
(2007) 09 RAJ CK 0032
In the Rajasthan High Court

Kedar and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 14, 302, 326

Citation : (2008) 2 RLW 1331

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—Life in essence is like an unobstructed, unrestrained, uncontrolled flow of a river. Life flows at its own pace and ultimate source of pain and suffering is the tendency to cling to and obstruct the flow. Prakash, Chiranji and Jagram, who had forgotten to live with the flow lost their life while involving themselves in a land dispute. As many as 29 persons were named as assailants and put to trial before learned Special Judge SC/ST (PA) Cases Sawai Madhopur for having committed triple murder. Learned Judge vide judgments dated January 10, 2002 and June 30, 2005 convicted and sentenced twenty eight assailants (appellants herein) as under:

Appellants Kedar, Kishore @ Ram Kishore, Babu Lal @ Ram Dhan, Laddu Lal, Jai Ram, Ram Swaroop, Harbhajan @ Bhajan, Moji Ram, Ramkesh S/o Shyopal, Shyoji Ram @ Shyoji, Gopal s/o Govinda, Brij Mohan, Kalu Ram @ Kalu, Hajari, Morapal, Dhanpal, Jamna Lal, Indra Raj, Shyokaran s/o Mool Chand, Shravan, Hanuman, Ramkesh s/o Shyopal, Ramji Lal, Mathura Lal, Jas Karan, Hari Ram, Kailash and Vilas @ Ram Vilas (vide Judgment dated January 10, 2002):

Appellants Ramphool and Ganga Bishan (vide Judgment dated June 30, 2005):

Under Section 148 IPC:

Each to suffer rigorous imprisonment for one year.

Under Section 302/149 IPC:

Each to suffer imprisonment for life and fine of Rs. 500/-, in default to further suffer simple imprisonment for three months.

Under Section 326/149 IPC:

Each to suffer rigorous imprisonment for five years and fine of Rs. 300/-, in default to further suffer simple imprisonment for two months.

Under Section 325/149 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs. 200/-, in default to further suffer simple imprisonment for one month.

Under Section 324/149 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs. 100/-, in default to further suffer simple imprisonment for fifteen days.

Under Section 323/149 IPC:

Each to suffer rigorous imprisonment for six months.

The substantive sentences were ordered to run concurrently.

2. On July 11, 2000 a typed report was handed over by informant Banshi to the SHO Chauthka Barwada at General Hospital Sawi Madhopur to the effect that on July 10, around 8.30 AM while informant along with Prakash, Chiranji, Jag Ram (since deceased), Hanuman, Teeka Ram, Chauth Mal, Ganga Ram and Harphool were sowing "Bajra" in their fields, the accused persons (named in the report) armed with Gandasis, axes and lathis came over there in three tractors and surrounded them. Ram Niwas ex-Sarpanch (absconding), Kishore and Kedar inflicted injuries on the person of Prakash with Gandasis, Mathura Lal, Jas Karan, Laddu and Babu s/o Prahlad caused injuries on the person of Chiranji with Gandasis and axes, whereas Ganga Bishan, Ram Swaroop, Bhajan, Jai Ram and Moji Ram gave blows with Gandasis and Axes on the person of Jag Ram. Informant, Hanuman, Harphool, Ganga, Chauth Mal and Teeka Ram, who made attempt to intervene, also sustained injuries. On that report a case under Sections 147, 148, 149, 323, 307, 341, 447 and 302 IPC was registered and investigation commenced. Autopsy on the dead bodies were performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed against 29 accused. In due course the case came up for trial before the learned Special Judge SC/ST (PA) Cases Sawai Madhopur. Charges under Sections 147 148, 302, 302/149, 307, 307/149, 326, 326/149, 325, 325/149, 324, 324/149, 323 and 323/149 IPC were framed against the appellants, who denied the charges and claimed trial. During the course of trial accused Babu Lal @ Babu died and proceedings against him were dropped on January 2, 2002. The prosecution in support of its case adduced evidence of injured eye witnesses, medical evidence, deposition of motbirs and investigating officer. In the explanation u/s 313 Cr.P.C., the appellant claimed innocence. Four witnesses in

support of defence were examined. Appellants Ram Phool and Ganga Bishan, who were absconding tried subsequently. All the appellants were convicted and sentenced by the learned trial Judge as indicated above.

3. We have heard the submissions advanced before us and scrutinised the material on record.

4. Death of Prakash @ Ram Prakash was undeniably homicidal in nature. As per post mortem report (Ex. P. 31) following ante mortem injuries were found on the dead body:

1. Incised wound 12 x 5 cm x cutting skin, soft tissue, muscle, bone and leg vessels with hematoma and clotted blood around on right leg lower 1/3 part below wound was attached only by a flap of skin.
2. Incised wound 8 x 4 cm x cutting skin and soft tissues (muscle & tendon) & vessels with hematoma & clotted blood around, and with incomplete-of underlying bone (tibia) on the right leg, lower 1/3 3 cm below injury No. 1.
3. Incised wound 5 x 1/2 cm x muscle deep on right parietal region with subscalp hematoma.
4. Diffuse swelling on left occipital region and adjoining upper part of neck, with an abraded Bruise of 5 cm x 5 cm over the swelling.
5. Incised wound 7 x 1/4 cm x skin deep on right shoulder.
6. Abraded bruise 6 x 4 cm on upper 1/3 of right arm.
7. Bruise red colour 25 x 5 cm on right side of chest posterior aspect.
8. Incised wound 8 x 1 cm x Bone deep on right hip with fracture of iliac bone.
9. Incised wound 7 x 4 cm x Bone deep on lat. aspect of left knee with-left patella.

In the opinion of Medical Board the cause of death was hemorrhage leading to shock. The injury No. 1 was sufficient to cause death in the ordinary course of nature.

5. Death of Chiranjii was also homicidal. As per post mortem report (Ex. P. 32) following ante mortem injuries were found on the dead body:

1. Incised wound 12 x 3 cm x chest cavity deep with huge amount of red clotted blood.
2. Incised wound 7x2 cm x bone deep with-of right humerus with hematoma of reddish colour.
3. Incised wound 3 x 1/2 cm x muscle deep left occipital parietal region with subscalp hematoma of reddish colour.
4. Incised wound 5 x 1/4cm x skin deep on left side of chest.

5. Bruise, red colour left lumber region, posteriorly with surrounding swelling size 13 x 8 cm.
6. Bruise red colour 10 x 6 cm on left popliteal fossa.
7. Bruise red colour 5 x 4 cm on right popliteal fossa.
8. Incised wound 7 x 1/4 cm x skin deep on left leg lower half on posterior aspect.
9. Lacerated wound 2 x 1/2 cm x muscle deep right knee anteriorly.
10. Abraded Bruise 5 x 4cm left knee anteriorly.
11. Incised wound 1 x 1/4 cm x muscle deep on right thumb dorsal aspect on terminal part.

In the opinion of Medical Board the cause of death was hemorrhagic shock. The injury No. 1 was sufficient to cause death in the ordinary course of nature.

6. Deceased Jag Ram as per post mortem report (Ex. P. 33) received following ante mortem injuries:

1. Incised wound 7 x 1cm x Bone deep on right parietal region. On further examination red subscalp hematoma was present on both parietal region, there was a depressed of right parietal bone posteriorly with underlying red hematoma.

Dura: On opening the dura matter subdural hematoma under & around the fracture site was present

Brain Contusion 3 x 2 cm on right parietal hemisphere occipital by red hematoma & clotted blood.

2. Right eye black eye.

3. Incised wound 7 x 2cm x muscle deep on right forearm, mid half.

4. Incised wound 5 x 1 cm x bone deep on left elbow postero lateral aspect with- of upper end of ulna and radius.

5. Incised wound 7 x 1 cm x muscle deep above left knee with - of patella.

6. Incised wound 3-1/2 x 1/2 cm x muscle deep on right leg middle half.

7. Bruise red colour 4 x 2 cm in right lumber region.

8. Bruise reddish colour on epigastric region 2 x 1 cm.

In the opinion of Medical Board the cause of death was coma as a result of injury to skull and brain. The injury No. 1 was sufficient to cause death in the ordinary course of nature.

7. Vide injury report (Ex. P.35 Tika Ram received following injuries:

1. Bruise 1" x 1/2" on back of left leg.

2. Bruise with swelling 4" x 2" on right shoulder.
3. Abrasion 1/4"x 1/" on right parietal region of scalp.

On X-ray no bony injury was found.

Vide injury report (Ex. P. 37) Banshi received following injuries:

1. Incised wound 3" x 1/2" x bone deep vertically placed on back of left arm.
2. Bruise 3" x 1" on left shoulder.

On X-ray chip fracture of lower 1/3 of humerus bone was found.

Vide injury report (Ex. P. 39) Chauth Mal received one incised wound with clotting 3" x 1" x bone deep on back of left mind forearm. On X-ray fracture of upper 1/3 of shaft of radius bone was found.

Vide injury report (Ex. P.41) Ganga Ram received following injuries:

1. Incised wound 3" x 1" x bone on posterior aspect of rt. mid leg.
2. Lacerated wound 1" x 1/4" x skin deep on left parietal region of scalp.
3. Swelling with tenderness 4" x 3" on right hand.

On X-ray fractures of lower 1/3 of fibula, lower and end of fibula and proximal phalanx of middle finger of right hand was were found.

Vide injury report (Ex. P. 43) Harphool received following injuries:

1. Incised wound 1-1/2" x 1/4" x bone deep on medial aspect of left hand.
2. Incised wound 3" x 1/4" x bone deep on Ant. aspect of lower 1/3rd right forearm.
3. Incised wound 2" x 1/4 x bone lateral aspect of right mid forearm.
4. Abrasion with swelling 1/2" x 1/2 on back of right hand.
5. Swelling with tenderness 4" x 3" on right foot.
6. Swelling with tenderness 3" x 3" on right knee.
7. Incised wound with clotting 2" x 1" x bone deep on anterior aspect of left elbow.

On X-ray fractures of upper end of radius bone of left elbow, lower end of radius and proximal phalanx of index finger of right hand, base of 2nd 3rd meta tarsal bone and lower end of right tibia bone were found.

8. Having carefully analysed the testimony of injured eye witnesses viz. Tika Ram, Banshi, Chauth Mal, Ganga Ram and Harphool we notice that they appeared before the learned trial Judge with graphic details of the incident. It appears to us that informant Banshi took ample time in drawing the typed report

of the incident. The incident occurred at 8.45 AM on July 10, 2000, whereas the report was handed over to SHO at the Hospital on July 11, 2000. According to Banshi, he got the report typed in front of General Hospital:

Lkkeus dksbZ Vkbi djrk gS mldks eS ?kVuk crkrk x;k ;g fy[krk x;k A Vkbi fjiksZV vLirky ds lkeus gh djokbZ Fkh A

9. We find it difficult to believe that memory of Banshi was so sharp that he described accurately the part played by each one of the assailants. Their Lordships of the Supreme Court in *Masalti Vs. State of U.P.*, in a situation where crowd of assailants committed offence of murder, indicated thus:

Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault.

10. Exaggerations, inconsistencies and embellishments noticed by us in the testimony of witnesses Banshi, Teeka Ram, Chauth Mal, Ganga Ram and Harphool are normal errors and they do not corrode the credibility of entire prosecution case. Having separated grain from the chaff we find the evidence of these witnesses consistent qua appellants Ganga Bishan, Kedar, Kishore @ Ram Kishore, Babu Lal @ Ram Dhan, Laddu Lal, Jai Ram, Ram Swaroop, Harbhajan @ Bhajan, Moji Ram, Shyoji Ram @ Shyoji, Kalu Ram @ Kalu, Mathura Lal and Jas Karan. As already noticed injuries on the person of deceased Prakash have been attributed to Ram Niwas, Ex. Sarpanch (Absconder, not before us) Kishore and Kedar. Deceased Chiranji Lal died on account of injuries caused by appellants Mathura Lal. Jas Karan and Laddu whereas appellants Ganga Bishan, Ram Swaroop, Bhajan, Jai Ram and Moji Ram inflicted injuries on the person of deceased Jag Ram.

11. Since appellants Shyoji Ram and Kalu Ram sustained injuries in the course of incident their participation in the crime is also established. In the facts and circumstances of case where typed report was drawn after 24 hours of the incident with graphic details of the part played by each of the assailants, possibility of over implication of appellant Ramphool, Ramkesh s/o Shyopal, Ramkesh s/o Shravan, Gopal s/o Govind, Brij Mohan, Hajari, Morapal, Dhanpal, Jamana Lal, Indra Raj, Shyokaran s/o Mool Chand, Shravan, Hanuman, Ramji Lal, Hari Ram, Kailash and Vilas @ Ram Vilas cannot be ruled out and we grant them benefit of doubt. In our opinion the prosecution has failed to establish guilt against them beyond reasonable doubt.

12. For these reasons, we dispose of instant appeals in the following terms:

(i) We allow the appeals of appellants Ramphool (Appeal No. 618/2005), Ramkesh s/o Shyopal, Ramkesh s/o Shravan, Gopal s/o Govind, Braj Mohan,

Hajari, Morapal, Dhanpal, Jamana Lal, Indra Raj, Shyokaran s/o Mool Chand, Shravan, Hanuman, Ramji Lal, Hari Ram, Kailash and Vilas @ Ram Vilas (Appeal No. 81/2002) and acquit them of all the charges. Appellants Ramphool, Gopal s/o Govind, Morapal, Jamna Lal, Shyokaran and Shravan are on bail, they need not surrender and their bail bonds stand discharged.

(ii) Appellants Ramkesh s/o Shyopal, Ramkesh s/o Shravan, Braj Mohan, Hajari, Dhanpal. Indra Raj. Hanuman, Ramji Lal, Hari Ram, Kailash and Vilas @ Ram Vilas, who are in jail, shall be set at liberty forthwith. If they are not required to be detained in any other case.

(iii) We find no merit in the appeals of Gangabishan (Appeal No. 618/2005) Kedar, Kishore @ Ram Kishore, Babu Lal @ Ram Dhan, Laddu Lal, Jai Raj, Ram Swaroop, Harbhajan @ Bhajan, Moji Ram, Shyoji Ram @ Shyoji, Kalu Ram @ Kalu, Mathura Lal and Jas Karan and the same accordingly stand dismissed. Their conviction and sentenced under Sections 302/149, 326/149, 325/149, 324/149 and 323/149 IPC are maintained. They, however, stand acquitted of the charge u/s 148 IPC.

(iv) The impugned judgment of learned trial court stands modified as indicated above.