
(2013) 10 RAJ CK 0052
In the Rajasthan High Court
Case No : Criminal Appeal No. 692 of 2004

Hajari Lal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 3 RLW 2314

Hon'ble Judges : Nisha Gupta, J; Mohammad Rafiq, J

Bench : Division Bench

Advocate : A.K. Gupta and Ms Chandrakala Sahu, for the Appellant; Javed Choudhary, Public Prosecutor, for the Respondent

Judgement

Nisha Gupta, J.—Both these appeals are related to same incident and arise out of a common judgment hence, they are being decided by this common judgment. These appeals u/s 374 Cr.P.C., have been filed against the judgment dated 8.6.2004 passed by Additional Sessions Judge (Fast Track), No. 2, Bundi in Sessions Case No. 79/2003 whereby the appellants have been convicted and sentenced as under:

Appellants Hajari Lal, Birdhi Lal, Ramesh Chand and Babu Lal

Under Section 147 IPC:- to undergo rigorous imprisonment for three months and fine of Rs. 500/- each. In default of payment of fine, he has to further undergo S.I. for 15 days;

Under Section 148 IPC:- to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/- each. In default of payment of fine to further undergo simple imprisonment for 15 days;

Under Section 302/149 IPC:- to undergo life imprisonment and to pay a fine of Rs. 1000/- each.

Under Section 326/149 IPC:- to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1000/- each. In default of payment of fine to further undergo

simple imprisonment for one month;

Under Section 324/149 IPC:- to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/- each. In default of payment of fine to further undergo simple imprisonment for 15 days;

Under Section 323/149 IPC:- to pay a fine of Rs. 500/- each. In default of payment of fine to further undergo simple imprisonment for 15 days;

Appellants Ram Laxman

Under Section 147 IPC:- to undergo rigorous imprisonment for three months and fine of Rs. 500/- each. In default of payment of fine, he has to further undergo S.I. for 15 days;

Under Section 148 IPC:- to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/- each. In default of payment of fine to further undergo simple imprisonment for 15 days;

Under Section 302/149 IPC:- to undergo life imprisonment and to pay a fine of Rs. 1000/- each.

Under Section 326/149 IPC:- to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1000/- each. In default of payment of fine to further undergo simple imprisonment for one month;

Under Section 324/149 IPC:- to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/- each. In default of payment of fine to further undergo simple imprisonment for 15 days;

Under Section 323/149 IPC:- to pay a fine of Rs. 500/- each. In default of payment of fine to further undergo simple imprisonment for 15 days;

(All the sentences were ordered to run concurrently)

2. The short facts of the case giving rise to these appeals are that PW/2 Badri Lal submitted a written report Ex. P/3 on 24.1.2003 at 10.00 PM stating therein that there exists one pond in the village and famine relief work was going on the same. In the periphery of this pond, persons of Mali caste made encroachments by putting bad. Bhanwar Singh submitted a written report to the Sarpanch and due to this reason Mali Community was having enmity with Bhanwar Singh. At about 7.30 on the day of occurrence, Bhanwar Singh was returning to his village Faulai. When he reached at bus stand, appellants Babu Lal, Laxmi Narayan, Ramesh, Pappu, Chauthmal, Hajarilal, Birdhi Lal and Ram Laxman Gurjar hidden there, attacked on him with sticks and Kulhari. The complainant was also returning to his home at that time from government work. Badrilal also came there. Hiralal also reached there as he was coming from his field, they also tried to save Bhanwar Singh in which complainant and Badri Lal Gurjar also received injuries. They shifted Bhanwar Singh to hospital. On this FIR No. 13/2003 has been registered for the offence under Sections 147, 148, 149, 323 and 307 IPC.

Next day Bhanwar Singh died and offence u/s 302 has been added and after usual investigation, charge sheet has been filed against 9 accused persons including the appellants for the offence u/s 147, 148, 149, 323, 324, 326, 302 and 307 IPC and the case was committed to Court of Sessions and thereafter transferred to Additional Sessions Judge (Fast Track) No. 2, Bundi. The court below has framed charges against the appellants for the offence under Sections 147, 148, 149, 302, 307, 326, 324 and 323 IPC. The appellants have denied the charges and claimed for trial. In support of its case, the prosecution has examined PW.1 Satyanarain, PW.2 Badrilal, PW.3 Satyanarain S/o Babulal, PW.4 Jodhraisinh, PW.5 Chhotusingh, PW.6 Laxmansingh, PW.7 Satyanarain S/o Girdhar, PW.8 Tejkanwar, PW.9 Kalyankanwar, PW.10 Badrilal S/o Motilal, PW.11 Hiralal, PW.12 Banshilal, PW.13 Shamboolal, PW.14 Babulal, PW.15 Lalsingh, PW.16 Prathviraj, PW.17 Babulal Meena S/o Mohanlal Meena, PW.18 Lalchand, PW.19 Nandkishore, PW.20 Hemraj, PW.21 Dr. O.P. Verma, PW.22 Rameshchand, PW.23 Ramrai, PW.24 Soji, PW.25 Ramswaroop, PW.26 Motilal, PW.27 Ramesh Kumar, PW.28 Dr. R.N. Yadav, PW.29 Ambalal, PW.30 Subhashchand Gupta, PW.31 Dr. Arvind Sharma and also relied upon documents Ex. P/1 to P/57. Statements of accused persons have been recorded u/s 313 Cr.P.C. Defence has also examined DW.1 Bhoja, DW.2 Sajna Devi, DW.3 Raghuveer, DW.4 Devkinandan Gaur, DW.5 Ramrai, DW.6 Rameshibai, DW.7 Dwarkabai, DW.8 Satyanarain and has relied on Ex. D/1 to Ex. D/20. After conclusion of the trial, accused Latoor, Laxminarain, Gopal Mali, Papulal and Chouthmal have been acquitted and present appellants have been convicted and sentenced, as referred above, hence these appeals.

3. The contention of the present appellants is that the whole story is concocted one. The witnesses have totally changed their version from their previous statements. The incident has occurred in a spur of moment. No immediate cause for the incident has been narrated in the First Information Report. All the witnesses are chance witnesses cannot be relied. PW/12 Banshi Lal has not been named in the FIR. Doctor has not stated that any injury was sufficient to cause death in the ordinary course of nature. Fatal injury has been attributed to Ram Laxman first time in the Court. Genesis has been changed in the court-statement. Application which was given by the deceased to the Sarpanch has not been produced. Hence bone of contention has not been established by the prosecution. Babulal has inflicted stone injury to Bhanwar Singh on his hand but no such injury is present on the person of Bhanwar Singh. Accused appellants Ramesh Chand and Hajari Lal have also received injuries. This is a case of free-fight, there was no premeditation of minds and offence u/s 149 IPC could not be made out. The death is due to excessive bleeding and injury has not been caused to any vital part of the body. There was no direct genesis for the offence, hence the present appellants be acquitted. In the alternative, the contention of the appellants is that case does not travel beyond the offence u/s 326 IPC.

4. Per contra, the contention of the Public Prosecutor is that evidence of witnesses is consistent. They are consistent in time, place and manner of the

incident. Fatal injury caused to the deceased is sufficient to cause death in ordinary course of nature and it has been verified by the post mortem report. There is some variance between the statement of witnesses from their previous statement but in the Court all are consistent. Injury to the deceased was so forceful that two ribs have been cut hence the court below has rightly convicted the appellants for the offence u/s 302 read with 149 IPC and no interference is needed.

5. Heard the learned counsel for the appellants as well as learned Public Prosecutor and perused the impugned judgment as well as the original record of the case.

6. PW/2 Badri Lal has lodged the First Information Report and his contention is that when Bhanwar Singh was coming to Bus Stand, Babulal has thrown stone on his leg. Badri Lal forbidden him for the same and when Bhanwar Singh, Badri Lal and he all were going to lodge the report, the appellant and other accused persons attacked on them. Babulal and Laxman were having Kulhari and others were having sticks in their hands. Hajari Lal has inflicted lathi blow on the head of Bhanwar Singh consequently Bhanwar Singh fell down. Thereafter, Birdhilal gave lathi blow at his left shoulder and Laxman Gurjar has inflicted Kulhari blow on his back. Ramesh has also inflicted lathi blow to Bhanwar Singh and when Badri Lal came there to intervene Babulal has inflicted Axe blow on his right hand and Birdhi Lal has inflicted injury to Badri Lal (PW/10) on his arm pit. Thereafter, Babulal has also inflicted another Axe blow on his head. His contention is that he has also intervened, Birdhi Lal inflicted lathi blow on his left hand. Hiralal also came there. Thereafter accused persons ran away. Bhanwar Singh was taken to Gendoli. Persons of Police Station Gendoli instructed them to took him to Bundi hospital. He was admitted to Bundi hospital where he died next morning and he has returned to lodge report Ex. P/3. His further contention is that Bhanwar Singh has lodged a report to Sarpanch objecting the possession of Mali community and in spite of it, Mali's have not been dispossessed from the disputed land.

7. The other eye-witness is PW/10 Badrilal who is also injured in the incident. He has stated that when they were going to lodged a report, the accused persons started beating. Laxman and Babulal were having Kulhari and others were having sticks. He has also stated that Hajarilal inflicted lathi blow on Bhanwar Singh and Babulal inflicted Kulhari blow and Laxman has also inflicted Kulhari blow on Bhanwar Singh at his arm pit. Birdhilal inflicted lathi blow on his left shoulder and when he intervened, Babulal inflicted Kulhari blow on his right hand fingers and also inflicted Axe blow on his head. He fell down thereafter all the accused persons inflicted injuries to him. PW/11 Heeralal has stated that first injury has been caused by Hajara to Bhanwar Singh with stick at his right side of head. Thereafter, Birdhilal inflicted lathi blow on his left shoulder and when Bhanwar Singh fell down, Laxman inflicted Kulhari blow on his arm-pit and Ramesh has also inflicted lathi blow to him. He has further testified the fact that Babulal

inflicted Kulhari blow to Badrilal from which his fingers have cut down and also inflicted Kulhari blow at Badrilal's head and all the accused person have inflicted injuries. PW/12 Banshilal is the another injured eye-witness who has also testified the same facts.

8. The contention of the appellants is that Banshilal has not been named in the FIR hence could not be relied upon. It is true that Banshilal is not named in the FIR as eye-witness but he has suffered injuries in the incident, hence his presence at the scene of occurrence could not be doubted. Thus, the eye-witnesses are consistent on the point that appellants have inflicted injuries to deceased and three injured persons complainant, Banshi Lal and Badri Lal Gurjar.

9. PW/8 Smt. Tej Kanwar is the wife of deceased who has also testified the injuries of deceased Banwar Singh that he suffered sharp edged injuries on head and back and bleeding. PW/9 Smt. Kalyan Kanwar, mother of the deceased has also testified that incident has taken place and Bhanwar Singh has died.

10. PW/5 Chhotu Singh is the brother of deceased. He has narrated the fact that when he was going to his Bada, he saw accused persons were running from the place of incident. PW/6 Laxman Singh has also testified the fact that he saw the accused persons running from the scene of occurrence and PW/16 Prithvi Raj has also testified the same fact. It also corroborated the presence of the present appellant on the scene of occurrence.

11. PW/21 Dr O.P. Verma has examined Bhanwar Singh and 5 injuries have been found on his person which are as under:

(i) Lacerated wound 6.5 x 1.5 x 1 cm clotted blood of. Bone deep at parietal region of right side of skull;

(ii) Incised wound 12 x 4 cm deep to pleural cavity profusely bleeding upto to lungs visible air bubbles coming from wound (surgical emphysema seen);

(iii) Bruise c 9 x 3 cm at lower part of right side of surgical emphysema chest at back;

(iv) Abrasion 3 x 2 cm at lateral aspect of left shoulder simple surface;

(v) Abrasion 4 x 3 cm posterior raddish part of left arm.

He has also examined the injured Badri Lal S/o Moti, and Badri Lal S/o Bhanwar Lal. Badri Lal S/o Moti has received 5 injuries out of which 4 injuries are of sharp weapon and one injury on his right index finger was found to be grievous in nature and Badri Lal S/o Bhanwar Lal has received four simple injuries and injury reports are Ex. P/22 and P/24 respectively. PW/28 Dr R.N. Yadav has examined injuries of Banshilal. He received two injuries of blunt weapon out of which one injury on right shoulder was found to be grievous in nature.

12. Dr. PW/21 Dr O.P. Verma has also conducted the post mortem of deceased Bhanwar Singh and prepared post mortem report Ex. P/25 and cause of death is

injury No. 2 which has been caused on back of the body Incised wound 12 x 4 cm deep to pleural cavity profusely bleeding upto to lungs visible air bubbles coming from wound and Doctor has also opined this injury sufficient to cause death, hence the contention of the appellants that injury was not sufficient to cause death has not been testified is not sustainable.

13. The other contention of the appellants is that Ram Laxman has inflicted this injury has been stated first time in the Court. It is true that in FIR this injury has not been attributed to Ram Laxman and from the previous statement of the witnesses also this injury has not been attributed to appellant Ram Laxman. But witnesses are consistent on the point that Ram Laxman was having Kulhari and all the witnesses in the Court has consistently stated that fatal injury has been inflicted by Ram Laxman. All the three witnesses are injured eye-witnesses, hence their evidence is worth reliable and can be relied and reliance has been placed on Abdul Sayeed Vs. State of Madhya Pradesh, wherein it has been held as under:

26. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant (s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".

27. While deciding this issue, a similar view was taken in, Jarnail Singh and Others Vs. State of Punjab, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:-

Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell.

In Shivalingappa Kallayanappa and others Vs. State of Karnataka, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In State of U.P. Vs. Kishan Chand and Others, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination

and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana*, (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.

14. Further, it has been held in *Abdul Sayeed* (supra) as under:

28. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

15. The other contention of the appellants is that all the witnesses are chance witnesses and cannot be relied upon. Admittedly, according to site plan Ex. P/4, the occurrence took place on way to the village Falai and witnesses were also going from the same way, they have occasion to see the occurrence. PW/2 Badrilal, PW/10 Badrilal S/o Bhanwar Lal and PW/12 Banshilal all are injured witnesses, hence their testimony could not be disbelieved only on the ground that they are chance witnesses and statement of PW/11 Heeralal is also in conformity with the other eye-witnesses.

16. In the light of above discussion, it can safely be concluded that Ram Laxman has inflicted fatal blow to deceased Bhanwar Singh and other accused persons have also caused injuries to Bhanwar Singh as well as to Badri Lal, Badri Lal S/o Bhanwar Lal and Banshilal. The other contention of the appellants is that there is no premeditation of mind and appellants are not sharing any common object. In FIR, the prosecution has tried to show that the appellants were at the place of occurrence in furtherance of common object but from the contents in the FIR the genesis of the incident has been totally changed in court statement and to show immediate cause it has been added that Babulal has inflicted stone injury to Bhanwar Singh on the leg whereas medical report reveals that Bhanwar Singh has not received any injury on his leg and PW/2 Badrilal and other witnesses has improved their version that they were going to lodge the report and that at that time appellants hidden behind the bushes attacked on Bhanwar Singh. All these narration has been exaggerated during the court statement. Such manner of incident has not been stated in the FIR. A bare reading of FIR suggests that no direct genesis or immediate cause of the incident has been disclosed. Thus the prosecution has suppressed the true manner of the incident. Apart from it, the injury has been caused to non-vital part of the body that is back of the deceased and post mortem report also suggests that death has caused due to excessive bleeding and hemorrhage shock and the contention of the appellants is that it is a case of free-fight and vicarious liability could not be fastened on the appellants.

Per contra, the contention of the learned Public Prosecutor is that accused appellants were forming an unlawful assembly sharing common object, it was not a sudden fight, hence there is no infirmity in the impugned finding.

17. This cannot be denied that in FIR, nothing has been stated that deceased and other eyewitnesses were going to lodge FIR or Babulal has caused any injury to Bhanwar Singh prior to the incident hence the genesis of the occurrence has been denied and significantly improved by the prosecution. There was no immediate cause or direct genesis of the occurrence and it seems that Bhanwar Singh was going to village and Heeralal and Badrilal came from different directions. Appellants have also received injuries which shows that it was a sudden and spontaneous reaction on the part of accused appellants. Injuries on both sides clearly prove that it was a case of free-fight and in such a situation, the accused appellants cannot be said to have formed an unlawful assembly and each appellant would be liable for his individual act only. It seems that dispute suddenly took place which has been suppressed by the prosecution. There was no premeditation thus the manner in which the incident has taken place substantiate the argument of the defence that it was a case of free-fight and in the light of the above, the analysis of the evidence goes to show that appellant Ram Laxman has inflicted fatal injury to deceased but as stated earlier, the occurrence has taken place in spur of moment, there was no premeditation of mind and only one injury has been attributed to appellant that too is not on the vital part of the body and Dr. PW/21 Dr. O.P. Verma has also stated that a common man could not know that what is surgical emphysema and it is possible that injury No. 2 and 3 could be inflicted by single blow and the cause of death is injury No. 2 as well as hemorrhage means excessive bleeding and looking to the above facts, the case does not travel beyond the scope of 304 Part-I. As regards appellant Hajarilal, he has inflicted injury to Bhanwar Singh on his head and also to Banshilal on his hand which have been found to be simple in nature, hence in view of the finding that it was a case of free-fight, appellant Hajari is only liable for the offence u/s 323 IPC.

Injury No. 4 of injury report Ex. P/20 caused to Bhanwar Singh has been attributed to appellant Birdhi Lal which was found to be simple in nature and by a blunt weapon. He has also inflicted injury to PW/2 Badri Lal on his left hand and injury to Banshi Lal has also been attributed to him but all these injuries are simple in nature. He is liable only for the offence u/s 323 IPC.

As regards appellant Babulal, the eyewitnesses are consistent on the fact that injury to Badrilal (PW/10) on hand and head have been inflicted by him with Axe and injury caused to hand on index finger has been found to be grievous in nature. Badrilal has received four incised wound out of which one is grievous in nature. All the eyewitnesses are consistent on this point that he inflicted these injuries. Hence Babulal is liable for offence u/s 326 and 324 IPC.

As regards appellant Ramesh, Badri Lal (PW/2) has stated that he inflicted lathi blow to Bhanwar Singh and PW/10 Badri Lal S/o Bhanwar Lal has also stated so

and PW/11 Heeralal has stated that he inflicted lathi blow on the right side of arm pit, hence he has also been attributed simple injury and he is also liable to be convicted only for the offence u/s 323 IPC.

As regards Ram Laxman he has inflicted fatal blow to deceased Bhanwar Singh but as stated earlier, the occurrence has taken place in spur of moment, there was no premeditation of mind and only one injury has been attributed to appellant looking to the above facts, the case does not travel beyond the scope of 304 Part-I.

In the light of the above, the conviction of the appellant Ram Laxman is converted from 302/149 to 304 Part-I and his substantive sentence is reduced to the period already undergone. He be released forthwith provided he deposits fine and in non deposit of fine he would further undergo the sentence awarded by the court below.

Appellants Hajari Lal, Birdhi Lal and Ramesh are convicted for the offence u/s 323 IPC and Babulal for the offence u/s 326 and 324 IPC, the ends of justice would be met by sentencing them for the period already undergone. Hajarilal is in jail, he be released forthwith if not required in any other case. Other appellants need not to surrender, their bail bonds and surety stand discharged.

Both the appeals are allowed as above.

Keeping in view, however, the provisions of Section 437A of the Code of Criminal Procedure, accused appellants are directed to forthwith furnish a personal bond in the sum of Rs. 20,000/- each, and a surety bond in the like amount, before the Deputy Registrar (Judicial) of this Court, which shall be effective for a period of six months to the effect that in the event of filing of SLP against this judgment or on grant of leave, the said appellants, on receipt of notice thereof, shall appear before the Supreme Court.