
(2010) 03 RAJ CK 0079
In the Rajasthan High Court

Dunga Ram and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 03 RAJ CK 0079

Hon'ble Judges : Govind Mathur, J;C.M. Totla, J

Bench : Division Bench

Judgement

Govind Mathur, J.—These two appeals are preferred by accused appellants Dungaram son of Pannaji and Ganeshram son of Pannaji against the judgment dated 13.3.2002 passed by learned Additional Sessions Judge, Bali. By the judgment aforesaid learned Additional Sessions Judge convicted both the accused appellants for the offence punishable u/s 302/34 Indian Penal Code and sentenced them to undergo life term imprisonment with a fine of Rs. 100/-each. The proceedings against third accused Jhalaram son of Durgaram stood abated because of his death during the course of trial.

2. As per prosecution case, on 29.1.1998 at about 07:30 PM, one Bhanwarlal son of Meetharam resident of Kothar, submitted a report at police station Nana with assertion that on the same day at about 06:30 PM his brother Lakhmaram has been killed under a plan. As per the report aforesaid, daughter of complainant named Padma saw her uncle Lakhmaram sitting outside the shop of Mangalji and then an axe blow was given to him by Ganesh. Lakhmaram tried to escape himself and, thus, went inside the shop. Ganeshram, Dungaram and Jhalaram chased him and entered into the shop. They gave numerous axe and knife blows, consequent thereto Lakhmaram died. The factum of killing of Lakhmaram was also told to the complainant by Hansaram and Vikram Singh.

3. On basis of the information aforesaid a case was lodged, investigation was made, charge sheet was filed, case was committed to the court of Sessions,

charges for commission of an offence punishable u/s 302/34 IPC were framed against each of the accused and on denial of the same, the accused persons were tried.

4. The prosecution supported its case with the aid of 22 witnesses (PW-1 to PW-22) and exhibited documents as Ex.P/1 to Ex.P/42. An opportunity was afforded to the accused to explain circumstances appearing in the evidence against them. In defence, the accused persons produced documents Ex.D/1 to Ex.D/5 and also Dr. Chandrakant Acharya as DW-1.

5. Learned trial court, after considering the evidence available on record held the accused appellants guilty for commission of offence u/s 302/34 IPC.

6. In appeal, the contention of learned amicus curiae Shri Nand Kishore Moondra is that the instant one is a case of no evidence as the eye witnesses have not supported the prosecution case, the recovery said to be made during investigation has not at all been established and lot of contradictions exist in the statements of PW-12 Kumari Padma who is introduced by the prosecution as an eye witness. It is also contended that so far as accused Ganesh is concerned, his case stands on absolutely on different pedestal in view of the fact that even as per prosecution he inflicted one injury by axe and that too on leg. He has been convicted with the aid of Section 34 IPC but there is no evidence available on record to prove common intention.

7. Learned Public Prosecutor, on the other hand, while defending the conviction recorded and sentence awarded, submitted that the trial court as a matter of fact has not based its findings on the statements of PW-11 Nainaram and PW-17 Vikram Singh but relied upon the statements of PW-12 Kumari Padma. As per learned Public Prosecutor Padma is an eye witness of the entire incident and there is no reason to disbelieve her testimony.

8. We have considered the arguments advanced and also scrutinised the record available.

9. PW-6 Dr. Shaitan Kumar conducted autopsy on the dead body of Lakhmaram and, thus, he proved the postmortem report Ex.P/11, according to that the body of deceased Lakhmaram was having 24 injuries of incised wounds. The cause of death given was haemorrhagic shock due to severe injuries to vital parts of the body. Looking to the medical evidence, there is no doubt that death of Lakhmaram was culpable homicide.

10. PW-22 Daulat Singh was the Station House Officer of Police Station Nana at the time of incidence and he narrated before the court the steps taken by him during the course of investigation. As per this witness, a knife was recovered from Dungaram as per Ex.P/13 and a blood stained axe was recovered from Ganeshram as per Ex.P/15. From third accused Jhalaram, against whom the case stood abated, a knife was recovered as per Ex.P/12. The responsible persons, in presence of whom the recoveries aforesaid were made, are PW-7 Prabhuram,

PW-9 Radheyshyam and PW-10 Dedaram. So far as PW-7 and PW-9 are concerned, they did not support the prosecution case regarding recovery of knife from accused Dungaram, however, PW10 Dedaram proved recovery of axe from Ganeshram as per Ex.P/15.

11. The argument advanced by learned amicus curiae certainly gives an impression that no evidence as a matter of fact is available to connect the accused persons with the crime in question as the eye witnesses PW-11 Nainaram and PW-17 Vikram Singh have not supported the prosecution case and so also the recovery of knife from accused Dungaram has not been established in view of the fact that PW-7 Prabhuram and PW-9 Radheyshyam have not supported the prosecution. PW-10 Dedaram though supported the prosecution case with regard to recovery of axe, but as per learned amicus curiae that too is of no consequence in view of the fact that the recovery was made at quite a belated stage and that too from an open place.

12. On examination of entire record little minutely, the position emerges is quite different. As already said above, the death of Lakhmaram is a culpable homicide in view of the medical evidence. The statements of PW-12 Kumari Padma, who is a girl of 12 years, are of quite importance. This witness has narrated the entire incident with absolute confidence and reiterated the same time and again during cross examination. Learned amicus curiae tried to point out certain contradictions in statements of Padma relating to place of giving blow, but those are too minor and are of no consequence.

13. PW-12 Padma, aged 12 years, stated that on the fateful day her uncle Lakhmaram was coming down from the stairs of Mangal Singh's shop and at that time accused Ganesh stated that today is the right opportunity to kill Lakhma. Ganesh then gave an axe blow on left leg of deceased. Lakhma then tried to enter into the shop but all the three accused persons followed him. Jhalaram and Dungaram were having knives with them and they stabbed Lakhma on his chest and abdomen. She also stated that stabbing was made on certain other parts of the body of Lakhmaram. As per this witness she was crying, therefore, Hansaram came and asked her about the reason for crying. Hansaram on knowing about the fact what was happening inside the shop, asked to the accused persons as to why they were assaulting to Lakhma, but being threatened for similar consequence he left the site. This witness also stated that Dungaram was having friendship with her aunt Kanya wife of Narayanji and that was not palatable to Lakhmaram. Lakhmaram was always advising Dungaram not to meet to Kanya. From reading of the statements of PW-12 Padma, which are running in about nine pages, it is quite clear that all the efforts were made to get her detract but she was quite firm to her stand with very specific stand that Ganeshram at the first instance stated that an opportunity was there to kill Lakhma then he gave an axe blow on left leg of Lakhma. Lakhma then moved inside the shop wherein all the three accused persons also entered with deadly weapons and Jhalaram and Dungaram gave numerous knife blows to Lakhmaram, consequent to which

he died. PW-12 Padma also stated that she witnessed entire incident from the front of shop as at that time she was going to bring their family cow to home.

14. Complainant PW-1 Bhanwarlal, who is father of PW-12 Padma, also supported the prosecution case. As per this witness, the entire incident was told to him by his daughter Padma and on knowing about that from her he submitted a report at police station immediately.

15. On basis of the statements of PW-12 Padma, learned trial court convicted the accused appellants. We are also of the view that PW-12 Padma as well as PW-1 Bhanwarlal are quite trustworthy witnesses and they have stated the facts whatever available with them. The contradictions in the statements of PW-12, as pointed out by learned amicus curiae, are too minor and as a matter of fact on basis of those the testimony of PW-12 cannot be disbelieved. It is stated by learned amicus curiae that while giving statements as per Section 164 Cr.P.C. PW-12 Padma stated that axe blow was given on right leg, whereas in her statements before the court she has changed the side of leg. We are of the view that this minor contradiction as a matter of fact does not effect credence of the witness. At every time she stated that an axe blow was given on leg of Lakhmaram and looking to all the facts and circumstances of the case the change of side is quite immaterial.

16. We also do not find any merit in the argument advanced by learned amicus curiae that the case of Ganesh stands on different pedestal on the count that he gave a single axe blow that too on leg and, therefore, he cannot be held guilty for common intention in killing of Lakhmaram. As already discussed above, the evidence is available on record that it was Ganeshram who at the first instance stated about availability of opportunity to kill Lakhmaram and then he was the person who first gave an axe blow on leg of deceased. He also chased deceased Lakhmaram in shop. In his presence two other co-accused gave number of knife blows to Lakhmaram. In such circumstances, the intention of killing Lakhmaram by all the persons is well founded.

17. Quite half heartedly, learned amicus curiae also urged that the instant one is a case of no motive, but we are not in agreement to that also. Adequate evidence is available on record to prove that accused Dungaram was keeping enmity with Lakhmaram on the count that Lakhmaram was not liking his closeness with Kanya wife of his brother Narayanji.

18. On the count of discussions made above, we are of considered opinion that conviction recorded by the trial court does not suffer from any wrong. As such the conviction recorded and sentence awarded by the trial court is affirmed. Accordingly, both these appeals are rejected.

19. The sentence of accused Ganeshram was suspended by this Court while accepting his second bail application on 5.5.2008 and in pursuant thereto he is availing suspension of sentence. As a consequent to rejection of appeals, the bail bonds and sureties furnished for suspension of sentence in pursuant to the order

dated 5.5.2008 stands forfeited. Accused Ganeshram be arrested forthwith for undergoing remaining part of sentence.