

**(1977) 04 RAJ CK 0001**  
**In the Rajasthan High Court**  
**Case No : Criminal Appeal No. 305/75**

|                         |    |            |
|-------------------------|----|------------|
| Ghamanda Ram and Others | Vs | APPELLANT  |
| State of Rajasthan      |    | RESPONDENT |

**Date of Decision :** 14-04-1977

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

**Citation :** (1977) WLN 109

**Hon'ble Judges :** M.L. Shrimal, J; M.L. Jain, J

**Bench :** Division Bench

## Judgement

M.L. Jain, J.—This appeal is directed against the judgment of the learned additional Sessions Judge No. I, Jodhpur by which he convicted and sentenced the appellants six in number as follows:

1. Ghamnda Ram u/s 302 read with 149 IPC, to life imprisonment and a fine of Rs. 200/- in default, to rigorous imprisonment for one month and u/s 148 IPC to rigorous imprisonment for 2 years.
  2. Moola Ram, Khuma Ram, Phusa Ram, Bhana Ram and Govind Singh u/s 302, read with 149 IPC, to life imprisonment and a fine of Rs. 200/- in default, to rigorous imprisonment for one month and u/s 147 IPC to rigorous imprisonment for one year.
  3. Govind Singh also u/s 325 IPC to rigorous imprisonment for one year and a fine of Rs. 200/- in default, to rigorous imprisonment for 15 days.
  4. Khuma Ram and Bhana Ram also u/s 323 IPC; to rigorous imprisonment for one month.
2. All these sentences were directed to run concurrently. We have heard arguments and perused the record.
3. The short facts of the case are that on 8th March, 1974 which was the day of "Holi Celebrations" at about 9-10 p.m. the accused appellants armed with Dharia

and Lathis came in a party of revellers, singing abusive songs. When they passed by the house of the deceased Bhagirath, he came out and objected to the use of abusive language by the revellers. It is alleged that thereupon, the appellants entered in the house of Bhagirath and gave him beating. His brothers Badri and Jagdish who came to intervene were also 1 eaten. The occurrence is stated to have been watched by Ghewer, the repent of the deceased and one Nenpuri. Bhagirath was taken to the hospital Jodhpur where he was admitted for treatment but died on 18th March, 1974. The bed head ticket showed that when he was brought to the hospital, he was in a drunken state.

4. Meanwhile, Ramgopal his brother lodged a type written report of the occurrence in the police station, Mathania on 13-3-74 in which he did not mention the names of the two witnesses and the two other injured persons. Upon some enquiries made by the Police Officer at the time of making the report, he disclosed the names of Ghewer Ram and Nenpuri, but here again he omitted to mention the names of Badri and Jagdish. It was in these circumstances that the accused came to be challaned and convicted and sentenced as aforesaid.

5. The medical examination of Badri and Jagdish took place on 2-4-1974 i.e. after three weeks. The medical examination of Bhagirath was conducted next day by Dr. P. Dayal PW 12 on 9-4-1974. One lacerated wound on the left parietal region of the scalp, another on the left frontal region of the scalp and one more on the right cheek were found on his person. There was also ill defined swelling over the left hand. Dr. Kamla Sharma PW 11 who was a lecturer in surgery, deposed that upon the instruction of Dr. Rawat she made a bur hole on 12-3-74 in order to treat the head injury but "unfortunately Bhagirath could not recover consciousness and subsequently expired. Dr. Kamla Sharma was not sure whether the head injury was sufficient to cause death of Bhagirath in the ordinary course of nature. Upon post mortem examination Dr. P. Dayal found that there was comminuted fracture of the left temporal bone continuing as fissured fracture of the left parietal and right parietal bone and fissured fracture of left middle cranial fossa. There was sub dural haematoma on the left cerebral hemisphere on the whole surface. There were fractures of the first and second metacarpal of the left hand. The patient according to him died as a result of the head injury. In cross examination, he denied that the skull of the patient was opened for surgical treatment. He even found no indication that there had been any bur-hole made in the skull of the deceased.

6. Now, out of four eye witnesses, it appears to us that two namely; Badri and Jagdish were taking care that in the house when the occurrence took place and they came out only to find Bhagirath lying bleeding. The evidence of Nenpuri does not inspire confidence as he lives in a different village and his presence at the scene of occurrence on that night has not been satisfactorily explained. We are left only with the evidence on Ghewer which we do not find any reason to disbelieve. He has deposed that in the party of revellers, he had seen Ghamanda Ram, Govind Singh, Moola Ram and Bhana Ram four persons only. That knocks

out the case of an unlawful assembly there being less than five persons in the assembly, it is also farther appears to us that there was no common object on the part of the accused to take the life of the deceased Bhagirath. The best evidence of the prosecution is that the whole thing happened at the spur of the moment. Bhagirath was also drunk and when he objected to the abusive language used by the revellers he was beaten by the accused. That further rules out completely the fact that the assailants had any intention of causing the murder of the deceased. It is also not possible to impute any intention or knowledge that the injuries caused to the deceased were likely to result in death. Thus we are not satisfied that there was any unlawful assembly with the object of causing the murder of Bhagirath. We therefore, find that there is no justification to convict all the appellants u/s 302 IPC with the aid of Section 149 IPC. Upon the prosecution evidence the case does not travel beyond the four corners of Section 325 IPC. Ghewer has stated that it were Ghamanda Ram, Govind Singh and Pusha Ram who attacked the deceased and were responsible for causing the injuries which were received by Bhagirath. There was thus no doubt a common intention formed at the spur of the moment on the part of the three accused persons who voluntarily caused grievous hurt to the deceased. All the three of them have committed an Offence u/s 325, read with Section 34 IPC. Ghamanda Ram and Govind Singh have been in jail right from 21-3-74 when they were arrested that is for three years by now. Pusha Ram was arrested on 21-3-74 and was bailed out on 9-5-75 and has been in jail for over one year. In the circumstances of this case, we feel that the imprisonment as aforesaid shall be sufficient punishment to meet the ends of justice.

7. The evidence regarding injuries to Jagdish and Badri against Jhumara Ram, Govind Singh and Bhanaram does not inspire confidence at all, The very fact that these injuries were examined almost a month later, makes the case on the prosecution extremely doubtful in this respect.

8. We, therefore, partly accept this appeal and direct as follows:

1. Accused Moola Ram, Khuma Ram, Bhanaram shall stand acquitted of all the charges levelled against them. Their sentences shall be set aside.
2. The remaining accused namely : Ghamanda Ram, Govind Singh and Pusha Ram are acquitted of the offences u/s 302/149 and 147 IPC but instead are convicted u/s 325 IPC read with Section 34 IPC for causing grievous hurts to Bhagirath deceased and their sentences shall be reduced to the period of imprisonment that they have already undergone. Pusha Ram and Khuma Ram who are on bail need not surrender, all the remaining appellants shall be released forthwith if not wanted otherwise.