
(1955) 09 RAJ CK 0002
In the Rajasthan High Court

Gondasingh and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 28-09-1955

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 326, 34

Citation : (1957) CriLJ 240 : (1956) RLW 178

Hon'ble Judges : Dave, J

Bench : Single Bench

Judgement

Dave, J.—This is an appeal by four accused namely Gondasingh, Ditasingh, Ajmersingh I S/o Bhagsingh and Ajmersingh II s/o Hazurasingh against the judgment of the Additional Sessions Judge, Ganganagar, dated the 20th of October, 1954, The first two appellants, namely Gondasingh and Ditasingh have been sentenced u/s 326 while the two Ajmersinghs have been convicted u/s 326 read with Section 34 of the Indian Penal Code.

Gondasingh has been sentenced to seven years" rigorous imprisonment and the rest to six years" rigorous imprisonment.

2. The prosecution story against the appellants was that there was previous enmity between the appellants and the deceased Hakimsingh. All the appellants and the deceased are residents of village Chandra. Sometime before the present occurrence, there was a quarrel between the party of the deceased Hakimsingh and the party of Ditasingh appellant and in that quarrel, one Karnailsingh of Ditsingh"s party was murdered.

The deceased Hakimsingh was challenged in that case and sentenced to six months" rigorous imprisonment. Hardly about a month and a half had passed since his release from the Jail in that case when the present incident took place on the 14th October 1953. The prosecution story goes that although Hakimsingh was convicted and sentenced in the previous case, the appellants" party was not satisfied with that small sentence and, therefore, they made a plan to do away

with him.

It was alleged that all the appellants went armed with Selas and lathies to the field of one Bachitrasingh and there they laid themselves in ambush behind the Ak plants. Early in the morning, when Hakimsingh was going to his field to sow the gram, then in the Rohi of the village Chandra, the appellants suddenly emerged from their place of concealment.

Gondasingh and Ajmersingh I were the first to attack him. It is said that Gondasingh had a Sela while Ajmersingh I had a lathi in his hand. Soon after the commencement of this assault Ajmersingh II and Ditasingh also came out of the bushes and joined in the attack. Ajmersingh II had also a lathi, while Ditasingh had a sela with him.

The story proceeds that when Hakimsingh fell down on the ground, Gondasingh sat on his chest, Ajmersingh II caught hold of his legs, while Ditasingh and Ajmersingh I gave further lathi and Sela blows on his person. Gondasingh then asked his companions whether Hakimsingh's legs were broken and when he was satisfied by their reply that they were broken and he was incapable of moving from that place, the appellants left him and went away.

According to the prosecution story, one Kemasingh, who was a Siri of the deceased in cultivation, had also gone with him, but he was walking behind the deceased at some distance. It is said that he saw all this occurrence and even asked the appellants not to beat the deceased, taut he was asked to keep quiet and was threatened with the same fate if he behaved otherwise. It was further stated that another person Kartarsingh also happened to pass that way.

He also requested the appellants not to beat the deceased, but he got a reply similar to the one which was given to Kemasingh, Thereafter Kemasingh and Kartarsingh both went to the village and informed the deceased Hakimsingh's brother Vichitrasingh of all this occurrence. So Vichitrasingh, his mother, another Hakimsingh, Indersingh and the two witnesses Kemasingh and Kartarsingh came to the site of occurrence and found Hakimsingh lying injured.

They took him from there to Hanumangarh dispensary where they reached at about 8.45 a. m. Injuries of the deceased were examined by Dr. A. S. Gulati. He thought that the condition of Hakimsingh was serious and so he informed the Magistrate and requested him to record his dying declaration. Thereupon Shri Puranchand Magistrate, First Class, Hanumangarh went to the Hospital and recorded the statement of the deceased,

Hakimsingh died the same day in the afternoon and his autopsy was performed the same day. Then information about this occurrence was sent to the Police Station Sangaria after the dying declaration of the deceased was recorded by the Magistrate. The Police registered the case on the same date and after investigation, challaned all the four accused for an offence u/s 302 of the Indian Penal Code.

After preliminary enquiry, they were committed by the Sub-Divisional Magistrate. Hanumangarh for the same offence i. e., under S 302. I. P. C., but after the trial, the learned Additional Sessions Judge thought that the appellants had committed the offence u/s 326, I. P. C., and so he convicted and sentenced them as mentioned above.

3. The appellants' version in the trial court was that they were absolutely ignorant about this occurrence and they were falsely named by the deceased and his witnesses on account of previous enmity, They did not produce any evidence in defence. In the present Court also it has been urged by the appellant's learned Counsel that all the four appellants are quite innocent and the prosecution evidence being discrepant, unreliable and insufficient, it is not proper to maintain their conviction on its basis.

4. It is not contested by appellants' learned advocate that the deceased Hakimsingh was beaten on the 14th of October 1953 and that he died the same day on account of the injuries caused to him. It is established beyond any doubt that Hakimsingh was taken to the Hanumangarh dispensary on the 14th of October 1953 at about 8.45. a, m. P. W. 7 Dr. A. S. Gulati, who was in charge of the dispensary, has stated that he had examined Hakimsingh and found as many as 19 injuries on his person.

He has given the description and measurements of all the injuries. It is no use repeating the whole of his statement here as the details of those injuries are given in the judgment of the trial court also. It is clear from the statement of this witness that 4 out of 19 injuries viz., injuries Nos. 1, 2, 9 and 10 were grievous as all these four injuries were incised wounds with compound fracture of the tibia bones of right and left legs.

It further appears from his statement that there were three contusions one contused wound and one bruise. The remaining injuries were incised wounds on different parts of the body. It is also proved from his statement that these injuries were caused by sharp and blunt weapons and that Hakimsingh died the same day on account of the combined effect of all these injuries.

Since it is not contested by the appellants' learned advocate that Hakimsingh received all the injuries mentioned by Dr. Gulati on 14th of October 1953 and that he died on the same day, it is no use dwelling on that point any further.

5. The main question for determination in this appeal is whether the said injuries were caused by the appellants and whether their conviction is proper. The prosecution evidence in this behalf may be divided into two classes. The first class of evidence consists of the dying declaration which is said to have been made by the deceased before a witness Indersingh and before the Magistrate First Class, Hanumangarh.

So far as the evidence about the first dying declaration is concerned, the evidence of P. W. 4 Indersingh has not been considered true by the trial court. P.

W. Indersingh had stated that on the day of occurrence when he went to the spot and asked Hakimsingh as to how the occurrence took place, he told him that the appellants Dita, Gonda and the two Ajmersinghs had caused the injuries to him.

The trial Court has remarked that the occurrence had taken place on the 14th of October 1953, while this witness was examined on 22nd of October 1953 and, therefore, it should be presumed that what he has desposed is false. I do not agree with the trial court that a witness should be presumed to be false simply because he is examined some days after. It is for the investigating officer to give the explanation if a certain witness is not examined promptly, but I would not place any reliance on this witness for other reasons.

According to his statement, the deceased had named the appellants when he went to the site in the company of Hakimsingh of Lllawali, Vichitrasingh Kema Kartarsingh and others. If the deceased had made a dying declaration in the presence of this witness, then others also who were present there, should have heard the same. This witness has admitted in his cross-examination that a civil suit between him and the four accused is pending in a court. He is, therefore, not a disinterested witness,

On the other hand, it may be said against him that he has reason to involve the appellants in trouble so that his own ends may be served so far as the civil case is concerned. I therefore agree with the trial court, though for different reasons, that the statement of this witness is not trustworthy, it is, however, the other dying declaration Ex. P. 1 which is on record, which requires consideration. Ex. P. 1 is a detailed statement of Hakimsingh.

He has stated therein that when he was going to sow the gram at his field and when he had gone about a mile from his village Gondasingh and Ajmersingh son of Bhagsingh made an attack upon him. Gondasingh was armed with a sela, while Ajmersingh had a lathi in his hand. He then proceeds to say that the second Ajmersingh and Ditasingh also emerged from the bushes and joined the first two accused in the beating.

The second Ajmersingh was armed with a stick, while Ditasingh had a Sela. When he fell down, Gondasingh sat on his chest, while Ajmersingh son of Hazursingh caught hold of his legs. The other two accused then further beat him with Selas and lathies. Gondasingh then asked his companions if the legs of the deceased were broken and when they replied that they were broken, they left him and went away.

He also says in his statement that the siri Kema, who was to go to the field with him, was following him at some distance and that he and Kartarsingh had seen all this occurrence. It was also stated by him that all the four accused had beaten him because of the previous enmity. Shri Puranchand, who examined Hakimsingh, has recorded a note on the statement that Hakimsingh was in full senses, that the statement was recorded at 10.20 a. m., that it was read over to Hakimsingh and admitted by him to be correct.

The Magistrate Puranchand has also been examined as a prosecution witness. He has stated that he was quite satisfied before recording Hakimsingh's statement that he was in a fit condition to give his statement. He has been cross-examined at length and his statement has remained unshaken.

6. Learned Counsel for appellants has urged that a dying declaration is a weak type of evidence and it is unsafe to convict an accused on its basis. In support of his contention, he has referred to the case of - Ram Nath Madhoprasad and Others Vs. State of Madhya Pradesh, In that case it was observed by their Lordships as follows:

It is settled law that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might well lie drawing upon his imagination while he was making the declaration.

7. It was in the light of this observation that their Lordships then examined the dying declarations & found them unreliable. It may be observed that in the present case, the prosecution case does not depend merely on dying declaration. Moreover, In the case cited above, the dying declarations were said to have been made by the deceased on different occasions to different persons.

In an oral dying declaration, which is sought to be proved by the prosecution there is always a chance for something being added or something being subtracted by the persons before whom it is made. In the present case, the dying declaration has been recorded in writing by the Magistrate. It was read over to the deceased and, therefore, there can be no doubt about the fact that whatever is mentioned in the document Ex. P-1 is the faithful statement of the deceased himself.

It may also be observed that in the present case, it cannot be said that Hakimsingh might be mentally and physically in a state of confusion or that he was drawing upon his imagination at the time when he was examined. The reason is that the Magistrate, who examined Hakimsingh has clearly stated that the deceased was in a fit state of mind and he understood whatever he was saying. Even then, there is one weakness in the dying declaration that the accused had no chance to cross-examine the deceased and, therefore, it cannot be given the same value as a statement which is given in the court.

Learned counsel for appellants has urged that no value should be attached to Ex. P. 1 because the deceased had a chance to consult his relatives and it is not unlikely that he might have been influenced by those persons and for that reason, he might have dropped out the real accused and substituted or added the names of the appellants. In support of his argument, he has referred to - "Bhanwarsingh v. The State" ILR (1953) Raj 567 .

It may be observed that if a dying declaration is made in circumstances in which there arises a suspicion that the deceased might have been prompted by his friends or sympathisers to drop out some of the culprits and to substitute or add other, then it must be used with the greatest possible caution. At the same time, it may be remarked that imaginary suspicion should not be created and dying declaration should not be thrown out Without good reasons. For instance, where a person is assaulted by only one or two persons and if his dying declaration is properly recorded, and if there is no circumstance to doubt his statement, his dying declaration should not be discarded simply on an imaginary suspicion that he might have substituted another person for the real culprit.

A confusion is likely to arise only in cases where there may be a number of accused assaulting a particular person. In the present case, the deceased had named only four persons as his assailants and looking to the number of injuries which he had received, it cannot be suspected that he might have added the name of some innocent person,

There was no reason for him either to leave out the real culprit and substitute another man in his place. The occurrence had taken place early morning. The deceased was removed to the hospital at about 9 a. m. He was examined only after about an hour or so and therefore, I see no reason to suspect that he was prompted by his relatives to drop out the real culprits or to substitute or add innocent persons in their place.

If the mere presence of relatives be considered to be a ground for suspicion, then most of the dying declarations would have to be thrown out because it is but natural that friends and near relatives must reach the injured person as soon as information is received.

8. As stated above, the conviction of the appellants in this case is not based merely on the dying declaration. There is further evidence of two eye-witnesses namely P. W. Kema and P. W. Kartarsingh. Learned Counsel for appellants has tried to urge that their statements are not reliable since there are certain contradictions in the statements of these persons and their previous statements which they had given before the police. I have carefully gone through the statements of both these persons.

So far as P. W. Kartarsingh is concerned, I do agree with learned Counsel for the appellants that his entire statement cannot be relied upon because P, W. Kema has stated that he had met this witness when he had run back 10 or 15 karams from the site of occurrence, Kartarsingh has given the description of the occurrence as if he was present from the very beginning.

It is obvious that he has reiterated a part of the hearsay story as if he had seen the entire occurrence. I would not, therefore, place much reliance on that statement. He can be relied only to the extent that he had arrived at the scene before the assailants left the place and he had also seen them beating the deceased. As regards the witness P. W. 3 Kema, he has been relied upon by the

trial court and I see no reason to discard his evidence.

He was a Siri of the deceased and, therefore, it was only natural for him to accompany him to field. He has corroborated the entire story as disclosed in Ex. P. 1 referred above. It was he who Informed Vichitrasingh brother of the deceased and other relatives about this occurrence. It is no doubt true that there are some minor discrepancies in his statement in the police and his statement in the trial court, but the discrepancies are not material. Thus, his statement read with Ex. P. 1 leaves absolutely no doubt that it was the four appellants and nobody else who caused all the injuries to the deceased.

9. Learned Counsel for appellants has urged that Ditasingh and Ajmersingh II should not have been convicted u/s 326 read with Section 34, I. P. C. Learned Counsel has referred to the case of - Pandurang, Tukia and Bhillia Vs. The State of Hyderabad, In that case it was Observed by their Lordships that

in the case of Section 34 it is well established that a common intention presupposes prior concert. It requires a prearranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all.

It would suffice to say that this Court has always taken this view and there can be no two opinions so far as the principle laid down by their Lordships is concerned. These observations, however, do not apply to the facts and circumstances of the present case because there can be absolutely no doubt that all the four accused had a prior meeting of minds and they had already planned the crime committed by them.

It is established beyond any doubt that all of them were armed with sharp and blunt weapons. They were lying in ambush together at one place. They all attacked the deceased together with the weapons and they did not leave him till they were satisfied that they had broken both of his legs. The very fact that Gondasingh asked the remaining three if the legs of the deceased were completely broken and they replied in the affirmative shows that they had a common intention to cause him grievous hurt. In my opinion the trial court has committed no error in applying Section 34, I. P. C., to this case.

10. Learned Counsel has also urged that the two spears recovered by the police could not cause the injuries which were found by Dr. Gulati on the person of the deceased. In this connection it would suffice to say that the weapons produced by the police have not been sent to the Chemical Analyser and, therefore, it cannot be said that these very instruments were used by the accused.

It appears that the police officers seized whatever instruments they could lay their hands upon. I agree with the learned Counsel to the extent that the two pointed weapons recovered by the police could not have been used by the assailants because, if these spears were used, the deceased would have received piercing wounds and not the clear cut incised wounds as they have been

mentioned by P. W. 7.

Even if no weapons of offence were recovered by the police, the present case would not have been affected because it is certain that both sharp and blunt weapons were used in this case.

11. Lastly it is urged by appellants' learned Counsel that three of the appellants are young boys and, therefore, the sentence awarded to them should be suitably reduced. In my opinion, this request is also not proper. Gondasingh has given his age as 38/39 years, Ditasingh and Ajmersingh II have given their age as 22 years while Ajmersingh I has given his age as 20 years. There is no doubt about the fact that the latter three are young boys.

But the crime committed by them is very serious. They are responsible for causing the death of Hakimsingh. It would be a misplaced clemency to reduce the sentence which has been awarded to them.

12. The appeal is therefore dismissed.