

(1975) 04 RAJ CK 0020
In the Rajasthan High Court
Case No : Criminal Appeal No. 412 of 1971

Bhanwar Lal and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 15-04-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (1975) RLW 254 : (1975) 8 WLN 227

Hon'ble Judges : Kalyan Dutta Sharma, J

Bench : Single Bench

Judgement

Kalyan Dutta Sharma, J.—This appeal is directed against the judgment of the Additional Sessions Judge, Tonk, in Sessions Case No. 1 of 1970, convicting Rama, Bhawna, Birdha and Jagdish appellants under Sections 147, 325/149, 323 and 323/149, I.P.C. and sentencing each of them to undergo rigorous imprisonment for three months and to pay a fine of Rs. 100/-, in default of payment of fine to suffer further rigorous imprisonment for 15 days on the first count; on the second to undergo four months" rigorous imprisonment and to pay a fine of Rs. 100/-, in default of payment of fine to further suffer rigorous imprisonment for 15 days. No sentence was awarded to each of these appellants under sections Section 323 and 323 read with Section 149 I.P.C. Both the sentences of imprisonment under Sections 147 and 325/149, IPC. were ordered to run concurrently. The Additional Sessions Judge convicted Ranjeeta and Bhanwar Lal appellants also under Sections 147, 325 and 325/149, 323, and 323/149, I.P.C. and sentenced each of them to undergo rigorous imprisonment for three months and to pay a fine of Rs. 100/-, in default of payment of fine to suffer rigorous imprisonment for 15 days on the first count, i.e. 147, I.P.C.; on the second count, i.e. u/s 325, I.P.C. to undergo rigorous imprisonment for two years and to pay a fine of Rs. 100/-. in default of payment of fine to further suffer rigorous imprisonment for 15 days. No sentence, however, was awarded to Ranjeeta and Bhanwar Lal u/s 323 and 323/149, I.P.C. All the sentences awarded to them were ordered to run concurrently.

2. The prosecution case against these appellants was that on 8-8-67 at about 10 a.m. they formed an unlawful assembly having a common object to beat Ramchandra, Sakrama, Sanwalia and Bhoja and in prosecution of the said common object Bhanwar Lal and Ranjeeta caused grievous hurts to Sakrama, and other members inflicted simple injuries on the bodies of Sakrama, Ramchandra, Sanwalia and Bhoja, while the latter were cultivating their agricultural lands which were allotted to them by the Government in the year 1966. A report of this incident was lodged with the police at police station, Devli, by Ramchandra son of Jagga Mina on 8-8-1967 at 12 in the noon. On the basis of report, the Station House Officer, Devli, registered a criminal case under Sections 148, 325, 323/149, I.P.C. and proceeded to make an investigation. During the course of investigation, the investigating agency got the injured medically examined by Dr. Bhajan Lal Mathur, who found the following injuries on the body of Sakrama:

1. lacerated wound 2" x 1" x 1" five inches away from the pinna of the right side over the parietal region;
2. lacerated wound 1 1/2" x 1" x 3/4" over the lower 1/3rd of the arm left side;
3. fracture of the left humerus on the lower 1/3rd of the arm;
4. swelling of the size 4" x 4" over the 8th, 9th and 10th ribs right side.

As the Doctor suspected injuries Nos. 1, 3 and 4 to be grievous, he advised X-ray examination. Upon these injuries being X-rayed, it was found by the Radiologist that injuries Nos. 3 and 4 only were fractures Sakrama was admitted in the hospital as his condition was serious. In the opinion of the Doctor injury No. 1 also was of a grievous nature because it endangered Sakrama's life and was sufficient in the ordinary course of nature to cause his death. The Doctor examined Ramchandra also and detected the following five injuries on his body:

1. swelling 3" x 2" lower end of the radius and ulna. Fracture of the lower end of radius and ulna;
2. lacerated wound 1" x 1/2" x 1/2" over the left eye brow;
3. swelling 2" x 3" on left thigh at the hip joint;
4. swelling 2" x 1 1/4" over the back of the left 7th and 8th ribs on posterior maxillary line;
5. loose tooth;

Out of these injuries, injury No. 1 was found to be a fracture upon X-ray examination. Dr. Bhajan Lal Mathur examined Sanwalia and Bhoja Ram also and found the following injuries on their persons:

Sanwalia

1. lacerated wound 1" x 1/4" x 1/4," over the frontal bone middle part;

2. lacerated wound 1" x 3/4" x 1/2", over the mid of right forearm dorsal side;
3. swelling 2" x 1 1/2" over the left elbow joint;
4. swelling 3" x 2" over the 9th and 10th ribs right side back;
5. abrasion 1" x 1/4" over the front of the ribs.

Bhoja Ram

1. Abrasion 1" x 1/2" over the left shoulder;
2. swelling 2" x 1" over the left fore-arm;
3. swelling 3" x 1" over the right scapula back side;

All these injuries were simple and caused by blunt objects. The Station House Officer collected other necessary evidence in the case and eventually submitted a charge-sheet against the appellants and one Nanu in the court of the Munsiff Magistrate, Tonk, u/s 307, 148 325 and 325 read with Section 149. IPC. The learned Magistrate conducted an inquiry, preparatory to commitment, and upon finding a prima-facie case, committed all the appellants to the charges against each of them. The learned Additional Sessions Judge tried the appellants and found them guilty in the manner stated above.

3. I have carefully gone through the record and heard Mr. A.K. Bhandari appearing on behalf of the appellants and Shri G.A. Khan for the State Firstly, it has been contended on behalf of the appellants that the learned Additional Sessions judge, Tonk, committed an error in making use of the evidence adduced in the cross-case in the present case without bringing it on the record of this case. It was further argued that he ought to have confined his judgment in each case to the evidence adduced in that particular case and should not have delivered one judgment in both the cases to the prejudice of the appellants. In support of his above contention the learned Counsel for the appellants placed his reliance on Mangu v. State 1958 R.L.W. 505, Sirju v. Emperor AIR 1938 Oudh 249 . Mrs. W. Waugh Vs. Emperor, and Banappa Kallapa v. Emperor AIR 1944 Bom. 146. Shri G.A. Khan appearing on behalf of the State, on the other hand, urged that the procedure adopted by the learned Additional Sessions Judge, Tonk, urged that the procedure adopted by the learned Additional Sessions Judge, Tonk, amounts to mere irregularity and unless prejudice is shown to have been caused to the appellants on account of the evidence in the cross-case being acted upon, the trial is not vitiated and cannot be set aside.

4. I have given my anxious consideration to the rival contentions. It is surprising how the learned Additional Sessions Judge adopted the novel procedure of referring to the evidence contained in another record without bringing it on the record of ibis case. He should have pronounced judgment in each case on the evidence adduced in that particular case as he was not authorised under the law to use the evidence adduced in one case for the purpose of delivering judgment in the other case. What he did was that he concluded the trial of this case and

the cross-case separately but did not pronounce judgments parately in the case and while divine on judgment in both the cases allowed his findings is one case to influenced by the evidence led in another case. The reasons given out by him for adoption this novel procedure are quoted below in his own words:

Both these cases came up before me and I have decided to dispose of them by a single judgment which in my opinion is necessary for better appreciation of the facts with regard to the aggressive nature of the parties or the plea of self defence. It would also result in uniformity of the finding with regard to the nature of the dispute. I therefore, propose to discuss separately the evidence led on behalf of the prosecution first in Sessions Case No. 1/70 and then in Sessions Case No. 4/70.

It is apparent from his judgment that he used evidence adduced in another case in deciding the present case against the appellants without bringing the evidence in the cross case on the record of this case. The following quotations from his judgment clearly reveal that he allowed his finding in this case to be influenced by the evidence led in the cross-case:

From the discussion of the evidence led by both the parties this is evident that Sanwalaram, Sakrama, Bhura and Ram Chandra were ploughing the land comprised in Khasra No. 548 in village Devpura on 8.8.67 at about 10 A.M.

X X X Even as per averment made in the complaint by Bhanwarlal Birdha, Jagdish, Bhawana and Bhanwarlal themselves, with their ploughs and having lathis in their hands they went on Khasra No. 548 and claimed their right of way through it.

Curiously enough, the learned Additional Sessions Judge was of the view that he was authorised under the law to use evidence adduced in one case as evidence in the cross-case, The view taken by the learned Additional Sessions Judge is erroneous in view of a decision of a Division Bench of this Court in Mangu v. State (Supra), wherein the following observations were made is:

We have considered the arguments of both the learned Counsel. On a reading of the judgment of the learned Additional Sessions Judge we are certainly of opinion that he has taken some of the evidence of the cross-case into consideration in convicting the accused in the case. Take, for example, the F.I.R in the cross case. We have not been able to find that document on the record of this case Evidently the learned Additional Sessions Judge has made use of this document from the record of the cross-case. In para 21 of his judgment he has gathered the defence of the accused in this case from the F.I R. made by Mangu in the cross case. He has given the summary of that document in this paragraph. The difficulty has arisen from the fact that the learned Additional Sessions Judge has given single judgment in both the cases. The correct procedure in the trial of cross-cases should be that both the cases should be that both the cases should be tried separately although by the same judge and separate record should be prepared for each case. The judgments should be separately given and they

should be based on the evidence on the record of that case alone. By giving a single judgment in two cross-cases there is likelihood of contusion that evidence in one case might be acted upon in the other. This is what appears to have happened in this case.

The learned Additional Sessions Judge ought to have known that he was not at liberty to follow the procedure which is not warranted by any provisions of the Code of Criminal Procedure. The learned Judge thought that the procedure adopted by him would be conducive to better appreciation of the facts or evidence in both the cases and would avoid conflicting findings, but in that he is mistaken, because he is not authorised to use evidence adduced in one case as evidence in the other cross case. The record of the criminal case must be self contained and the finding of guilt or innocence of the accused must be arrived at on consideration of the evidence in that case alone. If it is necessary to refer to a piece of evidence in the cross-case, it should be first caused to be placed on the record before it can be referred to or used.

5. Be that as it may, the question, however, is whether a breach of this rule has in fact resulted in grave prejudice to the accused and the case should therefore, be retried, in my humble opinion, if evidence which is not part of the record is used or acted upon in determining the guilt or innocence of the accused, it is by itself proof of grave prejudice to the accused. Such a procedure, if adopted by a trial Judge, is an irregularity which in fact occasions a failure of justice. I would have, therefore, ordered a retrial in this case on account of this irregularity resulting in grave prejudice to the accused, but, upon careful review of the entire evidence adduced in this case, I find that the judgment of the learned Additional Sessions Judge, Tonk, in the present case cannot be sustained for reasons recorded below. In nutshell, the prosecution case against the appellants was that on 8-8-1967, at about 10 a.m. Sakrama, Ramchandra, Sanwalia and Bhoja were ploughing the land which was allotted to Sheolal son of Sanwalia in village Deopura. At that time all the six appellants along with Nanu (who has been acquitted by the trial Judge) entered the field having armed themselves with lathis and asked Sakrama and his party to stop the ploughing. Sakrama and his companions told the appellants that the land was allotted to them by the Government. Thereupon; Bardha instigated his companions to beat Sakrama and his party. Bardha inflicted a lathi blow on the head of Sakrama while Ranjeeta and Bhanwar inflicted blows on his hands and ribs. As a result of these blows, Sakrama fell down. The appellants then administered beating to Ramchandra P.W. 2, Sanwalia P.W. 3 and Bhoja P.W. 4 and caused several injuries to their bodies. The plea of the appellants in the trial court was that Sakrama and his party were encroaching upon the land over which they had a right of way for going to their fields and when they asked Sakrama and his party to desist from causing an obstruction to the way, the latter became furious and resorted to use of force. The pertinent question that naturally arose in this case was as to who was the aggressor, because the right, of private defence could he successfully invoked by the appellants only, if they had a right of way to go to their fields

through she land ploughed by Sakrann and his party and if they were assaulted by the prosecution party and were entitled to use force in order to protect them from violence offered to them Sakrama, P.W. 1, was cross-examined by the learned Counsel for the appellants In his cross-examination he could not say on which date and in which month possession of the land allotted to them was given by the Patwari although he admitted that a document was prepared by the Patwari relating to the delivery of possession. He could not tell the number of the land which was allotted to sheolal However, he further stated that the land might be Khasra No. 518 measuring 6 Bighas. According to his version 3 Bighas of land only was allotted to Sheolal. The rest of the land remained in the possession of Nanu accused, who has been tried and acquitted by the trial Judge. His cross examination further reveals that he could not say which portion of Khasra No. 548 was shown to be allotted to Sheolal in the Patta or the title deed. He, however, admitted that Nanu has his fields and well in the vicinity of the land allotted to Sheolal. At first he denied in his cross-examination that the appellants were going with their ploughs and bullocks through the land in dispute on the day of the incident but when he was confronted with and contradicted by portion A to B of his previous statement Ex. D. 1, he admitted, in clear and of finite terms, that the appellants were coming with their bullocks that day Likewise Ramchandra P.W. 2 admitted in his cross examination that prior to their ploughing the land, it was lying fallow and that sometimes the appellants used to go to their well through the fallow and that the fight took place because the appellants asserted their right of way and he and his companions did not want that they should have a right of way over the disputed land. Sanwalla P.W. 3 also was confronted with and contradicted by portion of his previous statement Ex. D. 4 wherein he stated that the appellants asked him not to plough the land because it was their way When confronted with the above statement, Sanwala merely stated that he did not give such a statement before the police He, however, could not produce the document which was prepared by the Patwari relating to the delivery of possession. He on the other hand, gave a contradictory version to that of Ramchandra by saying that prior to their ploughing, the land was not tying fallow but was under cultivation and that he had cultivated Bajra and til crops there in the previous year. Bhoja, P.W. 4, clearly admitted that the appellants had brought ploughs and bullocks with them and that they had asserted their right of way over the land in dispute and that Sanwaia, Sakrama, Ramchandra etc. told the appellants that they would not allow their passage to them through the disputed land and that on their denial the fight took place. Bhoja P.W. 4 further stated that after the land was allotted to Sheolal it was cultivated for one year but it did not yield any crop and that in the next year the incident of "Marpeet" took place. Sua P.W. 5 and Ganga Ram P.W. 6 have turned hostile to the prosecution case. They admitted in their cross-examination that the land was lying fallow prior to the date of the occurrence and tint Sanwaia and others were cultivating it on the date of the incident. Jagdish Prasad Investigating Officer, P.W. 9, has no doubt produced the allotment order Ex. P. 5 bit he could not say on which date possession of this land was delivered to

Sheolal. He did not obtain memo of delivery of possession from the Patwari, nor did he examine the Patwari on this point during the course of investigation. He further admitted that at the time of site-inspection the Patwari was not with him and that he did not procure the relevant revenue record before the site inspection. He was specifically questioned whether he tried to find out whether there was any way shown in the revenue record through the land in dispute. To this question, he answered in the negative. He, however, claimed to have seen a footpath through this land. It is, therefore, established by the prosecution evidence itself that the appellants did not deliberately engage in fighting with Sakrama, Sanwalia and others and that the fight took place when the appellants were going through the disputed land to their fields and well with their bullocks and were prevented from doing so. The prosecution has led no cogent evidence to prove that the possession of the land in dispute was delivered to Sheolal s/o Sanwalia and his party after the allotment order was made in his favour. This fact could easily have been proved by the evidence of the Patwari or of the persons in whose presence the possession of the land was delivered to Sheolal. Even the memo of possession prepared by the Patwari has not been produced to show that in fact Sheolal s/o Sanwalia and his party had obtained the possession of the land in controversy in pursuance of an order of allotment. The cross-examination of the Investigating Officer clearly reveals that no effort was made by the Investigating Officer to find out whether any way or passage was shown to have been existing through the disputed land in the revenue records. The Patwari would have been the best person to throw light on the existence or nonexistence of the alleged way or right of way through the disputed land. The Patwari has not been produced in this case by the prosecution for reasons best known to it. The prosecution evidence relating to cultivation of this land by Sheolal son of Sanwalia in the year prior to the occurrence is highly conflicting, as indicated above. In these circumstances, a right of private defence of property could be successfully pleaded by the appellants who were passing through the land in dispute in the bonafide exercise of their right of way and who were unlawfully prevented by the use of force by the members of the prosecution party from going to their fields and well. The members of the prosecution party were not entitled to claim a right of private defence either of property or of person, because they were themselves the aggressors against the appellants who had a right to go through the disputed land along with their bullocks and ploughs to their fields and wells.

6. As stated earlier, it transpires from the prosecution evidence itself that the fight took place because the appellants asserted their right of way through the disputed land to their fields and the members of the prosecution party prevented them from exercising that right. There is further proof that injuries were sustained by Birdha, Bhawana, Jagdish and Bhanwar Lal appellants as well on their bodies during the course of the same incident. Dr. Bhajan Lal Mathur, whose statement was recorded by the Committing Court in the presence of the accused and which was received in evidence at the trial, stated in his cross-examination

that the four appellants were medically examined by him on 8-8-1967 and that the injuries mentioned in the injury reports Exs. D. 1, D. 2, D. 3, and D. 4 were found on the person of Birdha Bhawana, Jagdish and Bhanwar Lal respectively. In this manner, there is no doubt that Birdha received 5 injuries and Jagdish, Bhawana and Bhanwar Lal each had three injuries in his person. All these injuries were simple and were caused by blunt object and that their duration was about 4 hours. The prosecution could not afford any reasonable explanation for the presence of these injuries on the bodies of the four appellants. The eye-witnesses on the other hand denied that any injury was caused to the appellants by them during the course of the occurrence. The appellants were medically examined the very day soon after the occurrence. The failure of the prosecution to explain the injuries found on their person cast a reasonable doubt on veracity of the prosecution version. It is undoubtedly true that some of the injuries inflicted on the bodies of Sakrama and Ramchandra are more serious in nature than the injuries sustained by the four appellants but the nature of the injuries inflicted on the persons of Sakrami and Ramchandra is not a safe criterion for determining the question of aggression in this case, because the prosecution has utterly failed to show that in fact the appellants were the aggressors and that the members of the prosecution party were defenders and were entitled to use force in repelling the attack alleged to have been begun by the appellants. In this view of the matter, I have no hesitation in holding that the prosecution could not succeed in bringing guilt home to any of the appellants beyond reasonable doubt.

7. The result of the above discussion is that this appeal is accepted, the convictions and sentences of the appellants, Rama, Bhawana, Birdha and Jagdish under Sections 147, 325/149, 323 and 323/149, I.P.C. are set aside and are acquitted of the said charges. Similarly the convictions and sentences of the appellants Ranjeeta and Bhanwar Lal under Sections 147, 325 and 325/149, 323 and 323/149, LP C. are set aside and they are acquitted of the aforesaid charges. All the appellants are on bail. They need not surrender to their bail bonds, which are hereby cancelled.