

(2004) 04 RAJ CK 0026
In the Rajasthan High Court
Case No : Criminal Appeal No. 17 of 2000

Jahanghir Khan and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (2005) 1 RLW 26 : (2004) 4 WLC 62

Hon'ble Judges : Sunil Kumar Garg, J;N.N. Mathur, J

Bench : Division Bench

Advocate : B.K. Mehar, Public Prosecutor, M.L. Garg, M.K. Garg and J.S. Choudhary, for the Appellant;

Judgement

Mathur, J.—Twelve appellants namely A-1 Jahanghir Khan, A-2 Barkattulla, A-3 Yunus, A-4 Ayub, A-5 Jakir, A-6 Josab Khan, A-7 Manohar Khan, A-8 Lukman Khan, A-9 Saddiq Khan, A-10 Farooq Khan, A-11 Noor Mohd. and A-12 Ibrahim Khan have preferred this appeal against the judgment of the Additional Sessions Judge No.3, Jodhpur dated 30.11.1999 whereby they have been convicted and sentenced as under: -

(i) 302/149 I.P.C. Appellants A-1 to A-6 and A-8 to A-12 have been sentenced for imprisonment for life and to pay a fine of Rs. 1000/-; in default of payment to further undergo one years" simple imprisonment. (ii)307/149 I.P.C. Appellants A-1 to A-6 and A-8 to A-12 have been sentenced to seven years rigorous imprisonment and to pay a fine of Rs. 700/-; in default of payment to further undergo seven months simple imprisonment. (iii) 326/149 I.P.C. Appellants A-1 to A-6 and A-8 to A-12 have been sentenced to five years rigorous imprisonment and to pay a fine of Rs. 500/-; in default of payment to further undergo five months simple imprisonment. (iv) 325/149 I.P.C. Appellants A-1 to A-6 and A-8 to A-12 have been sentenced to three years rigorous imprisonment and to pay a fine of Rs. 300/-; in default of payment to further undergo three months simple imprisonment. (v) 148 I.P.C. Appellants A-1 to A-6

and A-8 to A-12 have been sentenced to one years" rigorous imprisonment and to pay a fine of Rs. 200/-; in default of payment to further undergo two months simple imprisonment. (vi) 341 I.P.C. Appellants A-1 to A-6 and A-8 to A-12 have been ordered to pay a fine of Rs. 200/-; in default of payment to further undergo seven days simple imprisonment. (vii) 323 I.P.C. Appellants A-1 to A-6 and A-8 to A-12 have been sentenced to three months rigorous imprisonment and to pay a fine of Rs. 100/- ; in default of payment to further undergo one months" simple imprisonment. (viii) 326 I.P.C. Appellant A-7 Manohar Khan has been sentenced to five years rigorous imprisonment and to pay a fine of Rs. 500/-; in default of payment to further undergo five months simple imprisonment.

All the sentences have been ordered to run concurrently.

2. Briefly stated the prosecution case is that on 11.07.1998, PW-3 Ibrahim Khan lodged a written First Information Report at Police Station Bilara stating inter alia that in the morning at about 10:00 A.M. his father PW-5 Usman Khan and uncle Aladdin Khan were on way to their fields. When they reached near the field, appellants armed with deadly weapons came out from the hideous and mounted attack on them, Appellants A-2 Barkat and A-7 Manohar Khan gave lathi blows on the legs of PW-5 Usman Khan on account of which he fell down. Other accused persons inflicted injuries to Usman Khan by lathis. After causing injuries to Usman Khan, they chased Aladdin and caught-hold of him. A-12 Ibrahim Khan gave a lathi blow which struck on his legs on account of which he fell down. Thereafter, A-7 Manohar Khan gave a khoot blow causing injury on the head. A-2 Barkat and A-1 Jahanghir Khan also gave lathi blows causing injuries on the hand. A-11 Noor Mohd., A-5 Jakir, A-9 Saddiq Khan, A-3 Yunus, A-6 Josab, A-10 Farooq and A-7 Manohar Khan gave lathi blows causing injuries on various parts of the body. A-8 Lukman drove tractor on the legs of the Aladdin causing crush injuries. A-12 Ibrahim Khan also inflicted lathi blows on the hand. Cries attracted the neighbours namely PW-4 Hasam Khan and Mubarak Khan. All the accused persons seeing them, took their heels and escaped. Both the injured were admitted in the hospital. Aladdin died in the hospital. Police registered the case for offence u/s 302 I.P.C. and allied offences. Police inspected the site and prepared the site plan and inquest memo. Dead body was sent for post mortem. PW-8 Dr. Bheemdan Detha conducted the post mortem of the dead body of Aladdin and noticed following injuries vide Exhibit P-42:-

"1. incised wound : 6 cm x 2 cm x bone deep on right occipital parietal region. On dissection, underlying bone found fractured with haematoma on darameter.

2. Fracture deformity with left forearm dropped. On dissection, left radius and ulna found fractured in multiple pieces. Size of deformity swelling 8 cm x 5 cm.

3. Lacerated wound 3 cm x 1/2 cm x 1/2 cm left forearm.

4. Fracture deformity with leg dropped (right leg) lower 1/3rd. On dissection, right tibia fractured found in pieces and right fibula also fractured in multiple

pieces.

5. Haematoma with swelling 8 cm x 5 cm left calf.
6. Haematoma with swelling 8 cm x 5 cm lateral side of left leg.
7. Cut wound 8 cm x 3 cm x 3 cm between left middle finger and index finger. Metacarpal bone left index finger found cut.
8. Haematoma with swelling left foot dorsal side.
9. Fracture deformity externally found. 8 cm x 5 cm on right forearm middle half. On dissection right radius and ulna found fractured.
10. Bruise 10 cm x 2 cm right scapular region.
11. Bruise 10 cm x 2 cm right infra-scapular."

He found following bones fractured :-

- "1. Right occipital parietal bone of skull.
2. Left radius and ulna.
3. Right radius and ulna.
4. Right tibia and fibula in multiple pieces.
5. Left metacarpal bone of index finger.
6. Right 5th and 6th ribs posteriorly."

On opening the body, Doctor also found fracture of parietal bone and sub-dural haematoma in the brain. On opening the thorax, Doctor found the fracture of 5th and 6th ribs. In his opinion, the cause of death was shock due to multiple injuries and multiple fractures including fractured skull. He also examined the injuries of PW-5 Usman Khan vide Injury Report Exhibit P-43 and noticed following injuries:-

- "1. Haematoma with swelling 8 cm x 8 cm on left hand dorsal side.
2. Haematoma with swelling 10 cm x 8 cm on right forearm lower 1/3rd ventral side.
3. Cut wound 3 cm x 2 cm x 1/2 cm on right wrist joint.
4. Haematoma with swelling 8 cm x 8 cm on left knee front side.
5. Haematoma with swelling 8 cm x 8 cm on right knee front side.
6. Bruise 16 cm x 2 cm transversely over thoracic region across vat. Column.
7. Bruise 10 cm x 2 cm middle side of right scapular region.
8. Abrasion 2 cm x 1/2 cm on right arm."

He referred the injury No. 1 to 7 for radiological examination. He has proved X-

Ray report Exhibit P-44. On the basis of X-Ray report, he prepared the Report Exhibit P-43. He found the injuries No. 1 to 7 grievous in nature. Injury No. 8 was simple in nature. During the investigation police also recovered a blood stained khoot in pursuance of the information given by A-7 Manohar Khan. After usual investigation police laid charge-sheet against 12 accused persons.

3. Trial Court framed the charges against the appellants for offence u/s 148, 341, 323, 302/149, 307/149, 325, 325/149, 326 and 326/149 I.P.C. Appellants denied the charges levelled against them and claimed trial. Prosecution adduced oral and documentary evidence. Appellants in their statement u/s 313 of the Code of Criminal Procedure denied the correctness of prosecution evidence appearing against them. Appellant A-3 Yunus stated that deceased Aladdin and injured PW-5 Usman Khan along with 15-20 persons arrived on two tractors armed with deadly weapons with a view to take possession over their land. They burned their huts, hurled stones and made attempt to assault their women-folk. In defence they examined DW-1 Ram Chandra and DW-2 Bhanwar Lal. Trial Court found the charges framed against the appellants proved beyond reasonable doubt. Thus, learned Judge convicted and sentenced the appellants in the manner already noticed.

4. With the assistance of learned counsel for the appellants and the learned Public Prosecutor, we have perused and critically scrutinised the entire evidence on record. The First Information Report lodged by PW-3 Ibrahim Khan reflects almost contemporaneous account what had taken place on the spot. Prosecution has examined PW-3 Ibrahim Khan, PW-4 Hasam Khan, PW-5 Usman Khan and PW-12 Sattar Khan as eye witnesses of the occurrence. Out of four PW-5 Usman Khan is the injured eye witness. He has stated that there existed a dispute between the complainant party and the accused persons with respect to the land and passage. On 11.07.1998, at about 10:00 A.M., he along with his deceased brother Aladdin were on their way to field. There is a passage since time immemorial passing through the fields of accused persons for going to their field. When they reached near the field, accused persons Barkat Khan, Manohar Khan, Ibu Khan, Jahanghir, Noor Khan, Ayub Khan, Lukman Khan, Yunus Khan, Josab Khan, Jakir Khan, Saddiq Khan and Farooq Khan arrived. Barkat Khan inflicted injury on his legs and Manohar Khan gave a khoot blow on his hand. Other accused persons assaulted him by lathis. He sustained number of injuries resulting into fracture of ribs and other parts of the body. Aladdin intervened to save. A-12 Ibu Khan gave a lathi blow on his leg on account of which he fell down. A-7 Manohar Khan dealt khoot blow on the head of deceased Aladdin. Another blow by A-7 Manohar Khan was warded off by deceased Aladdin sustaining injury on hand. A-2 Barkat Khan and A-1 Jahanghir Khan also dealt lathi blows inflicting injuries on both hands. Aladdin sustained injuries on various parts of the body. At that time PW-4 Hasam Khan and Mubarak Khan also reached on the spot. He further stated that A-8 Lukman Khan ignited the tractor and drove causing crush injuries on the legs of deceased Aladdin. Both the injured were immediately removed to the hospital in a jeep brought by

Ibrahim. There is a lengthy cross examination. He was being confronted with the part of statement u/s 161 Cr.P.C. with respect to causing of injury by A-7 Manohar Khan by khoot but nothing has been elicited to discredit the testimony of this witness. Statement of PW-5 Usman Khan finds corroboration from the medical evidence apart from the statement of PW-3 Ibrahim Khan, PW-4 Hasam Khan and PW-12 Sattar Khan.

5. PW-4 Hasam Khan is the neighbour of the fields of deceased Aladdin. He stated that on 11.07.1998 at about 10:00 A.M. while he was working in his field, at about a distance of 10-20 pawandas, accused persons mounted attack on PW-5 Usman Khan and the deceased Aladdin. He stated that A-8 Lukman Khan drove tractor on the legs of deceased Aladdin. He also stated that A-12 Ibrahim Khan inflicted injuries to deceased Aladdin by gedi and A-7 Manohar Khan by khoot. He admitted in the cross examination that when he reached on the spot, both the injured were lying on the ground and accused persons were saying that they have killed two persons and they will also settle the score with other members of the family. Trial Court held that PW-4 Hasam Khan did not witness the incident. However, his evidence is relevant to the extent that when he reached on the spot, found both the injured lying on the ground and assailants present on the spot.

6. PW-3 Ibrahim has reiterated what he has stated in the First Information Report. He also admitted in the cross examination that when he reached on the spot, Mubarak Khan and PW-4 Hasam Khan had already arrived. In view of the said admission, Trial Court discarded his statement as eye witness. However, his evidence is relevant for the limited purpose. Similarly, PW-12 Sattar Khan also reached on the spot after occurrence, as such, Trial Court rightly discarded his evidence as eye witness.

7. PW-14 Chandan Singh is the Investigating Officer. He has stated that on 12.07.1998 A-7 Manohar Khan made a discloser statement Exhibit P-57 leading to the recovery of blood stained khoot vide Exhibit P-32. It was sealed and packed on the spot. Learned counsel has not challenged the link evidence. As per the F.S.L. Report Exhibit P-69, the blood spot on the khoot has been found to be of human origin and of "B" group. The blood spot on the cloths of the deceased have also found to be "B" group.

8. It is submitted by Mr. M.L. Garg, learned counsel for the appellants that prosecution has falsely implicated as many as twelve accused persons. There is absolutely no evidence worth the name against most of the accused persons excepting a bald, vague and general statement. Thus, in the circumstances of the case, the conviction of all the accused persons for offence u/s 302 with the aid of Section 149 I.P.C. is not sustainable. Learned counsel has placed reliance on the decision of Apex Court in Manoj @ Bhau and Ors. v. State of Maharashtra 1999 SCC 533. We find substance in the contention raised by the learned counsel. On careful scrutiny of statement of PW-5 Usman Khan, it clearly appears that A-7 Manohar Khan inflicted a khoot blows on the head of deceased Aladdin.

This part of the statement finds corroboration from the medical as well as the evidence of recovery. He has also attributed lathi blows to deceased by A-1 Jahanghir Khan and A-2 Barkat Khan. This part of the statement finds corroboration from the medical evidence, inasmuch as, there are fractures on the hands of deceased Aladdin. He further stated that A-12 Ibrahim Khan inflicted injury on the leg of deceased Aladdin. This statement again finds corroboration from the medical evidence. He also assigned role to A-8 Lukman Khan. He has stated that Lukman Khan ignited the tractor and drove it on the legs of deceased Aladdin. Post Mortem Report shows that there are crush injuries in the legs.

9. Our critical analysis of the record shows that the common object of unlawful assembly was limited to attack PW-5 Usman Khan and the deceased Aladdin and did not extent to the murder of deceased Aladdin. Thus, the accused persons who had actually caused injuries to deceased Aladdin are alone responsible for his murder, others would not be liable for the murder with the aid of Section 149 I.P.C. At the most it can be said that the common object of unlawful assembly was to cause simple and grievous injuries to PW-5 Usman Khan and deceased Aladdin. On careful consideration of evidence of PW-5 Usman Khan, we are of the view that there is neither any inconsistency nor such improbability which may discredit the testimony of this witness. He is an injured eye witness. He himself has sustained as many as seven grievous injuries. He is a most natural witness. His evidence evinces creditability. He has assigned specific role to appellant A-7 Manohar Khan, inasmuch as, that he inflicted khoot blow on the head of deceased Aladdin. When the deceased warded off by the blow given by Manohar Khan, he sustained injuries on hand. Thereafter, A-1 Jahanghir Khan and A-2 Barkat Khan dealt lathi blows causing injuries on the hand and other parts of the body. This part of the statement also finds corroboration from the medical evidence. He further stated that A-12 Ibrahim Khan inflicted lathi blow on the leg of deceased Aladdin. Similarly, A-8 Lukman Khan drove tractor on the legs of deceased Aladdin. This part of the statement also finds corroboration from the medical evidence. As far as the defence of the appellants is concerned, it is not in dispute that complainant party was unarmed. None of the accused persons have sustained injuries. In view of this, Trial Court has rightly considered and found the same not to be worthy and of credence. Thus, for what has been stated above, the conviction and sentence of appellants A-7 Manohar Khan, A-1 Jahanghir Khan, A-2 Barkat Khan, A-8 Lukman Khan and A-12 Ibrahim Khan for offence u/s 302/149 I.P.C. is well founded and does not suffer from any infirmity. However, as far as the conviction of other accused appellants is concerned, it is not sustainable for offence u/s 302/149 I.P.C.

10. Consequently, the appeal is partly allowed as follows:-

(a) The conviction and sentence of the appellants A-7 Manohar Khan, A-1 Jahanghir Khan, A-2 Barkat Khan, A-8 Lukman Khan and A-12 Ibrahim Khan is confirmed. Their conviction for the allied offences is also upheld.

(b) As far as the appellants A-3 Yunus, A-4 Ayub, A-5 Jakir, A-6 Josab Khan, A-9 Saddiq Khan, A-10 Farooq Khan and A-11 Noor Mohd. are concerned, they are acquitted of offence u/s 302/149 I.P.C. However, their conviction for offence u/s 307/149, 326/149, 325/149, 148, 341, 323 and 326 I.P.C. is confirmed. Their sentences on each count is reduced to the period already undergone.

(c) Appellants A-7 Manohar Khan, A-1 Jahanghir Khan, A-2 Barkat Khan, A-8 Lukman Khan and A-12 Ibrahim Khan are in jail. They will serve out the remaining part of the sentence.

(d) Other appellants viz., A-3 Yunus, A-4 Ayub, A-5 Jakir, A-6 Josab Khan, A-9 Saddiq Khan, A-10 Farooq Khan and A-11 Noor Mohd. shall be released forthwith, if not required in any other case.