
(1985) 07 RAJ CK 0042

In the Rajasthan High Court

Case No : Criminal (Jail) Appeal No. 371 of 1981

Kalu Lal and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-07-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (1985) WLN 659

Hon'ble Judges : Mohini Kapoor, J; M.B. Sharma, J

Bench : Division Bench

Judgement

Mahendra Bhushan Sharma, J.—The two accused appellants Kalu Lal and Gulab Chand have been convicted by the learned Sessions Judge, Jhalawar, u/s 302/34 and 307/34 IPC, in the judgment dated July 30, 1981, in the former count, each of accused has been sentenced to undergo life imprisonment and a fine of Rs. 1,000/- and in default of payment of fine to further undergo for six months rigorous imprisonment and in the later count each has been sentenced to undergo seven years rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine further undergo three months rigorous imprisonment. The substantive sentences under both the counts have been ordered to run concurrently.

2. In brief the facts of the case are that on Sept. 7, 1980, at about 11 a.m. Smt. Pana Bai and Smt. Gulab Bai were going through the fields of Guwart in village Churelia and it is alleged that both the accused persons followed them for about a mile and thereafter told them as to whether they have committed theft of Guwar. Both the accused persons gave blows with their respective weapons to Smt. Pana Bai and Smt. Gulab Bai. Smt. Bhuli Bai PW 2 was also with them and she was also beaten by the accused persons. Accused Kalu is said to be armed with an axe and accused Gulab with a sickle (Dantari). Ram Narain PW 4 and Duli Chand PW 5, who were in the nearby fields, grazing their she-goats, came to wards that side and saw that the accused persons are running-away. It was also

seen by them that two ladies Pana Bai and Gulab Bai are lying in the field in a pool of blood.

3. Ram Narain PW 4 went to the police Station Aklera, lodged the first information report and the investigation was set in motion. The autopsy was conducted of the dead bodies of Pana Bai and Gulab Bai by Dr. Ramesh Chandra Dubey PW 6 who found that there were as many as eight injuries on the dead body of Smt. Gulab Bai out of which five were by sharp weapon. In his opinion they could be caused by an axe and were ante-mortem in nature. The injuries were sufficient in the ordinary course of nature to cause the death. There was excessive haemorrhage from the wound of the neck.

4. Dr. Dubey also conducted the autopsy of the dead body of Pana Bai and there were as many as ten injuries, all by sharp weapon and could have been caused by an axe or sickle and were sufficient in the ordinary course of nature to cause the death. All the injuries were ante-mortem in nature.

5. Dr. Dubey further examined Smt. Bhuli Bai PW 2 and found that there were as many as seven injuries on her person Smt. Bhuli Devi injured had as many as five injuries by sharp weapon, which could be caused by an axe, and the rest injuries were caused by a blunt weapon.

6. Ramzan Khan PW 12 was posted as the S.H.O. Police Station Aklera at the relevant time. He took-over the investigation of the case and prepared various memos. He has also seized and sealed the blood smeared earth from the spot. The accused Gulab was arrested vide Arrest Memo Ex.P. 12 and Kalu, Ex.P. 14. At the time of arrest of Gulab, he was wearing Bushirt and Nicker, which were blood stained. They were taken into possession and were sealed. Kalu accused was also wearing a Panja and Bandi, were also blood-stained and they were also seized and sealed.

7. Gulab Chand accused, while he was in police custody made a discovery statement to Ramzan Khan, PW 12 that he has concealed a sickle in the field and he can get it recovered. Consequence to this information Ex.P. 24, he got recovered sickle. Similarly on the discovery statement of accused Kalu, an axe, at his instance was recovered. They were also sealed. The sealed articles were sent for Chemical Examination. The report of Chemical Examination is available on record. It appears from the perusal of Ex.Ps 28 and 29 that clothes of the accused persons were stained with human blood but the blood on the axe and sickle was disintegrated and their origin cannot be determined.

8. A charge-sheet was filed against the accused persons who pleaded not guilty of the charges and claimed to be tried. The accused persons were examined after the prosecution evidence to explain the circumstances proved against them and they stood on a bare plea of denial. Learned Sessions Judge placed reliance on the testimony of injured Bhuli Devi PW 2 the solitary eyewitness in the case as well as the statement of Ram Narain and convicted and sentenced the accused persons as afore-mentioned.

9. We have heard learned counsel for the accused appellants and the learned Public Prosecutor. The contention of learned counsel for the appellants is that in the statement of Bhuli Devi all that has come is that accused Gulab Chand gave a single blow to Smt. Pana Bai. He, at the time of occurrence was aged below 16 yrs. Because the Children Act was not in force in Dist. Jhalawar, he was not tried by a Children Court. He contends that looking to the age of Gulab Chand and the circumstances, in which the occurrence took place, it cannot be said that beating to Pannabai, Gulabbai & Bhulibai was administered in furtherance of the common intention of both accused persons. According to the learned counsel for the accused appellants, the accused Gulab Chand cannot be held responsible under-section 302 IPC by invoking the aid of Section 34 IPC.

10. We have given our careful consideration to the arguments advanced by learned counsel for the accused appellants and we are unable to agree with him. Bhuli Bai PW 2, to us, appears to be a witness of sterling-worth. She is injured and she has seven injuries, out of which five were by sharp weapon. She has also stated that Gulabchand also gave blows to her by a sickle. In the facts and circumstances of this case the presence of any other person, other than the two accused appellants, at the lime of incident is neither substantiated nor can be accepted. Merely because Bhulibai has stated that accused Gulabchand gave only one blow to Smt. Panabai it cannot be said that he did not participate in the beating of Gulab Bai. That apart, we have already referred to the injuries of both the deceased ladies as well as of Bhuli Bai. Smt. Bhuli Bai, as far as her injuries are concerned, has not stated that all the seven injuries were caused by the accused persons. Therefore, in our opinion one else but the two accused appellants caused the injuries, found on the body of two ladies Panna Bai & Gulab Bai, as well as of injured Bhulibai. Looking to the nature of the injuries, it can safely be said that the common intention of both the accused persons was to cause the death of Panna Bai and Gulab Bai and it arose at the spur of the moment. Common intention can be inferred from the facts of the case and in the instanst case the nature of the injuries leads to the only inference that the injuries were caused by both of accused persons in furtherance of the common intention to cause the death of Pana Bai and Gulab Bai. We, therefore, place reliance on the testimony of Smt. Bhuli Bai, to us she appears to be a witness of sterling-worth. That apart the statement of Bhuli Bai PW 2 is corroborated by the statements of Ram Narain and Sua Lal PW 5, who have stated that they reached the spot and Bhuli Bai told them that the accused persons Kalu and Gulab Chand caused injuries to Panna Bai and Gulab Bai, who were found by them to be lying in a pool of blood, with multiple injuries on their dead bodies.

11. The First Information Report of the incident was lodged immediately after the occurrence without any delay. The accused are named therein and it is contained therein that they inflicted injuries to the two deceased ladies as well as Bhuli Bai.

12. Thus we are of the opinion that the prosecution has brought home the guilt of each of the accused persons beyond any reasonable doubt. Both the accused

persons were rightly convicted and sentenced. We dismiss the appeal.

13. But the submission of Shri Gupta learned counsel for the accused appellant is that at the time of occurrence, Gulab Chand was aged below 16 years but because the Children Act was not in force in Jhalawar District, his case could not be tried by a Children Court and the accused could not be dealt with under the Rajasthan Children Act, 1970.

14. So far as the age of accused Gulab Chand is concerned, in the Arrest Memo, his age has been entered as 19 years. In his statement u/s 313 Cr. PC the accused gave his age as 13 years but the estimate of learned Sessions Judge so far as the age of accused is concerned was 18, years. The statement of the accused was recorded on July 20, 1981, and the occurrence took place on September 7, 1980, about one year prior to the occurrence. It is always not safe to place reliance on the estimation of the age of accused and the prosecution normally should produce evidence, in case there is a dispute about the age of the accused. Be that as may even as per the estimation of the age by the learned Sessions Judge, it can be said that the accused was aged about 17 years. The possibility therefore, cannot be excluded that the accused might have been aged below 16 years at the time of incident.

15. u/s 52 of the Rajasthan Children Act, 1970, even if a child is undergoing any sentence at the commencement of the Act shall, in lieu of under going such sentence, be sent to a special school or be kept in safe custody in such place and manner as the State Government thinks fit, for the remainder of the period of the sentence.

16. We are of the opinion that attention of the State Government should be drawn to consider the case of accused Gulab Chand under the provisions of Section 52 of the Rajasthan Children Act, 1970, in view of the fact that this Act has now been extended even to the district of Jhalawar.

17. A copy of this judgment be sent to the Home Commissioner for information and necessary action.