

(2019) 11 RAJ CK 0057

In the Rajasthan High Court

Case No : Criminal Appeal No. 109, 702, 1036 Of 2017, Criminal Leave To Appeal No. 174 Of 2017

Javed And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 304(I), 307, 323, 324, 341
Arms Act, 1959 — Section 4, 25
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 11 RAJ CK 0057

Hon'ble Judges : Sabina, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Shyam Bihari Gautam, Sushil Pujari, Rekha Madnani, S.S. Hasan, Meenu Verma

Final Decision : Disposed Of

Judgement

Vide this order, above mentioned appeals/leave to appeal shall be disposed of.

Accused Javed, Nafis, Anish @ Koli, Arif Miyan, Aamad @ Janwar, Ramzani @ Kana, Shakeer @ Takla had faced trial in FIR No. 99 dated

18.3.2012 registered at Police Station Kotwali, Tonk under Sections 147, 148, 149, 323, 324, 307 and 302 of Indian Penal Code, 1860.

The trial court vide judgment/order dated 23.12.2016 ordered the conviction and sentence of accused Javed and Anish @ Koli under Sections 341, 302

IPC and 4/25 of Arms Act, 1959. Accused Ramzani @ Kana was convicted and sentenced for offences under Sections 341 and 323 IPC. Accused

Nafis, Arif Miyan, Aamad @ Janwar and Shakeer @ Takla were acquitted of the charges framed against them. Hence, accused Javed, Anish @

Koli and Ramzani @ Kana have filed appeals challenging their conviction and

sentence as ordered by the trial court, whereas, State as well as the complainant have filed leave to appeal/appeal respectively challenging the acquittal of some of the accused by the trial court and acquittal of accused Ramzani @ Kana under Section 302 IPC.

The prosecution story, in brief, as per the FIR is that on 18.3.2012 at about 8:30 PM, Nadir @ Imamuddin were standing in front of the shop of

Hamid. At that time, Javed, Ahmed, Anish and Sharif, were gambling in front of the shop of the complainant. The complainant stopped them from

doing so. Due to this reason, Hanif @ Karan, Shahid and Arif Miyan armed with swords and knives attacked the brother of the complainant with an

intention to kill him. When Nadir (brother of the complainant) intervened, he was attacked by Ramzani @ Kana, Aamad, Anish, Nafis with sharp

edged weapons. All the accused inflicted injuries to both the brothers of the complainant with an intention to kill them. Father of the complainant tried

to intervene to save his sons but he was also attacked by the accused and father of the complainant also suffered injuries. On an alarm raised by the

father of the complainant, Samiuddin @ Dabbu (brother of the complainant), Ahmed, Gullu, Rajjak, Farid and other persons tried to save them. Injured

were removed to the hospital for treatment. Both the brothers of the complainant succumbed to their injuries in the hospital.

After completion of investigation and necessary formalities, challan was presented against the accused Javed, Nafis, Anish @ Koli, Arif Miyan,

Aamad @ Janwar, Ramzani @ Kana, Shakeer @ Takla.

Charges were framed against the accused under Sections 148, 302 or 302/149, 323 and 341 IPC. Charges were also framed under Section 4/25 of the

Arms Act against the accused Javed and Anish @ Koli.

Accused did not plead guilty to the charges framed against them and claimed trial.

In order to prove its case, prosecution examined seventeen witnesses during trial.

Accused when examined under Section 313 Cr.P.C., prayed that they were innocent and had been falsely involved in this case. It was pleaded by

accused Javed that prior to the incident, Samiuddin @ Dabbu brother of the deceased was standing in front of his house and abused Anish @ Koli

under the influence of liquor. Accused Javed stopped Samiuddin @ Dabbu from doing so and due to this reason Samiuddin @ Dabbu went home after

threatening them and came to the spot alongwith his brothers, father, Nasir, Tahir Akhtar, Gullu and 16/17 other persons armed with swords and

knives. He went home and at that time Barat of his brother-in-law was leaving the house. Samiuddin @ Dabbu and others entered their house after

breaking the articles lying outside. Deceased had suffered injuries as they had fallen on the pegs supporting electricity poles.

Accused examined two witnesses in their defence.

Learned counsel for the accused Javed, Anish @ Koli and Ramzani @ Kana has submitted that the said accused were also liable to be acquitted of

the charges framed against them as the complainant party had come to the spot armed with weapons. Accused Javed had also suffered injuries in the

incident. Accused did not have any previous enmity with the complainant party and had no motive to commit the murder. In fact, the complainant

party was the aggressor. At the most, it could be said to be a case of free fight and the case would not fall within the ambit of Section 302 IPC but

would fall within the ambit of Section 304 (I) IPC.

Learned State Counsel has opposed the appeals filed by the accused Javed, Anish @ Koli and Ramzani @ Kana and has submitted that all the

accused had come to the spot armed with weapons and in the incident-in-question two persons were murdered and one person had suffered injuries.

From the statement of prosecution witnesses, it is evident that all the accused had participated in the crime. Hence, trial court had erred in ordering the

acquittal of accused Nafis, Arif Miyan, Aamad @ Janwar and Shakeer @ Takla. Accused Ramzani @ Kana was also liable to be convicted and

sentenced for offence under Section 302 IPC.

Learned counsel for the complainant has supported the arguments raised by the learned State Counsel.

Present case relates to murder of Nadir @ Imamuddin and Shakir @ Naimuddin. In the incident-in-question, Nasiruddin @ Nanne Khan (P.W.4) had

suffered injuries. Thus, the case rests on eyewitness account.

FIR in the present case was lodged by the complainant Nasir @ Jamiluddin. During trial, complainant appeared in the witness box as P.W.6 and

stated in his cross-examination that he had not witnessed the incident. He had disclosed the incident as per information given to him by the other

persons.

Abdul Rajjak P.W.1 while appearing in the witness box supported the prosecution case in his examination-in-chief but in his cross-examination he

deposed that he had not witnessed the incident.

Gullu @ Fakhruddin P.W.2 has deposed that on 18.3.2012 at about 8:30 PM, he alongwith Farid and Aamad was present on Mohammed Khan's

culvert in front of barbar shop. Shakir, Nadir and Nanne Khan were also standing in front of the shop of their brother. In the meantime, Javed, Anish

@ Koli, Shakeer @ Takla, Nafis, Sharif, Ramzani, Arif and Aamad came towards their houses. Javed and Anish were armed with knives and

Ramzani was armed with a stick. At the instigation of Javed, Shakeer @ Takla, Nafis and Sharif caught hold of Shakeer and Javed gave knife blow to

Shakir in his chest. At the instigation of Anish, Ramzani, Arif and Aamad caught hold of Nadir and Anish gave knife blow in the chest of Nadir.

Nasiruddin @ Nanne Khan raised alarm and Ramzani gave a stick blow on the head of Nasiruddin @ Nanne Khan. As a result, injured fell on the

ground and accused gave them kick blows. Accused also threatened that in case anybody became witness against them, then he would also be killed.

Injured were removed to the hospital for treatment. However, Shakir and Nadir succumbed to their injuries in the hospital. Deceased had stopped the

accused from gambling in front of their shop and due to this reason they had been murdered.

Farid P.W.3 has corroborated the statement of Gullu @ Fakhruddin P.W.2. Nasiruddin @ Nanne Khan P.W.4 has corroborated the statement of

Farid P.W.3 and Gullu Fakhruddin P.W.2.

Dr. Hamid Hussain P.W.11 deposed that on 18.3.2012 he had medico-legally examined injured Nasiruddin @ Nanne Khan and proved his medico-

legal examination report Exhibit-P/22. He further deposed that on 19.3.2012 being member of the Medical Board had conducted Post Mortem

examination on the dead bodies of deceased Nadir and Shakir and proved Post Mortem Reports Exhibit-P/23 and Exhibit-P/24.

A perusal of Exhibit-P/23 Post Mortem Report of deceased Nadir reveals that he had suffered following injuries:-

Incised and penetrating wound (Stab wound):- 5cm x 1.5 x cavity deep on left lower part of chest. Anteriorly vertically placed, 2cm left from

midline, overlying left 6th, 7th, 8th ribs, cutting of left 6th, 7th, 8th ribs in front

by sharp weapon. Incised wound on pericardium with blood in pericardial cavity. Incised wound 4cm x 1½ cm x cavity deep Heart on Anterior surface of Rt ventricle. Both pleural cavities (right and left) contained about 2

litres blood. Right side of heart and left side heart were empty. Excessive hemorrhage from heart caused shock and death by sharp weapon.â??

As per opinion of the Board of Doctors, cause of death of deceased Nadir was shock due to excessive hemorrhage from heart and injury no.1. Injury

No.1 was ante mortem in nature.

A perusal of Exhibit-P/24 Post Mortem Report of deceased Shakir reveals that deceased had suffered following injuries:-

â??1. Incised and penetrating wound (Stab wound):- 6cm x 1.5 x cavity deep on left lower part of chest. Anteriorly, vertically placed, 2cm left from

midline, overlying left 7th, 8th and 9th ribs, cutting of left 7th , 8 th, 9th ribs in front by sharp weapon. Incised wound on pericardium with blood in

pericardial cavity. Incised wound 2cm x 1½ cm x cavity deep Heart on Anterior surface of Rt ventricle near right border of heart. Right side of heart

and left side of heart were empty. Left thoracic cavity contained about 2 litres blood. Incised wound on left parietal cavity. Incised wound 4cm x 1cm

x 2cm, superior and anterior surface of left lobe of liver, about 1 litre blood present in abdominal peritoneal cavity. By sharp weapon. Severe excessive

hemorrhage from heart and liver caused shock and death.

2. Bruise red colour 1cm x 1½ cm, upper part on left side of cheek.

3. Bruise red colour 2cm x 1½ cm, upper part on right side of cheek.

4. Bruise red colour 1cm x 1½ cm, mid part on right side cheek.â??

As per opinion of the Board of Doctors, the cause of death was shock due to excessive hemorrhage from heart and liver and injury no.1. All the

injuries were ante mortem in nature.

Other witnesses examined by the prosecution relate to the investigation conducted in the case.

Raghuveer Singh P.W.15 has deposed with regard to the investigation conducted by him. In his cross-examination he deposed that during investigation

it has transpired that at the time of passing of Barat, some altercation had occurred between the accused Javed and Samiuddin @ Dabbu.

As per the eye-witnesses the occurrence had taken place as the accused had

been stopped from gambling in front of the shop of the deceased.

Apparently, all the accused had not come to the spot in conspiracy with each other to commit the crime. Thus, the learned trial court rightly came to

the conclusion that it was a case of sudden fight. Hence, the learned trial court rightly held that the offence under Section 148 IPC was not made out

in the facts of the present case.

So far as accused Javed and Anish are concerned, as per the eyewitnesses, they had inflicted injuries to deceased Shakir and Nadir respectively with

sharp edged weapon.

A perusal of the nature of injuries suffered by deceased reveals that injuries had been inflicted by sharp edged weapon with such force that their three

ribs have been cut and their heart was injured. Cause of death of the deceased was due to hemorrhage from heart. Although, in the present case,

accused Javed is attributed one injury to deceased Shakir and accused Anish @ Koli is attributed one injury to deceased Nadir, but the said injuries

had been inflicted with such force and keeping in view the seat of injuries, we are of the considered opinion that accused Javed and Anish @ Koli had

inflicted injuries to deceased Shakir and Nadir respectively, with a view/intention to commit murder. Hence, the argument raised by learned counsel on

their behalf that it could be said to be a case falling under Section 304(I) IPC is without any force.

After carefully going through the prosecution evidence, learned trial court rightly came to the conclusion that so far as accused Javed and Anish are

concerned, they were guilty of offence under Section 302 IPC. Statements of the eyewitnesses as well as injured Nasiruddin @ Nanne Khan P.W.4

inspire confidence with regard to the involvement of accused Javed and Anish in the crime. Statements of Naeem Taily D.W.1 and Mohammad

Anees D.W.2 fail to rebut the testimony of prosecution witnesses with regard to the involvement of accused Javed and Anish in the crime.

Although, it is the case of the accused Javed that he had also suffered injuries in the incident, but no such medical record has been proved by the said

accused to establish the fact that he had also suffered injuries in the incident. From the cross-examination of Raghuveer Singh P.W.15, it is evident that

at the time of arrest of accused Javed, it was found that there were some old injuries on his head and foot but there is no medical evidence on record

to connect the said injuries with the incident in question.

So far as accused Ramzani @ Kana is concerned, he has inflicted injuries to injured Nasiruddin @ Nanne Khan. As per Exhibit-P/22 injured had

suffered simple injuries. Hence, the learned trial court has rightly ordered the conviction and sentence of accused Ramzani @ Kana under Sections

341 and 323 IPC.

So far as accused Nafis, Arif Miyan, Aamad @ Janwar and Shakeer @ Takla are concerned, learned trial court rightly held that their presence at the

spot was natural as they were residing near the place of incident. The possibility that the said accused might have been falsely involved in the case

with a view to over-implicate the accused in the facts and circumstances of the present case, cannot be ruled out. The said accused were unarmed at

the incident.

Accordingly, D.B. Criminal Appeal No. 1036/2017 filed by Javed and Anish, D.B. Criminal Leave To Appeal No. 174/2017 filed by the State and

D.B. Criminal Appeal No. 702/2017 are dismissed.

So far as accused, Ramzani @ Kana is concerned, learned counsel for the appellant has submitted that accused Ramzani @ Kana has been

sentenced to undergo one year simple imprisonment under Section 323 IPC and the said accused has already undergone more than two months of

actual sentence. His sentence be reduced to the period already undergone by him. In the facts and circumstances of the present case, it would be just

and expedient to reduce the sentence of accused Ramzani @ Kana under Section 323 IPC from one year simple imprisonment to the period already

undergone by him. Consequently, the conviction of accused appellant Ramzani @ Kana under Section 341 and 323 IPC is maintained. However,

sentence qua imprisonment of accused Ramzani @ Kana under Section 323 IPC is reduced to the period already undergone by him and his sentence

qua fine under Section 323 IPC is maintained. His sentence under Section 341 IPC is maintained. D.B. Criminal Appeal No. 109/2017 filed by

Ramzani @ Kana stands disposed of accordingly.