
(2003) 07 RAJ CK 0102
In the Rajasthan High Court
Case No : Criminal Appeal No. 721 of 1996

Jagannath and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

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

Citation : (2004) 1 RLW 191 : (2003) 4 WLC 419

Hon'ble Judges : Shiv Kumar Sharma, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : Biri Singh Sinsinwar, for the Appellant; S.C. Purohit, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

SHIV KUMAR SHARMA, J.—In respect of incident occurred on October I, 1995 five accused were tried for having committed murder of Moti Lal, by the learned Special Judge SC & ST (Prevention of Attrocities Cases) Sawai Madhopur. The learned judge vide judgment dated November 20, 1976 convicted and sentenced all the accused as under -

Under Section 148 IPC to suffer two years R.I.

Under Section 302/149 IPC to suffer imprisonment for life and fine of Rs.

500/- in default of payment of fine to further

sentence of one Year R.I.

Under Section 323/149 IPC to suffer one year R.I.

All the sentences were ordered to run concurrently.

(2). Briefly stated the prosecution case is that on October 1, 1995 the informant Banshi (PW. 7) and Moti (now deceased) were called by the appellants to their house to settle the boundary dispute. On hearing from Moti that question of fresh

settlement did not arise as the dispute had already been resolved before the villagers, accused Ram Gopal, Ramcharan, Paras Ram, Harphool, Jagannath and Mahaveer made assault on Moti with lathles and axe. When the informant intervened he was also given beating. Hearing hue and cry when Sheonath and Jailal came, the accused fled away. Moti, in an unconscious state was initially removed to the hospital at Behravanda but the doctor advised the complainant to take Moti to Sawai Madhopur. While Moti was taken in a bus to Sawai Madhopur, he died on the way near village Bodal and the complainant party alongwith the dead body of Moti was forced to get down from the bus. The informant then gave information to the Police Station Khandar over telephone. Alam Singh ASI (PW. 13) reached at village Bodal where a written report (Ex. P-17) was handed over to him by informant Banshi at 2.45 PM. Constable Chhota Singh (PW. 11) then carried the report to SHO Nohwar Singh (PW. 16) at P.S. Khandar where a case under sections 147, 148, 323, 302, 307 and 341 IPC was registered and investigation commenced. On completion of investigation charge sheet was filed only against five accused viz. Jagannath, Ram Gopal, Parasram, Ramcharan and Jagdish. In due course the case come up for trial before the learned trial Judge who framed charges under Sections 148, 302/149 and 323/149 IPC. The accused denied the charges and claimed trial. The prosecution in support of its case examined as many as 16 witnesses. In their explanation u/s 313 Cr.P.C. the accused claimed innocence and stated that they were falsely implicated in the case. On hearing final submissions the learned trial-judge convicted and sentenced the accused as indicated hereinabove.

(3). The prosecution case Is primarily founded on the testimony of informant Banshi (PW. 7), Chhitar (PW. 5), Ram Prasad (PW. 6), Sheonath (PW. 9), and Kailash (PW. 12). Then comes the evidence of Dr. P.C. Gupta (PWI 15) who had performed autopsy on the dead body of the deceased. Nohwar Singh (PW. 16) conducted investigation and got recovered weapons of offence at the instance of accused persons.

(4). Dr. P.C. Gupta (PW. 15) in his deposition stated that the death of Motilal was homicidal and as per post mortem report (Ex. P-25) Motilal sustained following ante mortem injuries and cause of his death was fissured commuted fracture of both parietal bones, extradural haematoma and shock resulting from intrathoresic hemorrhage from right lung:-

1. Lacerated wound with clotted blood 6cm x 1cm x 1 cm bone deep obliquely transversely on central vault at scalp with swelling margin irregular and abraded hair hulb crushed 12cm above the right ear.

On dissection at scalp there is diffuse dark colour haematoma aver both parietal bones but near scalp one skull bone, after removing the haematoma fistured commuted fracture of both parietal bone.

"L" on opening the skull bone there is diffuse dark coloured haematoma between skull bone and dural meter (extra dural haematoma) present all the mentugesal

brain congested brain matter congested.

2. Lacerated wound with dark colour clotted blood 2cm x 1/2cm x 1/2cm x 1/2cm transversely over left lower eye lid. Simple-Blunt.

3. Incised wound with dark coloured clotted blood 3cm x 1/2cm x 1cm transversely on lower parietal centred back margin smooth. Clean cut with defined with taineral wound. Simple, Sharp.

4. Stab wound with dark coloured clotted blood 6cm x 1cm x 3cm obliquely transverse on pasklre lateral surface upper 1/3rd of right leg with cut fracture at right fibula bone all muscle external surface at the cut margin smooth clean cut well defined angles sharp to injury grievous sharp.

5. Stab wound with dark colour clotted blood 5cm x 1cm x 2cm transversely on posterior surface of middle 11cm of left margin smooth clean cut well defined angles, sharp simple, Sharp.

6. Abrasion with dark colour clotted blood 4cm x 11cm vertically on external surface at upper 1/3rd at right thigh simple-Blunt.

7. Dark red colour bruise with Abrasion with clotted blood 15cm x 2cm obliquely vertical on right back with fracture at 5 to 10 ribs right side injury by blunt with red coloured bruises.

8. Red colour bruise 13cm x 3cm obliquely vertical on lower 1/2 at right back caused by blunt.

9. Red colour bruise: 16cm x 3cm obliquely transverse on lower 1/2 at right back with fracture underlying ribs injury by blunt.

10. Red colour bruise: 16cm x 3cm obliquely vertical on upper part of right buttock to extending to lower part of right back with fracture of underlying rib injury by blunt.

(5). Informant Banshi (PW. 7) deposed that on the pursuation of Ram Gopal, Paras Ram and Jagan Nath, Moti went to their house where they asked him to resolve the boundary dispute. On his saying that the dispute had already been settled, Ramgopal, Paras Ram, Jagdish, Ramcharan, Jagannath, Mahavir and Harphool made an assault on him with lathies and axe. Ramgopal inflicted two lathi-blows on the head of Moti whereas Paras Ram gave axe-blow on his feet and Ramcharan caused blows with lathi on his ribs. When informant Banshi made an attempt to intervene he was also given beating by Jagdish, Jagannath, Harphool and Mahavir on his head and back as a result of which he became unconscious and regained consciousness at Bodal from where he informed Police Station Khandar on telephone. Moti died at Bodal and they were, forced to get down from the bus. He then submitted written report (Ex. P-17). The said report was got written by one Ajit. In the cross examination Banshi stated that his house was at a distance of about 100-150 ft. from his brother Moti's house. The accused persons did not reside jointly in one house but they had their

independent houses. He and Moti did not go together but he went to the house of accused after sometime and found Moti in injured condition. He further stated that he got the report written by police. Ajit wrote the report at the hospital.

(6). Chhitar (PW. 5) stated that around 8-9 a.m. on hearing hue and cry in front of Ram Gopal's house when he reached there he had seen Paras Ram armed with axe and Ram Gopal, Jagdish, Ram Charan, Harphool, Jagannath and Mahavir with lathies. Ram Gopal inflicted lathi blow on Moti's head as a result of which Moti fell down then Paras Ram gave axe glow on the feet of Moti. Ram Charan gave lathi blow on his ribs. Banshi was also given beating by them. When they raised shouts the accused fled away. They then took Moti and Banshi in a Tractor Trolley to Hospital at Behrabda and then on the advise of persons present there proceeded to take Moti and Banshi in a Bus to Sawai Madhopur. Moti died near village Bodal and they were forced to get down from the Bus. Ram Prasad (PW. 6) Sheonath (PW. 9) and Smt. Kailashi (PW. 12) also corroborated the version narrated by Chhitar (PW. 5).

(7). The injuries sustained by Banshi are not superficial in nature. As per injury report (Ex. P-24) Banshi sustained following injuries:-

1. Lacerated wound 6.5cm x 1cm

with clotted blood

bone deep 3/4cm vertically cut at parietal

region of scalp 11.5cm over the ear

margin grievous abraded have bulb

crushed.

2. Red colour bruise 17cm x 12cm

Obliquely vertical at back

3. Abrasion 5cm x 1/2cm

with clotted blood

Obliquely vertical lower 1/2 of posterior

surface of Rt.arm

4. Red colour bruise 12cm x 2 cm

Obliquely vertical on upper part of left
back.

5. Red colour bruise 14cm x 2cm

Obliquely vertical on upper part of left

back 2, 1/4 near to injury No. 4.

6. Lacerated wound 4cm x 1cm x 1cm with clotted blood

Vertical on posterior aspect of left side of

scalp occipital parietal region margin

1 irregular and abraded hair bulb crushed.

(8). Mr. Biri Singh Sinsinwar, learned counsel appearing for the appellants contended that the prosecution evidence is not certain about place and time of lodging the report. As per statement of Banshi (PW. 7) there are two places of lodging the report one is Bodal and another is Hospital. Banshi had already informed the police" station Khandar on telephone, therefore, the written report (Ex. P-I 7) is hit by Section 162 Cr.P.C. Learned counsel further urged that all the prosecution witnesses have specifically implicated Mahavir and Harphool, but no charge sheet was filed against Harphool and Mahavir. Learned counsel further canvassed that all the witnesses examined by prosecution are interested witnesses and in absence of Independent witness the evidence of prosecution witnesses ought to have been discarded. Reliance is placed on B.N. Singh v. State of Gujrat etc. (1), Sohan and Anr. v. State of Haryana and Anr. (2), Rajeevan and Anr. v. State of Kerala (3), Nirbhay and Anr. v. State of Rajasthan (4), Deepak Kumar v. Ravi Virmani and Anr. (5), The State of Punjab v. Jagir Singh and Ors. (6), Baldev Singh and Anr. v. State of M.P. (7).

(9), Per contra, Mr. S.C. Purohit, learned Public Prosecutor supported the impugned judgment and canvassed that the presence of prosecution witnesses is natural, and as the incident had occurred in the house of accused non examination of independent witnesses is not fatal.

(10). Having considered the material on record we find that the testimony of Banshi has been corroborated by injury report Ex. P- 24. But Banshi in his cross examination admitted that when he reached at the spot Moti had already sustained injuries and his clothes got soaked with blood. Therefore we have to examine the testimony of other eye witnesses. Although in Mohar v. State of U.P. (8), the Apex Court indicated that testimony of an injured witness has its own efficacy and relevancy and the fact that a witness sustained injuries shows the presence of such witness at the scene but in the instant case Banshi had sustained injuries when he reached at the scene of incident after the assault was made by the accused on Moti. Other eye witnesses Chhitar (PW. 5), Ram Prasad (PW. 6) Sheonath (PW. 9) and Smt. Kailash (PW. 12) however categorically deposed against accused Ram Gopal, Parasram and Ram Charan. Their testimony is consistent against these three accused and could not be shaken in the cross examination. Although they are partisan witnesses but we find them credible qua Ram Gopal, Parasram and Ram Charan.

(11). In Ashok Kumar Pandey v. State of Delhi (9), the Apex Court propounded that the evidence of a witness cannot be discarded merely on the ground that he

is either partisan or interested or both, if otherwise the same is found to be credible.

(12). In *Munshi Prasad v. State of Bihar* (10), it was observed that the witnesses may be related but that does not mean and imply total rejection of the evidence; interested they may be put in the event they are so-it is the predominant duty of the court to be more careful in the matter of scrutiny of the evidence of these interested witnesses and if on such a scrutiny it is found that the evidence on record is otherwise trustworthy, question of rejection of the same on the ground of being interested witnesses would not arise. It is the totality of the evidence which matters and if the same creates a confidence of acceptability of such an evidence question of rejection on being ascribed as "interested witness" would not be justifiable.

(13). Non-examination of independent witness is not fatal in the facts and circumstances of this case. From the testimony of Banshi it is established that Ram Gopal, Paras Ram and Ramcharan had lathies and axe when Moti was lying down in injured condition. Investigating Officer Nohbar Singh (PW. 16) also deposed that he got recovered weapons of offence at the instance of these three accused. Their Lordships of the Supreme Court in *Komal v. State of U.P.* (11), propounded that non-examination of some witnesses who arrived at the place of occurrence during the assaulted and intervened in the matter would not affect the variety of the prosecution case when the testimony of the injured eye witnesses had been found to be trustworthy and was supported by medical evidence as well as objective finding of Investigating Officer. The ratio indicated in case law on which reliance is placed by the learned counsel for the appellants is distinguishable.

(14). The discrepancies shown in the statements of the witnesses by the learned counsel for the appellants are not material. The Apex Court in *Dharmender Singh v. State of Gujarat* (12), indicated that the evidence as a whole should be appreciated. If prosecution evidence as a whole rings true and inspires confidence then despite the contradictions, conviction can be recorded. As per the fact situation of the case, the deceased and the accused were neighbours. Boundry disputes existed between them. Although attempt to settle the dispute was made by the villagers but the accused were not satisfied and on the fateful day they called the deceased to settle the dispute and when the deceased did not agree for fresh settlement, the accused made assault on him. There are two versions in regard to birth of the FIR. Informant Banshi initially stated that it was got written by one Ajit at village. Bodal, thereafter he said that it was got written by the police and Ajit wrote it at the hospital. In the examination in Chief Banshi gave graphic narration of the incident put in the cross examination he deposed that even he reached he saw Moti in an injured condition. Testimony of Chhitar, Ramprasad, Sheonath and Kailashi is consistent qua the accused Ram Gopal, Paras Ram and Ram Charan in our opinion the prosecution has established beyond reasonable doubt that Ram Gopal, Ram Charan and Paras Ram, had

shared common intention to kill Moti and to beat Banshi. The Investigating officer did not file charge sheet against accused Mahaveer and Harphool although, they were named in the FIR. There are only vague allegations against Jagdish and Jagannath. We find similarity in the allegations levelled against Jagannath, Jagdish, Harphool and Mahaveer and the prosecution has not been able to establish the participation of accused Jagannath and Jagdish beyond reasonable doubt. But on that basis entire case of the prosecution can not be thrown out.

(15). The Apex Court in *Rizan v. State of Chhatisgarh* (13), indicated thus-

"Stress was laid by the accused appellants on the non- acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution arose. In essence, a prayer is to apply the principle of *falsus in uno falsus in omnibus* false in one thing, false in every thing) even if major portion of evidence is found to be efficient in case residue is sufficient to prove go it of an accused notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from the grain it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not run it from beginning to end."

(16). In *Bijoy Singh v. State of Bihar* (14), the Supreme Court observed that it is the duty of the court in cases where a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutinise the rest of his evidence with care and caution. If the remaining evidence is trust-worthy and the substratum of the prosecution case, remains intact then the court should uphold the prosecution case to that extent. In the case on hand the substratum of the prosecution case, qua the accused Ram Gopal, Paras Ram and Ram Charan remains intact and the evidence of Banshi, Chhitar, Ram Prasad, Sheonath and Smt. Kailashi against these accused is trustworthy.

(17). As a result of the foregoing discussions, we dispose of the instant appeal in the following terms-

(i) Appeal of appellants Jagannath and Jagdish stands allowed, their conviction under sections 148, 302/149 and 323/149 IPC is set aside and they stand acquitted of the said charges. They are on bail, they need not surrender and their bail bonds stand cancelled.

(ii) Conviction of appellants Ram Gopal, Paras Ram and Ram Charan under sections 148, 302/149 and 323/149 IPC is set aside instead we convict them u/s 302 read with Section 34 and Section 323 read with Section 34 IPC and sentence each of them as under-

Under Section 302/34 IPC to suffer imprisonment for life and fine of Rs. 500/- in default to further suffer one year RI.

Under Section 323/34 IPC to suffer one year RI.

The sentences are ordered to run concurrently. Appellants Paras Ram and Ram Charan are on bail, they shall be forthwith taken in custody and their bail bonds stand cancelled.

(iii) The impugned judgment of the learned trial judge stands modified as indicated above.