta (P.W.4) and vide injury report (Exhibit-P/6), had found following four injuries on her person:-

"(i) Lacerated wound - 4 x 1cm - muscle deep, right parieto-occipital region.

(ii) Lacerated wound - 1.5 x 0.5cm - full thickness, lower part of left ear pinna.

(iii) Abrasion 2 x 1cm, middle of back, thoracic region.

(iv) Swelling - 10 x 4cm, middle 1/3 of left forearm."

9. This witness at 10:00 PM, on the same day, had examined Maharaj Singh (P.W.6) and vide injury report (Exhibit-P/7), had found following two injuries on his person:-

"(i) Lacerated wound - 5 x 1cm, muscle deep, left parietal region, upper part.

(ii) Lacerated wound - 5 x 1cm, muscle deep, left parieto-occipital region."

10. Similarly, at 10:15 PM, on police request, this witness had examined Mitthu (P.W.8) and as per injury report (Exhibit-P/21) had found following four injuries on his person:-

"(i) Abrasion - 5 x 2cm, over left parietal region.

(ii) Swelling - 12 x 6cm, middle 1/3 of left forearm.

(iii) Swelling - 6 x 6cm, middle 1/3 anterior aspect of right thigh.

(iv) Lacerated wound - 2 x 1/2cm over injury No. 3."

11. As per X-ray, Mitthu (P.W.8) had suffered fracture of finger and his Injury No. 2 was declared grievous.

12. At 10:44 PM, this witness had examined Leela (P.W.3) and as per injury report (Exhibit-P/22), had found following four injuries on her person:-

"(i) Lacerated wound - 4 x 1cm, skin deep, right parietal region.

(ii) Abrasion 1/2cm in diameter, medial side dorsum of left wrist.

(iii) Swelling - 5 x 2cm, left elbow.

(iv) c/o backache."

13. Sua (P.W.5) was examined at 10:50 PM, by the same witness and as per injury report (Exhibit-P/23), one injury was found on her person:

"Swelling - 6 x 6cm, left shoulder."

14. On 12.8.1999, at 9:10 PM, Dr. K.G. Mittal (P.W.14) had examined accused Bhagwan Singh and as per injury report (Exhibit-D/10A), had found following four injuries on his person:

"(i) Abrasion - 5 x 1cm, 3 x 1cm anterior aspect of right shoulder, near axilla.

(ii) Swelling 15 x 8cm, middle of right thigh.

(iii) C/o pain right knee.

(iv) C/o pain right shoulder."

15. This witness has further examined accused Gordhan at 8:25 PM and as per injury report (Exhibit-D/11A) had found following ten injuries on his person:

"(i) Lacerated wound - 7 x 1/2cm, muscle deep, middle of fronto-parieto region.

(ii) Lacerated wound - 2 x 1/2cm, left parietal region.

(iii) Bruise - 11 x 3cm, left infra scapular region.

(iv) Bruise - 10 x 3cm, left shoulder.

(v) Bruise - 5 x 2cm, near injury No. 4.

(vi) Abrasion - 2 in number, 1 x 1cm, each size, over left shoulder.

(vii) Abrasion - 2 in number, 3 x 1 and 2 x 1cm, medial side of right scapular region.

(viii) Swelling - 6 x 3cm, medial side dorsum of left hand.

(ix) Bruise - 3 x 2cm, over left knee joint.

(x) C/o chest pain."

16. Soni accused was examined at 8:20 PM and as per injury report (Exhibit-D/12A), the doctor had found following seven injuries on his person:

"(i) Lacerated wound - 7 x 1/2cm, skin deep over right parietal region.

(ii) Incised wound - 5 x 1cm, muscle deep, right parieto-occipital region.

(iii) Swelling 15 x 10cm, over right elbow.

(iv) Swelling 15 x 8cm, over upper 1/3 of left forearm.

(v) Abrasion - 3 x 2cm, over injury No. 4.

(vi) Bruise 21 x 3cm, middle of back.

(vii) Abrasion 2 x 1/2cm, anterior aspect of lower 1/3 of left leg."

17. On the same day, at 8:50 PM, Dr. K.G. Mittal (P.W.14) had examined accused Rajole and as per injury report (Exhibit-D/13A) had found following four injuries on his person:

"(i) Swelling - 4 x 4cm, over occipital region.

(ii) Bruise - 3 x 2cm, over left knee.

(iii) C/o pain both shoulder and right wrist.

(iv) Swelling 8 x 6cm, right elbow."

18. A perusal of the injuries on the person of accused, reveal that Gordhan had suffered two injuries on his head. Soni had also suffered two injuries on his head. Injury No. 1 was on the right parietal region and Injury No. 2 was an incised wound on right parietal occipital region. Thus, it cannot be denied that in the occurrence accused had suffered injuries and some of the injuries on their person are on vital parts of the body i.e. head.

19. In cross-examination, doctor stated that both sides have received injuries almost at same time and the possibility that the injuries were caused in one occurrence cannot be ruled out.

20. Dr. Umesh Mangal (P.W.18) stated that on 13.8.1999, he was posted at Radiologist at Bharatpur and as per X-ray report, he found fracture of parietal bone and also fracture of left mandible of Mohan.

21. Dr. B.L. Meena (P.W.19) on 13.8.1999, at about 12:30 in night, had medico-legally examined Girdhar Singh deceased and as per injury report (Exhibit-P/52), he found following injuries on his person:-

"(i) Oblique incised wound - 4 x 1/2cm, scalp tissue deep, on right parietal area with diffused swelling on right tempo parietal area with clean cut edges, hairs found cut with oozing of blood.

(ii) Abrasion - 1 x 1cm on left hand-elbow, lateral red.

(iii) Abrasion - 1 x 1/2cm, on left hand near index finger with fresh clotted blood.

(iv) Abrasion - 1 x 1/2cm, on back on left thumb, red.

(v) Red bruise, 8 x 3cm, on left thigh, mid 1/3 lateral.

(vi) Abrasion - 3 x 1/2cm, on left leg, middle 1/3 anterior, red.

(vii) Abrasion - 2 x 1/2cm, on right tibial shaft, middle L."

22. This witness has also medico-legally examined Mohan Singh at 12:45 in the night and had noted following ten injuries in the injury report (Exhibit-P/53), as under:

"(i) Abraded bruise - 2 x 2cm, with diffused swelling on right parietal area, red.

(ii) Lacerated wound - 4 x 1cm, MD on left cheek, near eye with fresh clotted blood and swelling.

(iii) Oblique incised wound - 3 x 1/2cm, muscle deep to bone deep on left side of chin with clean cut edge and oozing of blood and diffuse swelling.

(iv) Abrasion - 3 x 2cm, on tibia and right shoulder, red.

- (v) Red bruise - 7 x 2cm, on right scapular area.
- (vi) Red bruise - 4 x 3cm, on back of right wrist side.
- (vii) Oblique red bruise, 10 x 3cm, on right thigh mid 1/3 anterior.
- (viii) Trans red bruise - 6 x 2.5cm, on right thigh mid 1/2.
- (ix) Abrasion - 3 x 2cm, on left knee joint red.
- (x) Abrasion - 1.5 x .5cm on left leg mid 1/2 anterior, red."

23. Dr. M.L. Kawat (P.W.21) stated that the deceased Girdhar was admitted in Neuron Surgery Ward on 13.8.1999. As per Post Mortem Report (Exhibit-P/54), he had found following injuries on the person of deceased Girdhar:

- "(i) Stitched wound - 28 cm long, placed over right fronto-tempo occipital region with dry dark red clotted blood and swelling surrounding.
- (ii) Abraded bruise - 5 x 4cm with soft scab and surrounding swelling and dark red clotted blood on left parietal region.
- (iii) Bruise - dark red - 5 x 4cm, on posterior lumber region in midline.
- (iv) Abrasion-three, 1/2 x 1/4 to 1/4 x 1/4 cm, on left shoulder posteriorly with dark red clotted blood."

24. Pooran Singh (P.W.1) stated that the ladies of the family had gone to the well to fetch water. On well, they were abused by Gordhan, Sona, Bhagwan and Rajole. The women of the house after taking water proceeded towards the house. The women belonging to the accused also followed them while giving abuses. The witness stated that he heard abuses and along with Mitthu, Mohan, and Maharaj Singh came at the spot, where the accused were giving abuses. Meanwhile, Girdhar Singh, their brother, also came from Bayana and asked the ladies not to give abuses. Then, the accused started causing injuries to the ladies and others. The accused were 19 in number and out of them, 13 accused persons were present in the court. This witness stated that Soni gave a Dhariya blow on the head of Girdhar. Bhagwan also gave a Parsa blow on the head of Girdhar. Bhagwan also gave a Parsa blow on left cheek of Mohan. Bhanwar gave a lathi blow on left hand of Mitthu. Gordhan had snatched ear-ring worn by Geeta.

25. In cross-examination, he stated that these 19 accused belonged to two families; i.e. one family belonged to Bhagwan and another family belonged to Rajaram. The witness further stated that there was no previous dispute pending regarding land with the accused. On that day, ladies have not raised any protest before Buddho wife of Bidha regarding land. He further stated that he had no grudge with the accused. The witness admitted that regarding injuries caused to Bhagwan and others, he is accused in a cross case.

26. Sugad Singh (P.W.2) stated that about five years ago, regarding fight

between Girdhar and accused, police came to the village and they had prepared the site plan (Exhibit-P/5).

27. Leela (P.W.3) stated that while they were fetching water from the well, Gordhan, Bhagwan Singh and Rajole gave them abuses. Then all accused came. Gordhan on coming gave lathi blow to the earthen pot she was carrying, due to which the same was broken.

28. To similar effect is the statement made by Geeta (P.W.4). She stated that Gordhan first came at the well. He said bad words to the ladies and then all accused came and caused injuries.

29. Sua (P.W.5) has also corroborated the testimony of other witnesses.

30. Maharaj Singh (P.W.6) also stated that hearing noise at the well, they came running to the well, where accused had caused injuries.

31. Mitthu (P.W.8) and Mohan (P.W.9) have also corroborated the version given by other witnesses.

32. Amar Singh (P.W.10), an independent witness, stated that on the day of occurrence, at about 5:00-6:00 PM, a fight had ensued.

33. We need not notice the statements of various witnesses, who had participated in the investigation.

34. It is admitted fact that the complainant party has not explained the injuries on the person of four accused appellants. It is also a case of the prosecution that the occurrence had taken place at the village well, where the ladies had gone to bring water.

35. Bhagwan Singh, who received injuries in the occurrence, had stated that the accused came to their house and had caused him injuries.

36. It is also not the case of the accused that they had caused injuries to the complainant party while exercising the right of self defence.

37. In Lakshmi Singh and Others Vs. State of Bihar, AIR 1976 SC 2263 : (1976) CriLJ 1736 : (1976) 4 SCC 394 : (1976) SCC(Cri) 671 , it was held as under:

"It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

38. In the present case, both sides have not come to court with clean hands. Both sides have made an effort to hide their role and maximize the role of other side and put blame on the other side.

39. Taking totality of circumstances, we cannot rule out that while women were filling water at the well, some altercation had ensued and the sudden fight had erupted. Family members of both sides participated in the occurrence. Thus, it was a sudden affair and it is a case of sudden fight.

40. It was held by the Hon"ble Supreme Court in the case of Jumman and Others Vs. The State of Punjab, AIR 1957 SC 469 : (1957) CriLJ 586 as under:-

"(24). In such a case where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with under S.300, I.P.C., Exception 4.

(25). The matter has to be viewed in this way. It is clear that there was no pre-meditation and therefore when the contending factions met accidentally and attacked each other, the conflict resulted in a sudden fight, in the heat of passions, upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties had arms, there was no undue advantage taken by either. Hence Exception 4 to S.300, I.P.C., applies with the result that the offence is under S.304 (Part I), I.P.C."

41. A Division Bench of this Court in Buddhi Lal and Others Vs. State of Rajasthan, (2004) CriLJ 4420 : (2004) 2 RLW 1338 : (2004) 2 WLC 405 , relying upon Dharman Vs. State of Punjab, AIR 1957 SC 324 : (1957) CriLJ 420 held as under:-

"13. Coming to the incident that occurred with deceased Saltu we find that he sustained injuries in the course of sudden fight ensued in the field of accused party. The complainant party was also armed with deadly weapons and as many as eight accused persons received lacerated and incised wounds on the vital parts. In Dharman Vs. State of Punjab, AIR 1957 SC 324 : (1957) CriLJ 420 the Supreme Court held that when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries

were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner and that the case against the accused falls within Exception 4 of Section 300 of the Indian Penal Code and the accused who caused the injury was guilty under Part I of Section 304 and not under Section 302 of the Indian Penal Code."

42. The witnesses have stated that Bhagwan Singh and Soni both caused injury on the head of Girdhar, which had proved fatal. Since we have held that it is a case of sudden fight, we are of the view that Section 149 IPC is not attracted.

43. Both the appellants, Bhagwan Singh and Soni are responsible for causing death of Girdhar. Since the occurrence had ensued on the spur of moment, without any pre-meditation, we are also of the view that offence qua Bhagwan Singh and Soni will not fall under Section 302 IPC, but under Section 304-I IPC.

44. Consequently, we convert the conviction of the appellants Bhagwan Singh and Soni from Section 302/149 to Section 304-I IPC. Having modified the offence, we set aside the life imprisonment awarded to them and sentence them to undergo ten years" R.I. and to pay a fine of Rs. 10,000/-, in default of payment of fine to further undergo one year"s R.I.

45. Except Bhagwan Singh and Soni, all other accused are acquitted of the offence under Section 302/149 IPC.

46. Similarly, injury on the head of Mohan (P.W.9) has been caused by Bhagwan Singh. To us, he shall be substantively liable for offence under Section 307 IPC and we reduce the sentence of five years awarded by the trial court under Section 307 IPC to three years" R.I., while maintaining the sentence of fine and default clause.

47. Further, while maintaining the conviction of Bhagwan Singh appellant, under Section 307 IPC, we acquit the remaining accused for the offence under Section 307/149 IPC. However, we upheld the conviction of all the appellants for the offence under Section 341 and 323 IPC and the sentence awarded on these counts by the trial court.

48. We have already held that occurrence was a sudden affair, the conviction of the appellants for the offence under Section 148/149 is set aside.

49. Consequently, as a result of above discussion, Bhagwan Singh and Soni stand convicted for the offence under Section 304-I IPC substantively and sentenced to ten years" R.I. and to pay a fine of Rs. 10,000/-, in default of payment of fine, to further undergo one year"s R.I.

50. Bhagwan Singh is furthermore, substantively convicted for the offence under Section 307 IPC. However, sentence of five years awarded on this count is reduced to three years, while maintaining the sentence of fine and default clause.

51. All the appellants, except Bhagwan Singh and Soni are acquitted of offence under Section 302/149. All the appellants except Bhagwan Singh are acquitted of

offence under Section 307/149. All the appellants including Bhagwan Singh are acquitted of the offence under Section 148/149 IPC. However, conviction and sentence of all appellants for the offence under Section 341 and 323 is maintained.

52. As ordered by the trial court, sentences awarded upon the appellants shall run concurrently.

53. In view of above, the appeal stands disposed of.