
(2005) 05 RAJ CK 0071
In the Rajasthan High Court
Case No : Criminal Appeal No. 411 of 1998

Kanhaiya Lal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 34, 447

Citation : (2005) 3 RLW 1797 : (2005) 3 WLC 326

Hon'ble Judges : V.K. Bali, J; Harbans Lal, J

Bench : Division Bench

Advocate : N.A. Naqvi, Mukesh Poonia and R.S. Agarwal, for B.N. Sandu, for the Appellant; Nirmala Sharma, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—The appellants Kanhaiya Lal, Laxman & Narain were tried for intentionally causing deaths of Jagdish and Dilsukh. The resultant trial culminated into the order of conviction and sentence dated 7.5.1998 passed by the learned Special Judge, SC/ST, (Prevention of Atrocities Cases), Baran. The appellants have been convicted u/s 302 read with Section 34 IPC and sentenced to undergo Rigorous Imprisonment for life as also to pay a fine of Rs. 500/- and in default of payment of fine to further undergo Rigorous Imprisonment for 15 days.

2. The occurrence leading to deaths of Jagdish and Dilsukh, as per prosecution version, had taken place on 9.10.1995 at 7.45 PM. The FIR with regard to the incident Ex.P.9 was lodged by Samay Raj son of Dilsukh. Samay Raj had got the written report written from one Chandrakant PW6. Special report with regard to the incident reached the concerned Magistrate at Baran on 10.10.1995 at 4.30 PM.

3. Samay Raj while unfolding the chain of events leading to deaths of Jagdish and Dilsukh got mentioned in his written report hat on the eventful day at 5:00

PM his father Dilsukh alongwith Jagdish were sitting in the fields of Soyabean crop. Kana S/o Hari Ram Gujar, Laxman s/o Chanda Gujar and one another who was his paternal aunt's son passed through from there. His father wished them "Ram Ram", upon which they started beating his father. Laxman was armed with a Pharsa and one accompanying him was armed with a stick. Jagdish tried to intervene and save him father upon which he was also given injuries by Laxman on his hands and feet. He was standing close to the fields. They ran to give beatings to him as well. He ran away from the place. At the time of occurrence Ram Prasad S/o Chittarlal, Ramesh S/o Gyarsa were present and they saw the occurrence. His father and Jagdish became unconscious at the spot. He put his father Dilsukh and Jagdish in the tractor of Bharatlal and brought them to Kelwada Hospital. Both of them were admitted in the hospital. Yesterday and day before yesterday the buffaloes of these persons had damaged their crop. He surrounded the buffaloes of these persons and was taking these to Kanji House but on their intervention he had released the buffaloes. Because of this grudge his father and Jagdish were given injuries with Pharsa & Lathi, with a view to kill them. They were left unconscious in the field and the accused had run away.

4. The occurrence leading to deaths of Jagdish & Dilsukh was reported by a written complaint made by Samay Raj son of Dilsukh. It is on the basis of written complaint Ex.P9 that the formal FIR was entered and registered by Ramashish Pandey PW10. The special report with regard to the incident Ex.P16 reached the concerned Magistrate at Baran on 10.10.1995 at 4.30 PM. Baran is stated to be at a distance of 60 km from the police station where formal FIR was recorded. Initially, the case against the appellants was registered u/s 447, 307 read with Section 34 IPC but it was converted to Section 302 IPC on the death of Jagdish and Dilsukh.

5. In its endeavour to connect the appellants with the crime the prosecution examined Mushtak Ahmed PW7, who had conducted medico legal examination of Jagdish and Dilsukh. Mushtak Ahmed stated that he had medico legally examined Jagdish on 9.10.1995. He proved medico legal report Ex.P10, wherein injuries found on the person of Jagdish have been described as follows :-

1. Lacerated wound (4 x 1 muscle deep) cm. left palm ventral aspect.
2. Lacerated wound (3 x 1 x bonedeeep) cm. on right side of the scalp.
3. Swelling (4 x 2 cm.) left elbow joint.
4. Bruise (8 x 2 cm.) middle 1/3 back.
5. Bruise (6 x 2 cm.) back right shoulder.
6. Bruise (6 x 2 cm.) back left shoulder.

6. He stated that but for injury No. 2 all other injuries were simple in nature and were caused by blunt weapon. Injury No. 2 was also caused by blunt weapon. With a view to ascertain the nature of injury, he wanted to take opinion of injury

No. 2 from the X-ray report. All the injuries found on the person of Jagdish were of the duration of 24 hours. On the same day at 8.20 PM he medico legally examined Dilsukh. The doctor proved medico legal report Ex.P.11, wherein injuries found on the person of Dilsukh have been described as follows :-

1. Bruise (15 x 2 cm.) horizontal to the chest of abdomen.
2. Bruise (10 x 2 cm.) middle 1/3 back.
3. Bruise (4 x 2 cm.) right buttock.
4. Bruise (4 x 2 cm.) right shoulder anteriorly.
5. Scratch (1/2 x 1/2 cm.) right left upper 1/3.

7. He had reserved his opinion with regard to injuries No. 1 and 5 which he was to give on the receipt of X-ray report. The other injuries found on the person of Dilsukh were simple in nature and were caused by blunt weapon. The injuries found on the person of Dilsukh were of the duration of 24 hours. The doctor further stated that both the injured had died at night. He conducted post-mortem on the dead body of Jagdish at 8.30 Am on 10.10.1995. He proved post-mortem report Ex.P12 and stated that death of Jagdish was because of head injuries sustained by him. On the very same day he conducted post mortem on the dead body of Dilsukh. He found ribs 7, 8, 9 and 10 of the left side had been fractured. The death in the opinion of doctor was excess bleeding which was because of injury in the spleen. He proved post mortem report Ex.P13. He also stated that the injuries sustained by Dilsukh were sufficient to cause death in the ordinary course of nature. In the cross-examination he admitted that in Ex.P12 and P13 he had not mentioned that injuries No. 1 and 2 found on the person of deceased, were sufficient to cause death in the ordinary course on nature.

8. Lithru examined as PW1, did not support the prosecution case. As per prosecution version, Samay Raj the first informant and the son of Dilsukh had gone to him and told that his father was being beaten by the accused and that he had gone to the place of occurrence after sitting on a tractor. Even though declared hostile, the only question put to him by the Public Prosecutor was with regard to statement made by him from portion A to B in Ex.P1. He stated that he had made no such statement. Ramesh examined as PW2, who as per prosecution version, was attracted at the scene of occurrence when Jagdish and Dilsukh were given beating by the appellants also, did not support the prosecution case. He was declared hostile and in the cross-examination adverted to him by the Public Prosecutor he denied having made the statement before the police from portion A to B in Ex.P2. Narayan examined as PW4 a witness with regard to recovery of weapon of crime, and did not support the prosecution case. Badai s/o Manphool examined as PW5, another witness of recovery of weapon also did not support the prosecution case. Chandrakant s/o Dhansukhlal examined as PW6, stated that Samay Raj, who was illiterate, had got recorded FIR from him which was Ex.P9. Sanjay Singh, Constable examined as PW8 only deposed with regard to

his depositing the case property in the Malkhana. Hari Prasad examined as PW9 also deposed with regard to depositing of case property in the Malkhana. Ramashish Pandey examined as PW10, deposed with regard to steps which he had taken while investigating the case.

9. Samay Raj, the first informant who alone supported the prosecution case, in his examination-in-chief stated that whereas Laxman was armed with Pharsa, Kanhaiyalal and Narain were armed with lathies. It may be mentioned that while lodging the FIR he had not named Narain. The third accused was referred to him as paternal aunt's son but in the statement made by him before the court he did not state that Narain the third accused was related to either Kanhaiyalal or Laxman. He stated that Kanhaiyalal had given a lathi blow on the shoulder of his father upon which his father fell down and it is thereafter that all the accused started beating him. He also stated that when his maternal uncle Jagdish tried to rescue his father, he gave an injury with Pharsa on his head and that when he himself wanted to rescue his father and uncle the accused ran towards him to beat him as well upon which he went home and told Bharatlal, Sriphool and Ram Prasad that accused were beating his father. In his cross-examination he admitted that FIR Ex.P9 was written by him in the hospital and that the same was got recorded after arrival of the police. He stated that he got the name of Narain recorded in the FIR Ex.P9 but why the police did not mention the same, he did not know. He stated that he knew Narain earlier. He specifically stated that Pharsa/Pharsi is a sharp edged weapon. One side of Pharsa he further stated is sharp edged. He stated that Pharsi blow was not given to his father but the same was given to Dilsukh. Jagdish was given three blows with Pharsi. Jagdish had started bleeding from the injuries sustained by him. Gopal Singh who was examined as PW13 deposed with regard to the steps which he had taken while investigating the case. There is no need to give further details of the prosecution evidence as nothing based upon the same has been urged before us by the learned counsel appearing for the parties.

10. When examined u/s 313 Cr.P.C. all the appellants denied their involvement in the commission of crime. They claimed to be innocent having been falsely involved in the case. They, however, led no evidence in defence.

11. Mr. N.A. Naqvi, learned counsel appearing for the appellants vehemently contends that the prosecution version is based upon a solitary witness who is highly interested in the success of the case being son of Dilsukh-one of the deceased in the occurrence that took place on 9.10.1995. Ramesh and Ram Prasad stated to be eye-witnesses as mentioned in the FIR, were examined as PW2 and PW3 respectively but did not support the prosecution case. Narayan and Badai examined as PW4 and PW5 respectively with regard to recovery of weapons pursuant to disclosure statements made by the appellants, also did not support the prosecution case. In the context of the facts as mentioned above, placing implicit faith on the statement of Samay Raj, would be wholly unsafe particularly when he has tried to substantially improve the prosecution case and

also indulged in total false-hood, further contends the learned counsel.

12. Before we might further proceed in the case we would like to mention that we called for the case property particularly to see Pharsa/necessarily be a sharp one. Blunt injury cannot be caused by Pharsi/Pharsa if used from right side. Dr. Mushtak Ahmed did not describe a single injury on the person of Jagdish and Dilsukh that might have been caused by a sharp edged weapon. Even in the post mortem report, be it of Jagdish or Dilsukh, no injury has been described that may even appear to be caused by a sharp edged weapon. From the deposition made by Mushtak Ahmed PW7 it clearly emerges that Samay Raj is not speaking the whole truth. The statement made by him in so far as the role attributed to appellant Laxman is concerned, is contrary to the medical evidence. Mrs. Nirmala Sharma, learned Government Advocate, was at pains to explain to us that Pharsa is struck from a corner, could well cause a blunt wound and for that precise reason we had called for the case property and examined Pharsa/Pharsi ourselves. As mentioned above, Pharsa if used from right side even struck from a corner, could not result in a blunt injury and at no stage it was case o Samay Ram that Pharsa was used from the reverse side. In fact Samay Raj categorically stated that injuries caused by Laxman with Pharsa had resulted in bleeding. The tractor in which injured were taken to hospital was full of blood. Samay Raj in so far as appellant Narain is also concerned, it appears, he is also not telling the truth. It may be recalled that while lodging the FIR he mentioned that the third accused was paternal aunt's son. Appellant Laxman and Kanhaiyalal are not related to each other. Samay Raj did not state in the FIR as to whether the third accused was related in the manner stated by him to Kanhaiyalal or Laxman. He stated while appearing as a witness in the court that he knew Narain earlier. If, he was familiar with the face of Narain and had actually seen him causing injuries to his father Jagdish and Dilsukh, he could not have missed his name. Still further, if Narain was related to either of other accused he would have stated so when he appeared in the witness box. He however, chose not to make any mention with regard to relation of Narain with either Kanhaiyalal or Laxman. The involvement of Laxman & Narain in causing murder of Jagdish and Dilsukh appears to be highly doubtful. It appears to this court that Samay Ram saw the occurrence from a considerable distance and could identify only Kanhaiyalal, he appears to have made a mention of Narain and another on the basis of suspicion that he might be entertaining against them. The observation made by us above is strengthened from the fact that Samay Raj did not state while lodging the FIR the distance from where he had witnesses the occurrence. He stated for the first time while making his statement as PW11 that he was at a distance of ten paces but he was duly confronted for this improvement made by him. Further, if Samay Raj was at a distance of ten paces as stated by him and appellants had run after him when he had tried to rescue his father and Jagdish, there was no reason that three strong persons would not have caught hold of him and give him some injuries. The prosecution has not been even able to establish the motive that is said to have actuated the appellations to commit the crime. In the FIR lodged by

the first informant, he stated that yesterday and day before yesterday she buffaloes of appellants had entered their Soyabean crop and caused damage to it upon which he had gathered the buffaloes and was going to lodge them in Kanji house but the same were left on coming. He did not mention as to who owned the she buffaloes that had entered their Soyabean crop and who had come upon which the same were let-off.

13. We have already mentioned that the accused are not related inter-se, and that being so, there does not appear to be any reason for them to have shared common intention to commit the crime. The first informant mentioned in the FIR that she buffaloes of these people had entered in their fields and that when they were going to lodge the same that they came and got the she buffaloes released. Even though he stated that she buffaloes belonged to Kanhaiyalal but he did not state as to who had come to get the she buffaloes released from them. From the statement made by him all the can be spelled out is that she buffaloes belonged to Kanhaiyalal and he only may be interested to get the same released and thus might have come to do so. In any case, there was no occasion for the other two appellants to get the she buffaloes released.

14. From the totality of the facts and circumstances as referred to above and in particular that name of appellant Narain is not mentioned in the FIR and that no evidence has been led to show that he is paternal aunt's son of either of the accused as also that the statement made by Samay Raj with regard to involvement of Laxman is belied by medical evidence, these two appellants namely Narain and Laxman deserve to be given benefit of doubt.

15. In so far as, however, Kanhaiyalal is concerned, the evidence against him is consistent. The FIR in this case was lodged within 2 hours and 45 minutes from the time of occurrence. If perhaps, Samay Raj would have deliberated and pondered over the occurrence, he might have been able to ascertain correct names of the persons involved in the commission of crime. The FIR seems to be spontaneous where Samay Ram named on person i.e., Kanhaiyalal being sure in the involvement but mentioned the name of Laxman and a third person, as a paternal aunt's son on the basis of his guess work. It is true that the first information has not come up with the whole truth but falsus in uno, falsus in omnibus is not the rule applied in this country. The court in its endeavour to find out the truth can always sift grain from the chaff. The facts fully detailed above demonstrate that whereas the prosecution has been able to prove the offence against Kanhaiya Lal beyond the shadow of reasonable doubt, it has failed to do so against Laxman and Narain.

16. Consequently, the appeal preferred by Kanhaiyalal is dismissed and it is held that he alone or accompanying other cause death of Jagdish and Dilsukh. Laxman & Narain have to be given benefit of doubt and thus acquitted of the charges framed against them. Their appeal against the order of conviction and sentence is allowed and the order recorded against them by the learned Special Judge, SC/ST, (Prevention of Atrocities Cases), Baran, dated 7.5.1998 is set-

aside. If not on bail Laxman and Narain be set at liberty forthwith, if not required in any other case.