

(1978) 03 RAJ CK 0020
In the Rajasthan High Court
Case No : Criminal Appeal No. 29 of 1977

Ghansu and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 08-03-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 147, 149, 161, 307, 308

Citation : (1978) WLN 27

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Judgement

M.L. Jain, J.—On 10th January, 1977, the learned Session Judge Bharatpur, consisted the appellants u/s 147 IPC and sentenced each one of them to undergo rigorous imprisonment for six months. He further convicted Ghansu u/s 307 and the remaining appellants u/s 37/149 IPC and sentenced them each to undergo rigorous imprisonment for five years and a fine of Rs. 200/- and in default of payment of fine, to further undergo rigorous imprisonment for two months each. Hence this appeal.

2. The brief facts of the case are that on the night intervening 20th & 21st April 1974, complainant Rambabu PW 4 and his father Shiviliram PW 3 were sleeping in their threshing grounds in village Gurdha Nadi Distt. Bharatpur. At about 3-4 a man unknown person passed by and asked them which was the way leading to Jheel. Both the father and son were awakened Rambabu pointed to the pedestrian the way to Jheel that went by a foot-track. The stranger then enquired Rambabu whether he had fire. Rambabu pointed out that the fire was available near the Babul tree. The stranger then asked Rambabu whether he could give him some water to drink. When Rambabu got up to bring water for him, the stranger shouted to the accused that was the right time for them to come. Thereupon, all the five accused persons reached Rambabu. Ghansu delivered a lathi blow on the head of Rambabu. The remaining accused also assaulted him with lathis. All this while, the accused were shouting that Rambabu

should be done to death. In the near by threshing floor Ghamandi PW 5 and his employer Omprakash PW 6 were sleeping on one out. Gopal PW 7 and one Girdhari who were proceeding from their village to station Jheel to board the local train to Bayana arrived at the scene of occurrence. Rambabu is said to have become unconscious and was removed to Bharatpur hospital. From medical examination it was found that the skull of Rambabu was fractured. Shobharam PW 2 then lodged the first information report with the police station Bayana. The police after usual investigation sent up the accused for trial with the aforesaid result.

3. It was admitted on all sides that both the parties had a long standing enmity. The accused pleaded that at the time of occurrence, he was an indoor patient in the hospital. Weir and he was falsely implicated. Accused Radhey, Srikishan and Hari also pleaded alibi. Accused Ramji Lal pleaded that he had appeared as a witness against Rambabu and therefore, was falsely roped in. It is also alleged that four of the witnesses, namely, Shobharam, Shivilram, Rambabu and Omprakash were themselves facing trial u/s 307 IPC for attempting murder of Mangti, who is an uncle of accused Ghansu. It was also contended that the night of occurrence was a dark night and it was not possible for the witnesses to identify the accused.

4. The learned Session Judge rejected the plea of alibi put forward by Ghansu. Upon an examination of the record of the hospital, he found that the entries in the hospital record were fabricated. The appellant Ghansu was shown to have been admitted in hospital on 20th April, 1974 at 11.05 a.m. as an indoor patient and was discharged on 21st April, 1974, at 10.40 a.m. He was supposed to have been treated for stomach ailment. The learned Sessions Judge has thoroughly discussed the evidence of compounder Satyaprakash DW 2 and found that the stock register did not show that any medicine was issued to the accused Ghansu. What the out door register showed is that the accused Ghansu was admitted. One tablet of Spasimindon and one dose of carminative mixture was given. The learned Sessions Judge held that Rambabu was a stamped witness corroborated by the medical evidence and that the prosecution case was also supported by other witnesses. The learned Judge further held that the appellants had attacked Rambabu with intention to murder him and accused Ghansu was responsible for the fracture in the skull of Rambabu. He accordingly found them guilty as aforesaid.

5. Learned Counsel for the appellants now submits that the prosecution case was wholly false and looks like a drama having been enacted. The introduction of the stranger who was not even named, arrested or identified was made to give colour and authenticity to the story, otherwise there was no need for all this as the accused were known before hand and are even alleged to be shouting at the time of the occurrence. He pointed out that the parties were having a long litigation and therefore the accused were falsely implicated. What appears to have happened is that some miscreants attacked Rambabu in the dead of night

and since it was not possible to identify the actual miscreants a case was cooked up against the appellants with the help of two chance witnesses and Ghamandi who was employed only a week before by Omprakash, a neighbour of the complainant and since his very presence could be doubted, an embellishment was introduced further that both the master a Brahmin and the servant a mali were sleeping on the same cot. There was a police outpost at Jheel but no report was lodged there. The way to hospital Bharatpur lay through Bayana but no report was lodged there at the time of taking Rambabu to the hospital. Several persons had accompanied Rambabu and it was easy for one of them to go and inform the police. The first information report was lodged with delay of 10 hours and this delay provided ample scope for the prosecution to concoct and develop its story, The first information report shows that the occurrence took place in the dead of the night but at the time of trial the time of the occurrence was shifted from night to day-break. The learned Sessions Judge has dealt with this aspect of the case & has found that the time of occurrence should be near about 5 O'clock in the morning when the first light had spread around This coincided with the time of arrival of train to Jheel Station at about 6 O'clock which two of the witnesses were going to board, and just were able to watch the occurrence. Learned Counsel for the appellants pointed out that the learned Sessions Judge has tried to make out a case for prosecution by holding that the occurrence was of the time of dawn.

6. Learned Counsel further assailed the judgment of the trial court on the ground that the learned Sessions Judge failed to notice that not only there was delay in making the first information report but the statements of the witnesses were recorded 39 days after the occurrence. All the statements of the witnesses are stereotyped and appear to have been repeated in a parrot like manner The learned Sessions Judge has discarded the contradictions which were pointed to him between the statements of the witnesses made u/s 161 Cr.P.C. and those at the trial It was also lastly added that the medical officer Dr. Devendra Singh who admitted the accused in the hospital was not examined. There was, therefore, hardly any reason to reject the defence and condemn the medical officer behind his back and without hearing. He is in Persia.

7. I have gone over these submissions. Enmity is a double edged weapon. If the complainant party could falsely implicate them on account enmity, it could equally be true that the accused attacked the complainant out of enmity. The long delay in recording the statements by the police has no material effect on the prosecution case. The delay in lodging the first information report was also discussed by the learned Sessions Judge. He had observed that the primary concern of the complainant party was immediate treatment of the injured instead of a report to the police. The party had to travel from Guardhi Nadi to Bharatpur for that purpose and then send a person to Bayana to make the report There was no delay. The author of the report was an illiterate villager and therefore incapable of any embellishment. I am in full agreement with the observations of the learned trial Judge The accused were known and one should not be surprised

if their identity could be placed even if there was insufficient light Five persons were attacking, shouting for life of Rambabu. In such a situation it is not difficult to place the identity of the accused persons known beforehand. The discussion and the determination of time of occurrence made by the learned Sessions Judge is equally quite convincing. Two persons were going to board the train and the railway timing shows that the arrival time of the train was about 6 a.m. and the station was about four miles away from the place of occurrence. Therefore, the witnesses should be at the place of occurrence round about 5 O'clock It is not expected of the villagers to be able to give the time of occurrence by clock. I have gone through the statements of the witnesses but it does not appear to be correct to criticise them as parrot-like repetitions. It is also incorrect to urge without any basis that Ghamandi is a got up witness. The learned trial Judge had found him to be an independent witness. The fact that he came to be employed only a week before by Om Prakash does not derogate from his reliability. There is also nothing unusual in a matter and a servant sharing one cot in village fields and threshing floors. The omissions pointed out in the statements of witnesses u/s 161 IPC are not significant at all. The witnesses said at the trial that Rambabu before he fell unconscious had said that Ghansu had attacked him with a lathi. This statement was not made by them before the police. Such omission as a matter of fact cannot be considered a statement as it is not necessarily implied in the other parts of the statement and in the contract it appears it cannot be considered a contradiction. I, therefore, do not find any force in any of the arguments advanced by the learned Counsel for the appellants I see no reason to differ from the findings arrived at by the learned trial court that it were the accused who were responsible for the injuries of the complainant. The plea of alibi taken by the accused has been rightly rejected by the learned lower court. It was not only suspicious but false too.

8. Learned Counsel then submitted that the case is not covered u/s 307 IPC but it is a case u/s 308 IPC i.e. an attempt to commit culpable homicide not amounting to murder. The medical officer Dr Kanhaiya Lal PW 1 deposed that the head injury was sufficient in the ordinary course of nature to have caused death but in his report Ex. P 3 the doctor recorded rather hesitatingly as evidence by the corrections he made, that death can be caused by a fracture of the head, The present argument is founded in this report but that report contained a general statement and at the time of trial he gave a categorical opinion Ghansu was the main assailant and therefore he has been rightly convicted u/s 307 IPC. Appellants Ramjilal did not participate in the assault and the only part assigned to him is that he was also saying "Mar do". This type of version is a very weak type of evidence and in view of the enmity cannot be accepted in the circumstances of this case. Ramjilal therefore does not appear to be a member of the assembly and deserved acquittal. With his acquittal the charges u/s 147 and 149 IPC must also fail. The witnesses have said that the remaining accused have delivered lathi blows and that fact makes them guilty of an offence only u/s 323 IPC.

9. I, therefore, partly accept this appeal and direct as under:

- 1) Ramjilal shall be acquitted of all the charges and his sentences shall stand quashed;
- 2) Ghansu shall stand convicted u/s 307 IPC and his sentence is maintained, but his conviction and sentence u/s 147 IPC are hereby set aside;
- 3) Radhey, Hari and Kishan are acquitted of the offence u/s 147 and 307/149 IPC but they shall instead be convicted u/s 323 IPC and since they have already suffered imprisonment for over a month, their sentence is reduced to what they have already undergone.