
(1985) 01 RAJ CK 0013
In the Rajasthan High Court
Case No : Criminal Appeal No. 103 of 1981

Gyarsaya and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-01-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 323, 324, 34, 447

Citation : (1985) WLN 652

Hon'ble Judges : S.N. Bhargava, J; S.K. Mal Lodha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Surendra Nath Bhargava, J.—This is an appeal against the judgment order dated 24th January, 1981 of Sessions Judge, Jaipur District Jaipur convicting and sentencing the accused appellants under Sections 447, 302, 302/34, 323, 323/34 IPC.

2. The prosecution case briefly stated is that Smt. Bhuri wife of Mehar Chand submitted a written report to the Additional Superintendent of Police on 7-11-1978 at 11.45 p.m. that she was staying with her husband Mehar Chand in Village Tewari, Tehsil Viratnagar District Jaipur after her husband had served in the Police for 14 years and were in possession of 30 bighas of Sawaichak land and was cultivating the same for last 10-15 years. Her husband and her son were busy in cutting the grass, when suddenly Gyarsa, Sonya, Cheetar and one more person, whose name she could not recollect but whom she could recognise, came to the field on 6-11-1978 carrying sword, farshi and sticks and gave beating to her husband, as a result he died at the spot. The S.H.O., Police Station Viratnagar was in league with the accused persons and they are not attending or carrying on the investigation and they have not even visited the spot to see the dead body. The Addl. Superintendent of Police ordered the S.H.O. Viratnagar to register the case and proceed with the investigation. Thereafter a regular FIR

(Ex. P. 2) was drawn on 8-11-1978 at 2 am. and thereafter the S.H.O. went to the site along with Dr. R.C. Sharma (PW 5). Panchnama, was prepared and the dead body was examined by Dr. R.C. Sharma. Dr. R.C. Sharma found the following injuries on the body of the deceased.

Abrasion:

- (1) 5" x 5" left tribial surborecity;
- (2) .75" x .5" below left knee;
- (3) .5" x .5" just above left knee;
- (4) .5" x .25" lateral side of left upper arm;
- (5) .5" x .5" lateral side of left upper arm;
- (6) 1" x .25" margin of the left half of lower lip;

All abrasions were dry and black in colour and ante-mortem in nature.

Bruises:

- (1) 9" x 1" lateral side of left upper arm;
- (2) 5" x 1" lateral side of the left shoulder;
- (3) 3" x 1" lateral side of right forearm;
- (4) 4" x 4" multiple bruises over lapping each other at front of right upper arm;
- (5) 3" x 4" multiple bruises over lapping each other at front or left upper arm;
- (6) 9" x 1" back of left thigh;
- (7) 8" x 1" left hip;
- (8) 2" x 1/2" left parietal area of scalp;

Colour of the bruises was bluish which is denser at margines as compared to the central part. All the bruises were ante-mortem.

Haemotoma:

- (1) 3" x 1.5" middle of fore head;
- (2) 3" x 2.5" around right sternomastoid joint with abrasion;
- (3) 3" x 3" left mandiblur lower ranus.

Lacerated Wounds:

- (1) 1" x .25" x 5" right parietal area posterior half transverse in direction;
- (2) 1" x .25" x .5" anterior half of left parietal area transverse in direction;
- (3) 1" x .5" x thickness of external ear at the middle of left external ear.

The blood stained land and blood stained stick were seized from the site and site plan (Ex. P. 3) was also prepared. Accused appellants Gyarsaya, Sonya, Cheeter and one Budha were arrested. Smt. Bhuri was also examined by the Doctor Her injury report is Ex. P. 7. She had received 5 simple injuries by blunt weapons. Ram Gopal son of the deceased was also examined by the Doctor and he received one incised wound on the left palm and 3 lacerated wounds on the skull region. All injuries were simple in nature and were caused by blunt object. Whereas, Shyam Lal another son of deceased had received 3 simple injuries by blunt object. His injury report is Ex. P 6. After completing usual investigation, Prosecution filed a challan before the Munsiff and Judicial Magistrate, Shahpura, who committed the case to the Sessions Judge. Learned Sessions Judge, Jaipur District framed charges against all the four accused persons under Sections 447, 302, 302/34, 323, 323/34, 324 and 324/34 IPC. The accused denied the charges and claimed trial. The prosecution examined as many as 14 witnesses in support of its case. The accused in their statements u/s 313 Cr.PC denied the charges and examined four witnesses in defence. Learned Sessions Judge after hearing and considering the evidence convicted the accused appellants as aforesaid and acquitted. Budha Ram of all the charges giving him the benefit of doubt and it is against this judgment and order of conviction and sentence that the present appeal has been tiled.

3. We have heard learned counsel for the accused appellants as well as learned Public Prosecutor and have also carefully gone through the record of the case.

4. PW 1 Smt. Bhuri wife of deceased Mehar Chand who had lodged a report (Ex. P 1) before the Additional Superintendent of Police, has deposed in the court that her husband Mehar Chand and her son Ram Gopal and his wife Devki were cutting the grass and her another son Shyam Lal had gone to bring water. Accused Sonya with sword in his hand, Cheetar having Farshi and Gyarsa and Budha having lathies came there. Sonya inflicted a blow by to sword her husband. Cheetar inflicted a Farshi blow on his head. Gyarsa inflicted a lathi blow on the left bow and Budha inflicted lathi blow on the right "Kanpati". Mehar Chand fell down on the ground. Thereafter Gyarsa, Cheetar gave a farshi blow on the left hand of Ram Gopal and she was given beating by Gyarsa by stick. Thereafter all the four accused persons started beating Mehar Chand and then ran away. Mehar Chand died on the spot. No body was available at that time near the spot. When Shyam Lal came there he had also received injuries which were inflicted by Gyarsaya. They took the dead body of Mehar Chand to the hut. Next day, S.H.O. Bairath came and she asked him to see the dead body which was lying in the hut but he did not pay any attention and went back. Then she came to the village and wanted to meet the Sarpanch who was not available and, therefore, she came to Jaipur and lodged a written report to the Addl. Superintendent of Police. In cross-examination she has admitted that the land in question was a Charagah and that she had paid Rs. 400/- in Tehsil. Accused do not cultivate that land and there is no field of the accused persons near that land. None of the accused persons had received any injury at that time. The

house of the accused was at a distance of about 10-12 spaces. The crop of Gawar was being sown on the disputed land. The accused had started beating as soon as they came there, without saying anything. She was cross-examined on several omissions in the written report Ex. P 1 but she could not give any satisfactory explanation. She has specifically denied that Gyarsaya and Sonya had asked them not to cut the grass and on their asking her husband and her son Ram Gopal had beaten them.

5. PW 2 Devki is the wife of Ram Gopal s/o deceased. She has also supported the statement of Mst. Bhuri. Similarly, PW 3 Ram Gopal son of deceased Mehar Chand has also jointly supported the statement of Smt. Bhuri and Mst. Devki. PW 4 Shyam Lal is the another son of deceased Mehar Chand who was not an eye witness, but he has deposed that when he was coming with the water accused met him on the way and Gyarsya inflicted a lathi blow on his head and hand. He fell down and the accused went away. Thereafter, when he came to the field he found that his father had died because of the injuries and his mother Smt. Bhuri, brother Ram Gopal were also injured.

6. PW 5 is Dr. R.C. Sharma, who had examined the body on 8-11-78 and had also examined Smt. Bhuri, Ram Gopal and Shyam Lal. According to him there was no fracture of skull and the cause of death of Mehar Chand was coma due to compression of brain by effused blood caused by the blows on head. The post mortem report is Ex P 4 and the injury reports of Shyam Lal is Ex.P 5 and that of Ram Gopal and Smt. Bhuri are Ex. P 6 and Ex P 7 respectively. In cross examination, he has admitted that no single injury on the dead body of the deceased was sufficient in the ordinary course of nature to cause death. In this case the death took place because of excessive bleeding. There was no bone injury on the head. Brain tissues were not out. Injury No. 3 on the middle of the near can be caused with sharp as well as blunt object weapon. Injury No. 3 and could be caused as a result of one blow. Injury No. 2 can also be caused with sharp as well so blunt object. Incised wound can result from a blow inflicted with a cleft stick and the stick produced in the court was a cleft stick. He has further deposed that the injuries under the head incised wound can be caused by sword only when the force used is very small.

7. PW 6 Jaber Singh is a formal witness, who had produced the Khasra Girdawari (Ex. P 8) which was given to him by the Patwari during investigation.

8. PW 7 Ganpat Singh, PW 8 Prabhatya and PW 9 Shyam Behari Mathur are all formal witnesses.

9. PW 10 Kallu Ram was the Patwari of Tehsil Viratnagar, who has deposed that Khasra No. 1177 is Charagah measuring about 41-1/2 bighas. He has produced Ex. P 17 the report of Tehsildar Shyam Lal and a map (Ex.P 15). In cross-examination he has proved Ex. P 2 to Ex. P 6 the receipt of Lagan and has further admitted that the accused were in possession of Khasra Nos. 1172 and 1173, which are adjoining to Khasra No. 1177 and grass was growing both in

1172 and 1173.

10. PW 11 Himmat Singh is the S.H.O., who has conducted part of investigation.

11. PW 12 Ganpat Singh is a formal witness, who had recorded the wireless message (Ex. P 21) received from the Superintendent of Police.

12. PW 13 Bharat Singh is the S.H.O. who had conducted the investigation.

13. PW 14 Mukh Ram is the last witness who is also only a formal witness.

14. Gyarsaya accused in his statement u/s 313 Cr.PC has stated that Banuar Brahmin whose field is just near his field, told him that Mehar Chand, Gopal, Shyama, Bhuri and Devki were cutting grass from his field and, therefore, he went to the spot and asked them as to why they were spoiling the crop. They asked him to go back and when he wanted to lift the grass, they gave beating with back on his hand and head. As a result where of he became unconscious. Later on he made a report in the police station at about 5.00 p.m. (Ex. D 5) and he was medically examined a Sahapura and he was arrested from Sawai Mansingh Hospital, Jaipur. Accused Sonya and Cheetar have also denied the prosecution case. Accused have examined PW 1 Hanuman who has deposed that his field is just near the field of accused appellants and when he was doing Lawani in his field, Bhuridevi, Meharchand and Gopal were destroying the crop of Gyarsaya accused and when Gyarsaya came there with a small stick in his hand and asked them not to do so, there was exchange of hot words and they started quarrelling and fightine amongst themselves. Gyaraya was given beating and in defence he also gave some stick blows to the complainant party. They have also examined DW 2 Gopi, who was also in his field grazing buffalow near the field of Gyarsya where Mehar Chand, Bhuri and his son Gepal and his wife were cutting grass & destroying the crop of Gyasaya. Gyarsaya came with a Kapadi (stick) and asked them as to why they were cutting his crop. There was a dispute between Gopal and Gyarsaya. Gyarsaya was given beating and Gyarsaya also inflicted blows to save himself.

15. DW 3 Banwari has deposed that he had informed Gyarsaya that Mehar Chand, his wife, his daughter and son"s wife were cutting the crop from his field. DW 4 Gheesha Ram whose field is also near the field of Gyarsaya, saw Mehar Chand, Bhuri, Gopal, Devki and Sriyam cutting grass from the field of Gyarsaya. Gyarsaya told that he will not allow him to cut the grass. Thereafter, Gyarsaya also gave beating in self defence.

16. We have also carefully gone through the evidence in the case.

17. The incident had happened on 6-11-1978 in the after-noon and the report (Ex.P 1) by Smt. Bhuri was filed before the Addl. S.P. on 7-11-1978 at about 11.50 in the night that means after more than 30 hours, and the FIR was registered on 8-11-1978 at about 2 a.m. whereas Gyarsaya accused had lodged the FIR against the complainant party on 6-11-1978 itself at 5 p.m. in Police Station, Viratnagar and in the endorsement "Police Karynwahi" it has been

mentioned that Gyarsaya had received blood stained injuries on his head and left hand and Sonya had also received blood stained injuries. That clearly shows that some incident had happened. We have only to see as to under theses circumstances, the accused-appellant can be convicted u/s 302 IPC.

18. From the evidence on record, it is clear that the incident had taken place in the field of accused persons and the accused persons Gyarsaya and Sonya had also received injuries and the accused have produced four witnesses in defence, who have deposed that Gyarsaya first requested the complainant party not to destroy the crop but they insisted and when Gyarsaya resisted he was given beating, and thereafter Gyarsaya also gave beating to the complainant party. Looking to the nature of injuries received by the deceased is also the statement of Dr. R.C. Sharma (PW 5) it appears that sword was not used nor the Farshi was used by the accused persons. The injuries received by the deceased could be caused by blunt object and, therefore it cannot be said that the accused persons had any intention to commit the murder of deceased Mehar Chand and we are of the opinion that it was in self defence both of the property and the person that accused gave beating and inflicted blow to the complainant party. Merely because the prosecution has given the FIR in the case launched by the accused persons by lodging the FIR (Ex.D 5), it cannot be said that the accused are not entitled to the right of private defence. Accused persons were in jail and they could not persue their report. Moreover, there is no evidence of any pre-consert or that Mehar Chand was given beating in furtherance of common intention or object. Each accused shall be responsible for his own injury and the prosecution has not been able to prove as to which injury was inflicted by which accused person and the Doctor has also opined that no single injury on the dead body of the deceased was sufficient in the ordinary course of nature to cause death. Accused Gyarsaya was 64 years old on 21-7-1980 when his statement u/s 313 Cr.PC was recorded, so at present he is nearly 70 years of age. All the accused persons have remained in jail since 6-11-1976. Moreover there was no motive for murder of deceased Mehar Chand. It was at the spur of moment when Gyarasaya asked them not to cut the grass and destroy their crop and the quarrel took place between the accused and the complainant party and unfortunately Mehar Chand succumbed to the injuries. Moreover, the prosecution has failed to explain the injuries of the accused-appellants Gyarsaya and Sonya.

19. Looking to all the facts and circumstances of the case, we are of the opinion that the conviction of the accused appellants u/s 302 or 302/34 IPC cannot be maintained. The prosecution has not been able to prove the case against the accused appellants beyond reasonable doubt.

20. As a result, this appeal is allowed. The conviction of the accused appellants is set-aside and they are not acquitted of the charges levelled against them. The appellants be released forthwith, if they are not required in any other case.