
(1990) 10 RAJ CK 0006
In the Rajasthan High Court
Case No : Criminal Appeal No. 270 of 1987

Bhop Singh and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 16-10-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (1990) 2 WLN 582

Hon'ble Judges : Y.R. Meena, J;Kanta Bhatnagar, J

Bench : Division Bench

Judgement

Y.R. Meena, J.—Appellants were tried for the charges u/s s, 147,302 and 302/149 IPC by the Sessions Judge, Pali who vide judgment dated August 10, 1987 held them guilty u/s 302 read with Section 149 and 147 IPC and sentenced them each to imprisonment for life for the first count and one year's R.I. on the second count with an order that both the sentences shall run concurrently.

2. Briefly stated the prosecution case against the appellants was that they feeling annoyed with deceased Bhurgiri on account of his siding one Bhanwarsingh, who is said to have given a beating to one Bhop Singh four days prior to the date of incident i.e. June 18, 1984 gave a beating to Bhurgiri with lathis while he was grazing his cattle at about 9-10 A.M. On hearing his cries of "MARE RE MARE RE" his brother Roopgiri (PW 1) who at the time was standing outside the house of Modia Bhambhi (PW 14) went to the site along with Modia and saw the six appellants giving a beating to Bhurgiri while he was standing as well as after his falling on the ground. Binjaram (PW 7) is said to have reached the site prior to Roopgiri and Modia. After the assailants leaving the place, Roopgiri and Modia with the help of Narainal (PW 10) and some children brought injured. After Bhurgiri on a cot to his house. Oil with coal was given to the injured. After that Roopgiri (PW 1) went to fetch some vehicle to take Bhurgiri to the police Station. He returned in the evening. Meanwhile Bhurgiri had breathed his last a little while after Roopgiri leaving the house in the morning. Roopgiri went to Police

Station Guda Endla and lodged the report Ex.P/1 scribed by Champlain (PW 9) and gave it to Mangilal (PW 15), S.H.O. of that Police Station. Case Under Sections 302, 147, 148 and 149 I.P.C. was registered. The S.H.O. went to the site along with the informant and proceeded with the investigation. He prepared all the necessary memos. On June 19, 1984 at, 11.45 A.M. Dr. Arvind Kumar Nawal (PW 16), Medical Officer, In charge Government Dispensary, Gundej conducted the Postmortem examination of the dead body of Bhurgiri and prepared the postmortem examination report Ex.P/20. The Doctor noted following injuries on the dead body:

1. Abrasion 1 cm x 1/2 cm. on front of forehead.
2. Bruise 7 cm. x 3-cm. oblique rt. back of elbow joint.
3. Bruise 4 cm. x 3 cm. on oblique It. back of elbow joint & arm.
4. Contusion 6 cm. x 4 cm. on right front of knee joint.
5. Contusion 3 cm. x 2 cm. oblique on right upper 1/3rd of front of leg.
6. Contusion 3 cm x 2 1/2 cm. on left upper one third of leg.
7. Bruise 12 cm. x 3 1/2 cm. oblique back on It. shoulder joint.
8. Bruise 10 cm x 4 cm. oblique on right back of shoulder region.
9. Bruise 16 cm x 3 cm. on oblique left lower back of chest.
10. Bruise 9 cm x 3 cm oblique left lower lateral side of chest
11. Bruise 7 cmx 3 cm. on oblique on upper left lateral side of chest.
12. Bruise 10 cm x 4 cm. oblique on lower right side of chest.
13. Bruise 10 cm x 3 cm. oblique on right back of lumber region.
14. Bruise 7 cm x 3 1/2 cm. on back of It. lumber region.
15. Bruise 4 cm. x 3 cm. back of neck.
16. Abrasion 5 cm x3 1/2 cm. on left lateral side of chest.

3. On Dissection of the body 9th, 10th and 11th ribs on left lateral side of chest were found fractured. A lacerated wound on left lateral side of the spleen with severe internal hemorrhage, which was due to fracture of the ribs on the left lateral side of the chest was found. The cause of death according to the Doctor was multiple injuries received on chest with severe visceral injuries at spleen leading to hemorrhage and shock. On June 9 1984 the S.H.O. arrested the appellants vide memos Ex. 10 to Ex. 17. They produced one lathi each, which the S.H.O. took in possession.

4. Upon completion of investigation charge sheet against the appellants was filed in the Court of CJM, Pali. The case on committal reached the Court of Sessions

Judge Pali. The learned Sessions Judge charge sheeted the appellants as stated above and recorded their pleas. On their denial of the charges, trial proceeded. Prosecution examined sixteen witnesses in all to substantiate its case. In their statements u/s 313 of the Code of Criminal Procedure appellants Sardarsingh, Roopsingh and Prabhusingh pleaded alibi. Jai Singh and Chhogsingh denied the allegations. Bhopsingh stated the Bhurgiri along with Bhanwarsingh was illegally cutting the wood from the jungle and on being restricted felt annoyed. That, Bhanwarsingh and Bhurgiri had given a beating to Bhopsingh (DW 1) son of Bhanwarsingh sustained injuries and gave a beating to Bhurgiri. Seven witnesses were examined from the defence side. The learned Sessions Judge placed reliance on the prosecution evidence relating to the occurrence and passed the judgment under appeal.

5. We heard Mr. M.L. Garg learned Counsel for the appellants and Mr. V.S. Chaudhary, learned Public Prosecutor assisted by Mr. L.S. Udawat learned Counsel for the complainant.

6. The learned Counsel for the appellants has assailed the findings of the learned trial Judge on the ground that Roopgiri (PW 1) being the real brother of deceased has falsely implicated a number of persons in order to bring the case within the ambit of Section 147 IPC. The learned Counsel emphasized that the delay of about twelve hours in filing the FIR itself will lead to the inference that this time was taken by the complainant party to make out a case against the appellants. The learned Counsel submitted that there is no reason to disbelieve the defence story coming forth from the statement of Bhopsingh, (PW 1) son of Bhagwan Singh that Bhurgiri and Bhanwarsingh were cutting wood in the jungle a day prior to incident when he along with Bhopsingh, Chhogsingh, Sanwalsingh and Jaisingh restrained them and told them that they would report the matter to the Government. He then went to the house of Sardarsingh. On the next day Bhanwarsingh and Bhurgiri came with lathis at this at the house of Sardarsingh and gave a beating to him. Meanwhile Bhopsingh son of Bhursingh, Chhogsingh, Sanwalsingh and Jaisingh came to his rescue. They sustained injuries. The witness then fell down. While quarreling Bhanwarsingh, Bhurgiri, Bhopsingh Chhogsingh and Jaisingh came outside the house of Sardarsingh. Later on what happened he could not say as he became unconscious.

7. The learned Counsel for the appellants emphasized that the incident had taken place outside the house of Sardarsingh and not at the place alleged by the prosecution and only three appellants viz. Bhopsingh, Chhogsingh and Jaisingh were there was that too in their attempt to rescue Bhopsingh (PW 1) son of Bhagwansingh from Bhurgiri and Bhanwarsingh. The learned Counsel for the appellant based his arguments mainly on the point that the prosecution witnesses have exaggerated by introducing the presence of Prabhusingh, Roopsingh and Sardarsingh so that case against the appellants may be brought within the preview of an unlawful assembly. It has also been urged by the learned Counsel that the original information has been withheld and Ex. P/1 has

been taken to be the FIR because in the original information only three assailants were named. The learned Public Prosecutor placing from the statement of Aanchi wife of the deceased submitted that all the six appellants were the assailants and had caused fatal injuries to Bhurgiri and, therefore, the findings of the learned trial Judge do not call for any interference.

8. The place of occurrence is the grazing ground named "askhariya" according Roopgiri and Moda. Binjaram (PW 7) who is said to have reached the site first of all has stated that beating had taken place in front of the main door of the house of Saradarsingh. This shows that the prosecution witnesses are concealing something and the origin of the quarrel has not been brought on record. In the FIR the cause of quarrel is said to be Bhanwarsingh having given a beating to Bhopsingh son of Bhagwansingh three or four days prior to the incident and Bhurgiri was suspected to be an instigator of Bhanwarsingh. The attention of Bhurgiri having been drawn to this portion of Ex. P/1, he disowned it and stated that the cause of annoyance of the appellants was that Bhanwarsingh used to visit the temple of which Roopgiri was the "pujari". Be that as it may, in the absence of any medical certificate regarding any injury of Bhopsingh son of Bhagwansingh, the appellants cannot be given benefit of any defence to property or person. It has nowhere been suggested to any of the prosecution witnesses that Bhanwarsingh and Bhopsingh has entered the house of Sardarsingh on the Bhanwarsingh and Bhopsingh had entered the house of Sardarsingh on the relevant day. The witnesses have rather stated that the quarrel had taken place in the grazing ground outside the house of Sardarsingh.

9. The pertinent question however would be whether all the six appellants were the assailants?

10. The learned Counsel for the appellants vehemently argued that all the prosecution witnesses except Roopgiri have stated about only three persons viz. Bhopsingh, Jaisingh and Chhogsingh being the assailants and this fact is corroborated by Champlain (PW 9) the scribe of the FIR.

11. The incident is said to have taken place at 9-10 in the morning. The FIR by Roopgiri was lodged at the police Station about twelve hours thereafter. The explanation given by Roopgiri is that he went to village Girvar and Kurna for a truck and unable to manage any, returned in the evening and found his brother dead. He then went to village Girvar and Kurna for a truck and unable to manage any, returned in the evening and found his brother dead. He then went to Police Station on foot. It is important to note that from village-Gerva Police Station was only two kilo meters away and if the witness could have gone on foot to that village, he could have also proceeded two kilo metres ahead to lodge the report and ask the Police to manage for some vehicle. The explanation of Roopgiri that he wanted to take the injured also to the Police Station on getting a Tractor is not palatable because as stated by him that from village-Girvar he went to Th. Rughnath singh and Th. Devisingh and informed them of the incident and if it was so, these two persons have not been examined to state as to what

Information Roopgiri had given to them. If he had met these two important persons there and the Police Station was only at distance of two-kilo metres, they also could have informed the Police at the instance of Roopgiri. But instead of that Roopgiri, as stated by him, returned to the village and then again went to the Police Station on foot. Explanation given by Roopgiri does not appear to be reasonable and we find substance in the contention of the learned Counsel for the appellants that all this time was taken to make out a case. Roopgiri has named these persons and prosecution has bought support to his version in the statement of Aanchi wife of the deceased who had stated that her husband had named these assailants, when he was taken to his house in injured condition. Roopgiri was there for sometime and is said to have left for managing the vehicle after giving oil and coal to his injured brother. He nowhere states about his brother making any dying declaration naming the assailants. Aanchi (PW 2) has not claimed to be an eyewitness. According to her when on hearing the noise of beating to her husband she was going that side. She saw that Roopgiri, Moda, Narain and Achlaram were being her husband on a cot. According to her, on reaching home she asked her husband as to who gave the beating to him and her husband named the six appellants as the assailants. The witness stated that her husband had remained alive only one minute after being brought to the house. There is no other witness to support her in this regard. Narainlal (PW 10) who was one of the persons bringing the injured on the cot to his house had remained at the house for sufficient time even after Roopgiri leaving the house, Narainlal has stated that when he (Bhurgiri) was taken to house he was conscious and uttered that he would not survive. That, he had told nothing except that. The witness specifically stated that till he remained at his house Bhurgiri did not tell anything else. Modia has been declared hostile by the prosecution. However, in view of the fact that Roopgiri does not state anything about the dying declaration and Naryanlal only stated that Bhurgiri uttered that he would die and would not survive, we cannot take the version of Aanchi as correct. Roopgiri (PW 1), Binjaram (PW 7), Ghisi (PW 5), Methi (PW 4), Hazari (PW 6) and Modia (PW 14) have been examined as eyewitnesses. Out of them Methi (PW 4), Hazari (PW 6) and Modia (PW 14) have been declared hostile by the prosecution. The first two witnesses have denied to have seen the incident and the third i.e. Modia has stated about Bhurgiri naming only two persons as the assailants.

12. The learned Public Prosecutor submitted that there is no reason to disbelieve Roopgiri, the real brother of the deceased who had reached the site on hearing the cries of his brother and had seen six persons surrounding his brother and giving a beating to him with lathis.

13. Statement of Roopgiri in this regard is to be scrutinized from the checks available on the record. In the F.I.R. Ex. P. 1 Roopgiri has stated about all the six appellants being the assailants. Champalal (PW 9) is the scribe of Ex.P 1. He has admitted to have written Ex.PI but has stated that he had copied it from some report brought by the Baba. Meaning by Roopgiri, the Pujari of the temple. The

witness has stated that Roopgiri has first of all gone to him in the afternoon and told him that three persons had given a beating to his brother. He got the report scribed in which names of three persons were written. He took that report to the Police Station and returned back after getting it corrected and asked the witness to copy that corrected report. The witness however could not tell the names of the persons he was asked to write by Roopgiri in the first report. This statement has given rise to the legitimate argument of the learned Counsel for the appellants that initially only three persons were named and at the instance of Police three more persons were added so that the assailants may be taken to be members of the unlawful assembly and be held guilty vicariously with the help of Section 149, IPC. It is noteworthy that Champalal (PW 9) has not been disowned by the prosecution and there is no reason to take his statement to be incorrect specially when Binjaram (PW 7), who is said to have reached that site first of all according to Modia and Roopgiri, has also stated about only three persons being the assailants. Binjaram has named Bhopsingh, Jaisingh and Chhogsingh.

14. In view of the above discussions of the evidence, the case is made out only against Bhopsingh, Chhogsingh and Jaisingh. Only three persons being the assailants, charge u/s 147 goes away. Hence, the conviction u/s 147 and 302 with the aid of Section 149 cannot be maintained. They have been charge sheeted u/s 302 simplicitor also and therefore, in absence of any specific injury being assigned to any one of three persons found guilty by us, they can be convicted with the help of Section 34 IPC. The further question would be whether the case was within the ambit of Section 302 IPC or not.

15. The learned Counsel for the appellants have submitted the injuries were with lathis and not on the vital part of the body nor were they sufficient to cause death and, therefore, intention to cause murder or bodily injury likely to cause death is not made out. All the external injuries were abrasions and bruises but on dissection 9th, 10th and 11th ribs of left lateral side of chest were found fractured and those injuries according to the Doctor corresponded to injuries No. 9, 10 and 11. The Doctor has categorically stated that injuries No. 9, 10 and 11 cumulatively were likely to cause death. He has further clarified that injuries No. 9, 10 and 11 plus corresponding internal fracture of the ribs were not sufficient in the ordinary course of nature to cause death. From this opinion of the doctor, the parts of the body affected, the weapons used by the three assailants i.e. lathis and also the fact that origin of the quarrel is not known, we are of the opinion that the charge of murder is not made out. Nor can the three assailants be imputed with intention to cause bodily injury likely to cause death. The assailants shall however be imputed with the knowledge that causing injuries with lathis to a person was likely to cause death and as such the case falls within the ambit of Section 304 Part-II IPC and Bhopsingh, Jaishingh and Chhogsingh appellants are held guilty u/s 304 Part-II, read with Section 34 IPC.

16. Consequently appeal of Roopsingh, Sardarsingh and Prabhusingh is allowed and they are acquitted of the charges. They are on bail. Their bail bonds stand

discharged. Appeal of Bhopsingh, Chhosisingh and Jaisingh is partly allowed. They are not held guilty of the charge Under Sections 147, 302 read with 149 IPC and, therefore, their conviction and sentences for those charges are set aside. They are instead of convicted u/s 304 Part-II read with Section 34 IPC and sentenced to six years R.I. They are in Jail since June 19, 1984 and have thus suffered sentences awarded to them by this judgment. They shall be set liberty forthwith if not required in any other case.