
(1988) 12 RAJ CK 0011
In the Rajasthan High Court
Case No : Criminal Appeal No. 267 of 1980

Dhansi, Sardara and Leela

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-12-1988

Acts Referred:

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

Citation : (1989) WLN 255

Hon'ble Judges : Farooq Hasan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Farooq Hasan, J.—This is an appeal directed against the judgment dated 20-7-1980 passed by the Additional Sessions Judge No. 2, Alwar whereby the accused appellants have been convicted and sentenced as under:

Dhansi Leela, u/s 307/34, 3 year"s R.I. with a & Sardara IPC fine of Rs. 500/- in default, 5 month"s RI). -do- u/s 323, IPC 1 year"s R.I. with a fine of Rs. 300/- (in default, 3 month"s RI)

2. Briefly stated, the facts of the case are that, a challan was presented by the police on a First Information Report lodged by Behari at the police station Sansur (District Alwar) for the offences under Sections 147 323 447 IPC, against the accused-appellant, In this FIR it has been stated that the informant, Behari, and Mangu PW 3) were allotted land bearing Khasra No. 228 situated in village Mangalpur measuring 3 Bighas in each case in the year 1976, and since then both of them were cultivating the agricultural land having their possession over it. How ever, in the year 1979 in Rabi crops they had sown mustard products and when the harvest has been ready to reap, both of them are alleged to have gone to the field in order to reap the harvest, along with their labourer, Bansi PW 1, Latoor PW 9 & Shriram PW 10, and while all of them were reaping mustard product in Mangu"s field, Dhansi, Leela Sardara (accused-appellants), Mst.

Patasi, Rameshwar and Chajuram duly armed with weapons axe with Mst. Banarsi, Bantali with Mst. Patasi and lathies order accused's hands) reached there saying not to reap the crop of mustard as of theirs to which the informant and the complainant party resisted Thereupon, all of them (accused named above) started beating complainant & his companions with lathies. It has been stated in the report that in this beating, Mst. Banarsi inflicted axe blow on the informant's neck; Rameshwar (now dead) inflicted a blow of axe (snatched from Mst. Banarsi) on the informant's right hand, lathi blow by Dhansi caused injury on Rameshwar's left hand Man2u & Latoor were made unconscious by inflicting blows with lathies and axe by the accused on their persons that apart, Sardara is alleged to have inflicted lathi on Shriram's left hand. On hearing bullabaloo, Munna & Prahlad & Prahalad are alleged in the report to have reached the spot and Latoor, Mangu, Banshi, Shriram, and Behari are alleged to have sustained injuries in this occurrence; and since the injured Latoor was serious, he was taken to the hospital at Bansoot.

3. On the basis of the said report (Ex. P 1) a case was registered for the offences under Sections 147 323 447, IPC. After usual investigation, the challan was submitted against Sardara, Leela, Dhansi, Gyarsa, Chaju Ram & Rameshwar for the offences 147, 148, 307, 325, 323, IPC in the Court of Munsif & Judicial Magistrate, Buhror, who committed the case for trial to the Court of Sessions. Since the accused Rameshwar died, the trial against him was dropped. It is thus clear that during the course of investigation, no offence was found to have been proved against Smt. Banarsi, & Patasi, and as such, since no offence was found to have been proved u/s 447 34, IPC, the challan against these ladies was not produced.

4. The learned trial Court framed charges against the accused for the offences u/s 148, 307 149 325 325 149 323. IPC. A look at the charge sheets framed by the trial court against the accused, shows that no charge against the accused persons was framed for the offences 147 447 or Section 34 IPC or Section 307 read with Section 34, IPC or 149 IPC. The accused persons denied the charges and claimed to be tried.

5. The prosecution has produced in all 13 witnesses The statements of the accused persons were recorded u/s 313 Cr.P.C. wherein they (accused) denied the charges levelled against them by the prosecution. In defence they (accused) produced three witnesses.

6. After hearing the parties, the learned trial Court found the accused appellants guilty of the offences under Sections 307 34 323. IPC and sentenced them as indicated in first para of this judgment. Gyarsa & Chhajuram, the accused persons were acquitted of the offences charged. That apart, the accused appellants, Sardara, Leela and Dhansi were also acquitted of the offence charged under Sections 148 325 and 323/149, IPC.

7. Hence this appeal.

8. As said earlier, the accused-appellants have been convicted for the offence u/s 307, with the aid of Section 34, IPC and none of these appellants were charged u/s 307/34, IPC. Even these appellants were also not charged for the offence u/s 307 read with Section 149, IPC. In these circumstances, a question arises here for consideration as to whether the appellants could have been convicted u/s 307, IPC with the aid of Section 34, IPC. For this purpose I would like to refer a decision of the Apex Court in Dalip Singh and Others Vs. State of Punjab, where in the accused persons were charged for the offence u/s 149, IPC, but in the facts and circumstances of the case, the Court observed as under:

No one suggests that there were more than seven, no one suggests that the seven, or any of them were, or could be, other than the seven named.

Nor is it possible in this case to have recourse to Section 34 because the appellants have not been charged with that even in the alternative, and the common intention required by Section 34 and the common object required by Section 149 are far from being the same thing. In the circumstances, we find ourselves unable to allow the conviction to rest on the insecure foundations laid by the High Court. We have accordingly reviewed the evidence for ourselves. Mr. Sethi took us elaborately through it. In our opinion, the learned Sessions Judge's conclusions are right.

In view of the aforequoted principles of law laid down by the Supreme Court, the learned trial Court in the present case, was not justified in convicting the accused appellants, only with the aid of Section 34, IPC u/s 307, IPC. That apart, it is now to be seen as to whether the offence u/s 307, IPC read with Section 34, IPC is proved by the prosecution against the appellants, and for that purpose, one has to scrutinise the evidence adduced by the prosecution elaborately.

9. Maniya (PW 1) who has not been named in the FIR as a witness, has deposed that the land allotted to Behari & Mangu was in their possession; that after hearing about the incident, he reached on the spot and there he saw seven persons of the accused party as named in the first information report except Smt. Patasi; that Smt. Banarasi inflicted axe blow on Behari's hand whereas Rameshwar snatched the axe from Smt. Banarasi and inflicted blows on the person of Latoor. In his cross-examination. Maniya (PW 1) stated that the field of the accused-appellant, Sardara is adjacent to the field of Behari and Mangu, and in between these fields there existed stone fencing wall which was made at the time of delivering possession to Manga & Behari after allotment of the land to them. Maniya (PW 1) confronted with his police statement (Ex. D 1) for the embolishment made by him in his statement before the court. In the police statement, Maniya (PW 1) has not given any specific overact, against the accused-appellants. This part of his statement (PW 1's) that axes blows were inflicted on the person of Behari and Latoor, has not been corroborated by the statement of Dr. S.C. Gupta (PW 4) who prepared the injury reports of the injured persons because, in these injury reports, none of the injured is found to have sustained any incised wound by a sharp object. Maniya (PW 1) has not

been named in the first information report and that according to his statement (PW 1) he reached at the place of occurrence at the time when he was answering the call of nature. Maniya (PW 1) did not claim that he held any land nearby the place of occurrence of that he frequently used to go that place. It is thus clear that Maniya (PW 1) is totally a chance witness and non-mention of this witness in the first information report makes the prosecution case very doubtful more so when his evidence as PW 1 is not corroborative by the evidence of Dr. S.C. Gupta (PW 4) who has prepared the injury reports.

10. Behari (PW 2) who claimed the allotment of the disputed land in his favour, in his statement admitted that before the mustard crop in question, millet crop was harvested by the accused-appellant Sardara; and in his examination-in-chief, he has stated that Sardara is a strong man and so he (Sardara) reaped the crop for carefully. But Behari (PW 2) in his statement admitted that no action was ever taken against Sardara for force, fully reaping the crop, and that Mst. Banarasi was having an axe in her hand whereas other accused were having lathies. Behari (PW 2) further stated that the accused-persons after reaching the place of occurrence offered them smoking-this offer was made by Sardara, Dhansi and Chhajuram, and they started smoking and thereafter they were about to move then at that time, lathies were inflicted on their persons; and that, Banarasi inflicted axe blow and Rameshwar inflicted axe blow after snatching axe from the hand of Banarsi on the person of Latoor apart from Banshi.

11. From the aforesaid statement of this witness (PW 2) who can said to be start witness of the prosecution, it is clear that the appellants initially made an offer of smoking to the complainant party which was accepted by them. This acceptance shows that intention of the accused appellant who though according to the prosecution witnesses were having lathies in their hands but initially did not give any beating to the complainant party and the beating only/started after the complainant party finished smoking. I fail to understand as to why the accused-appellants could not give beating at the threshold if they had come to resist the complainant party for harvesting the crop, and why they gave beating at the time when the complainant party finished their smoking. It appears and certain casts a speak on their evidence that the witnesses have tried to cancel true facts by giving false version and this circumstances is sufficient to creates doubt in their testimony in as much as the evidence of Behari (PW 2) does not inspire confidence because his statement regarding possession over the disputed field also creates doubt as earlier crop of millet is stated to have been reopen by the accused, Sardara against which also no complaint was filed. In cross examination, it has been suggested from the defence side that the land in question was in possession of the accused Sardara. In these circumstances, it was obligatory on the part of Behari (PW 2) to have adduced reliable evidence in order to support his claim of possessions over the disputed land because, Ramsingh (PW 6) of admitted that the land in question was in possession of the accused, Sardara, apart from his other testimony that initially mustard crop was sown by the complainant party but the same was re-sown by the accused party

and the mustard crop in question was thereafter reaped by the accused; and that, between the fields there is no stone fencing Ramsingh PW 6 is the witness who proved Ex P 9 & P 10. By his evidence, Ramsingh (PW 6) disproved this piece of evidence of Behari & Maniya (PW 1) that in between the fields, there was stone fencing Moreso, the evidence of Ramsingh (PW 6) shows that he bore hostility towards the accused.

12. Behari (PW 2) further deposed that spade of the axe was penetrated 2" deep on the person of Latoor and 3" deep on the person of Banshi by blows inflicted by Mst. Banarsi on his person 2" in depth. The witness further stated that the occurrence took place outside their field because at the time when the beating was given the complainant party came outside the field. This part of the evidence of PW 2 (Behari) is discrepant to the version given in the first information report as well as the version given out by the other eye witnesses. Mangu (PW 3) who is injured person one of the allottees of the disputed land, has stated that after allotment of land millet was sown in the field which was reaped by Sardara, and in his statement he has named all the accused persons except Banarsi & Patasi, deposed about only one blow said to have been inflicted on his person by the accused-appellant Dhansi thereupon he alleged to have become unconscious so he felt inability as to happened thereafter. In his cross examination, Mangu (PW 3) stated that he did not know as to which of the accused was having lathi and which axe in their hands and as to who was unarmed.

13. Latoor (PW 9) in his statement has stated that Rameshwar snatched the axe from the hand of Mst. Banarsi and then Rameshwar inflicted axe blow. Similar is the version of Shriram (PW 10) & Banshi (PW 11).

14. The charge for the offence u/s 307, IPC has been framed against the accused-appellant on the basis of Head injury sustained on the person of Latoor which was grievous in nature and which is said to have been inflicted by the accused, Rameshwar and that too by axe which was snatched by Rameshwar from Mst. Banarsi but Mangeram (PW 3) completely washed away this version of the prosecution witnesses by not naming Mst. Banarsi in his court statement. There is no reason to disbelieve this part of Mangeram (PW 3) that Mst. Banarsi was not there at the scene of occurrence. In the presence of this statement, this part of the allegation levelled by other eye witnesses that the axe blow was caused on the person of Latoor by accused. Rameshwar after snatching axe from the hand of Smt. Banarsi and in these circumstances, it can be said that in the present, case the prosecution failed to prove the author of grievous injury sustained on the person of Latoor. In these circumstances, no offence u/s 307, IPC is proved against the accused-appellants.

15. Latoor (PW 9) in his statement before the Court named only three persons, Sardara, Dhansi, & Rameshwar who came at the place of occurrence and restrained the party of complainant from reaping the crop. Latoor further stated that Rameshwar snatched axe from the hand of Mst. Banarsi and inflicted blow on his head and Sardara inflicted lathi blow on his shoulder whereas Dhansi

inflicted lathi blow on his finger. After sustaining injuries, as Latoor stated, he became unconscious. There can be no doubt that his evidence is discrepant to the evidence of the other prosecution witnesses because, most of the prosecution witnesses named six to eight persons who are alleged to be the accused of this occurrence but Latoor (PW 9) named only three persons so it can, therefore, stated that this witness has not given out the correct version with regard to the incident. His testimony again becomes doubtful due to the reason that he has given specific overact of the accused Sardara and Dhansi but the same has not been corroborated by the evidence of Dr. S.C. Gupta who after examination prepared injury report of Latoor (PW 9). No injury has been found by the doctor on the left finger and shoulder of this witness (PW 9) as was alleged by him to have been inflicted by the accused appellants. Sardara & Dhansi. This witness disowned his police statement (Ex. D 3). In these circumstances it can be said that Latoor (PW 9) is not a reliable witness and no conviction is possible on the basis of his evidence. Shriram (PW 10) has named five accused persons including Smt. Parasi & Smt. Banarsi, but did not name accused-appellant Leela, and Gyarsa in addition to Chhajuram who have been acquitted by the learned trial Court. Shriram (PW 10) has stated that Rameshwar inflicted lathi blow on the left hand but no injury was found by the doctor on his left hand Shriram (PW 10) also stated that Rameshwar inflicted axe blow on the person of Latoor. and the axe was snatched by Rameshwar. In his cross-examination, the witness (PW 10) has stated that he could not say as to whether the accused Sardara was in possession of the disputed land from the date of occurrence till the date or earlier to it also. By his evidence, this witness (PW 10) has made the prosecution case very doubtful and weak on the point of possession. Shriram (PW 10) has disowned his police statement (Ex. D 4).

16. Banshi (PW 11) in his statement before the Court deposed that when the accused persons reached the place of occurrence, the accused-appellant (Leela) said, "come here, let us have mutual settlement (Panch Faisala)". From this statement it can be assumed that at the initial stage, the accused persons were not having any intention to do any Maar-peet with the complainant party and this fact further makes the charge of Section 307, IPC as groundless.

17. As discussed above, all the eye witnesses except Mangeram (PW 3) have stated that Rameshwar inflicted axe blow on the person of Latoor, & Behari. One of the witnesses has stated that the blow penetrated 2" deep but looking to the injury report of the injured witnesses, it is abundantly clear that none of the injuries sustained on the person of the injured is caused by any sharp object. In similar situation, in Hallu and Ors. v. State of Madhya Pradesh 1974 CLR 697 according to the eye witnesses, the two man were attacked with lathis, spears and axes but that clearly stands falsified by the medical evidence. In that case, not one of the injuries found on the person of Jagdeo and Padam could be caused by a spear or on axe. The High Court, how ever, refused to attach any importance to this aspect of the matter by saying that the witnesses had not stated that "the miscreants dealt and blows from the sharp side or used the

spear as a piercing weapon". According to the High Court axes and spears may have been used from the blunt side and therefore the evidence of the eye witnesses could safely be accepted in these circumstances, according to the Apex Court, normally, the witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or piercing instrument was used as a blunt weapon.

18. It is thus clear that in the present case, the prosecution witnesses have not been corroborated by the evidence of the doctor who prepared the injury reports of the injured persons who in their statements have deposed that a sharp side of the axe was used by the accused Rameshwar in inflicting the blow on the person of Behari, Latoori & Banshi. Behari has gone to this extent saying that he has given a depth of the penetration of the spade of axe. It has nowhere been said by the prosecution that the blunt side of the weapon was used rather they have given out that the sharp side of the weapon was used by Rameshwar. In these circumstances, the prosecution version, referred to above, cannot be believed and it can be assumed that the prosecution witnesses have given false evidence and this creates a doubt in the mind of the court. Hence no conviction is possible on such weak type of the evidence.

19. In the present case, one more important question which requires to be considered and arises to who was in possession of the disputed field at the relevant time. In this context also, there is the improvement & establishment in the prosecution case as unfolded before the Court. The prosecution witnesses though have stated that after allotment the possession was delivered to the allottees and since the date of delivery of possession, they are/have been cultivating the land in question, but in Khasra girdawari (Ex D 6) pertaining to the St. year 2033, 2034 of Khasra No. 528/1. measuring 3.5 bighas of land, in col. 16, the name of Sardara s/o Moti has been shown as Khatedar tenant of the land. Ex. D 7 is also a copy of Khasra girdawari for the St. year 2033 to 2035 regarding Khasra No. 529/2. In St. year 2033 according to the revenue rules, the name of the cultivator was to be written in Khasra girdawari. If the disputed land is pertaining to Khasra No. 528/2 then from a perusal of Ex. D 7 it is clear that in St. year 2033 according to col. of cultivator, the name of Behari, Mangu & Banshi is missing who claimed themselves to be allottees of the land. The occurrence is said to have taken place in the St. year 2036 it is a case of Behari, Mangu that prior to the date of occurrence, they cultivated millet crop in the disputed land but a perusal of Ex. D 7 shows that in St. 2033 in Khasra No. 528/2, 10 bighas millet, and 4 bighas Guwar were cultivated in Kharif crop whereas 14 bighas mustard and 1 bighas barley gram were cultivated. This entry therefore, is contradicting the statements of Behari, Mangu and makes their evidence as doubtful. Behari, Mangu both of them nowhere claimed that mustard crop was cultivated in St. year 2035 and only millet was sown which was reaped by the accused, Sardara. This is also a circumstance to disbelieve the statements of the

prosecution witnesses.

20. Another more feature which caste a speck on the prosecution evidence to disbelieve this part of the prosecution story that the land in question was in possession of the complainant party, is that initially a case was registered u/s 44, IPC against the accused persons but during the course of investigation, this Section was deleted while filing the challan and no charge was framed against the accused-persons for the offence u/s 447, IPC. This shows that the prosecution itself was admitting the possession of the accused persons otherwise the challan could have been filed for the offence u/s 447, IPC.

21. After making an over all estimation of the prosecution evidence I am of the opinion that the prosecution has miserably failed to prove the charges levelled against the accused-persons. The prosecution case was a blantant lie. The prosecution witnesses as discussed above, have thus betrayed true colour. They are of types who in blind loyalty and support to the case of the party calling them, would not hesitate to tell lies even in regard to patents facts. To most questions the prosecution witnesses did not give prompt and straight forward answers. In an effort to evade, perry and hide some thing they indulged in a equivocation. Further more these witnesses in their anxiety to go whole hog to support the charge are prone to exaggerate matters.

22. The statements of the prosecution witnesses are full of infirmities and doubts and to me, the subtratum of the prosecution story appears to be wholly untrustworthy. After considering very carefully the evidence of this tricka-Behari, Mangeram and Latoor. I have left with the impression that the story propounded by them is not genuine and worthy of credence. The evidence rendered by these witnesses was not so unimpeachable, unblemished and disinterested that it could be safely accepted without corroboration from independent sources. The prosecution has come with a definite story of inflicting particular injury assigning to the accused which was discarded by the learned trial court and in these circumstances, it was not useful to convict the accused on more conjectures and surmises. At many places, while reading the judgment of the trial court, I observe that the trial court, itself has observed that this was only a conclusion based on the possibility which in say opinion is against the criminal jurisprudence. For these reasons, the conviction is not possible on the basis of such evidence which I have carefully discussed above in comprehensive manner and elaborately.

23. In the result, I allow this appeal, and set aside the impugned judgment passed by the Addl. Sessions Judge No. 2 Alwar in Sessions case No, 34/79 and acquitted the accused-appellants, named in the first para of this judgment for the offence levelled against them under which they have been convicted & sentenced by the trial Court. The accused appellants are on bail. Their bail bonds stand cancelled. They need not surrender.