

(1997) 07 RAJ CK 0056
In the Rajasthan High Court
Case No : Criminal Appeal No. 232 of 1978

Kishnia and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Juvenile Justice Act, 1986 — Section 26, 3
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (1998) CriLJ 38

Hon'ble Judges : D.C. Dalela, J; Amaresh Kumar Singh, J

Bench : Division Bench

Advocate : Sandeep Mehta, for the Appellant; D.R. Bohra, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Amaresh Ku. Singh, J.—Heard the learned counsel for the appellants and the learned public prosecutor.

2. This appeal is directed against the judgment dated 30th May, 1978 passed by the learned Additional District and Sessions Judge No. 2, Hanumangarh in Sessions Case No. 61/77. By the aforesaid judgment, the appellants were convicted u/s 302 read with Section 34, I.P.C. and each of them was sentenced to imprisonment for life.

3. The facts of the case may be briefly summarised as below :

On 18th April, 1976 at about 11 a.m. Mamraj lodged an oral First Information Report (Ex. P/2) at Police Station, Rawatsar. According to the First Information Report (Ex. P/2) the land of Mamraj is adjoining the land of Shama Jat. The sons of Shama Jat kept their animals in their field and sometimes they grazed their animals in the field of Mamraj by stealth. Because of this, relations between Mamraj and the sons of Shama Jat were strained. On 16th April, 1976 Mania s/o

Shama Jat had beaten the cow of the complainant. When the complainant's father objected to it. Mania abused him. The complainant's father then slapped him. On the next day i.e. on 17th April, 1976 complainant's father and younger brother Rameshwar went to bring water, leaving complainant and her mother at the house. At about 8 p.m. complainant's brother Rameshwar returned to complainant's house and he told that in the field of Beejha Jat, at the time of sun set, Kishnia, Mania and Karnail Singh attacked his father. Kishnia, Mania were armed with lathies and Karnail Singh was armed with Sela. Karnail Singh said "Don't leave him alive kill him and teach him a lesson for slapping the child" and thereafter, the accused persons started inflicting blows on his father. In consequence of the injuries, complainant's father fell on the ground. On receiving the information about the incident, the complainant decided to start from his house, but his mother stopped him. When complainant's father did not return to his house, the complainant and his mother started from his house. When they were at some distance from the boundary they heard the sound of talking and saw three persons and a camel standing. The complainant then called "who was there" and then those persons threatened to kill the complainant in the event he dared to go near them. They further told the complainant that his father's dead body was lying there and saying that they had killed Rawata and threatened to kill him in the event he would go to the Police Station to lodge a report. Thereafter, those three persons went away with the animals. According to First Information Report, the complainant recognised them by the voice. They were Karnail Singh, Mania and Kishnia. After they went away, the complainant's mother went to the field and saw that the complainant's father Rawata was lying there in injured condition. He was already dead. The dead body of Rawata was carried to the complainant's field on the back of the camel. On the night, which followed, the complainant did not gather up sufficient courage to go to the Police Station to lodge the report. In the morning, he went to the police outpost, where Incharge was not available. He, therefore, went to the Police Station, Rawatsar and gave an oral information report.

4. On the basis of the First Information Report given by Mamraj, the police registered a case u/s 302 read with Section 34 of the Indian Penal Code. Usual investigation was conducted. After completing investigation, the police submitted a charge-sheet u/s 173 of the Criminal Procedure Code in the Court of learned Munsif and Judicial Magistrate, who committed the case to the Court of learned Additional District and Sessions Judge No. 2, Hanumangarh.

5. The learned Additional District and Sessions Judge No. 2. Hanumangarh framed charges under Sections 302, 302 read with 34 and 201 of the Indian Penal Code against the accused Kishnia Mania and Karnail Singh. The accused persons pleaded not guilty to the charges.

6. The prosecution examined Dr. Som Prakash Jakhar P.W. 1. Mamraj P.W. 2, Ramjilal P.W. 3, Rameshwar P.W. 1, Tulsi P.W. 5, and Ramdayal P.W. 6 in support of the prosecution case. Accused persons were examined u/s 313 of the Criminal

Procedure Code. They denied all the allegations levelled against them. No witness was examined in defence.

7. After taking into consideration the evidence produced by the prosecution and hearing the arguments of the parties, the learned Additional District and Sessions Judge No. 2, Hanumangarh acquitted the accused persons of the charges under Sections 302 and 201 I.P.C., but convicted them u/s 302 read with 34, I.P.C. and sentenced the accused persons to imprisonment for life.

8. Learned counsel for the appellants has submitted that in this case there is no satisfactory evidence to prove the charge u/s 302 read with 34, I.P.C. against the appellants and the learned Additional District and Sessions Judge has committed an error by placing reliance on the prosecution evidence. He has, therefore, prayed that the appeal be allowed and the accused persons be acquitted of the charge u/s 302 read with 34, I.P.C. It is further submitted by him that appellant Kishnia was according to his statement 20 years of age on the date of his examination u/s 313 of the Criminal Procedure Code and accused Mania was 16-17 years old on the date of his examination u/s 313 of the Criminal Procedure Code. He has, therefore, prayed that this fact should be taken into consideration by the Court and appropriate orders be passed under the Juvenile Justice Act. The learned Public Prosecutor has supported the judgment of the trial Court and prayed for dismissal of the appeal.

9. We have carefully considered the rival arguments and the evidence adduced by the prosecution.

10. Out of six witnesses examined by the prosecution, Dr. Som Prakash Jakhar P.W. 1 has proved the Post Mortem Examination Report Ex. P/1 Mamraj P.W. 2 is the author of the First Information Report Ex. P/2. He is not an eye witness of the occurrence. He went to the place of occurrence at night when the deceased did not return home.

11. Ramjilal P.W. 3 has proved that on 18th April, 1976 Karnail Singh, Kishnia and one another boy had been arrested by the police and Ramdayal was arrested on 19th April, 1976 and at that time nothing was recovered from their possession. Ramjilal P.W. 3 has further added that he carried the sealed articles of this case from the Police Station to Jaipur and deposited them at Police Headquarters at Jaipur.

12. Rameshwar P.W. 4 is the younger brother of the complainant and son of the deceased. He is an eye-witness of the occurrence.

13. Tulsi P. W. 5 is wife of the deceased. She accompanied Mamraj to the place of occurrence after the occurrence was over.

14. Ramdayal P.W. 6 is the Station House Officer of the Police Station. Rawatsar He recorded the First Information Report Ex. P/2, registered a case and commenced investigation.

15. Dr. Somprakash Jakhar P.W. 1 has deposed that he conducted the Post Mortem Examination of the dead body of Rawata on 18th April, 1976 at 3 p.m. and he found the following injuries on his dead body :

- (1) Abrasion on left side of chest 1" lateral to sternum and two and half inch below nipple, two and one fourth inch X one and half inch in size.
- (2) Abrasion on right side of chest three and half inch below nipple five inch X three fourth inch in size.
- (3) Fracture of right middle finger at first phalynx.
- (4) A stab wound on posterior aspect of right forearm 3" above the wrist joint one fourth inch in diameter and half inch in depth.
- (5) A stab wound three fourth inch X one fourth inch extending up to lateral condy of humerus on posterior aspect of right arm.
- (6) Lacerated wound half inch X one forth inch X one fourth inch on dorsal aspect of left hand and one fourth inch above index finger.
- (7) Lacerated wound one third inch X one fourth inch X one fourth on dorsal aspect of left hand one and one fourth inch above middle finger.
- (8) Stab wound half inch X one fourth inch extending up to ulna with fracture of ulna in the middle one third portion on posterior aspect of left forearm.
- (9) Lacerated wound one fourth inch X one sixth inch X one sixth inch on posterior aspect of left elbow joint.
- (10) Bruise on medial aspect of right thigh middle one-third part. Four inch X two and half inch in size with fracture of shaft of femur in its middle one-third portion.
- (11) Stab wound on posterior aspect of right thigh five and half inch above knee joint half inch X half inch X three inch in size.
- (12) A transverse bruise on medial aspect of middle one third part of right leg three inch X half inch in size.
- (13) A transverse bruise on medial aspect of middle one third part of right leg two and half inch below injury No. 12. Three and half inch X half inch in size.
- (14) Bruise on lateral aspect of lower one third part of right leg. one and three fourth inch X one inch in size.
- (15) Bruise on lateral aspect of middle one third part of left leg two inch X one and one fourth inch in size.
- (16) Multiple bruise 9 in number on back of chest and back of abdomen and on buttock region. Varying in size from one and half inch X half inch to four and three fourth inch X one and half inch in size.

16. All the injuries were ante-mortem in nature. Stab wounds could have been

caused with a "Sela" and all the injuries were collectively sufficient to cause death in the ordinary course of nature and in the opinion of the doctor, the cause of death was shock due to multiple injuries. In cross-examination Dr. Somprakash Jakhar P.W. 1 has admitted that the injuries found on the body of the deceased were not individually sufficient to cause death, but the grievous injuries were likely to cause death and injury No. 5 was grievous and could have been the cause of death.

17. The evidence of Dr. Somprakash Jakhar P.W. 1 and the Post Mortem Examination Report Ex. P/1 proves it beyond reasonable doubt that the deceased Rawata received more than 16 injuries, one of which was grievous and several injuries were caused with the sharp weapon like "Sela" and that his death has been caused by the injuries which in the opinion of the doctor was sufficient in the ordinary course of nature to cause death. In view of this evidence, there is no doubt in it that death of Rawata was homicidal and the injuries caused to him were collectively sufficient in the ordinary course of nature to cause death.

18. Rameshwar P. W. 4 is an eye-witness of the occurrence. According to First Information Report Ex. P/2 he had accompanied Rawata to village Sheikhchoolia as water was to be brought from that village, Rameshwar P.W. 4 has supported the prosecution case by stating that he went with his father to village Sheikhchoolia on a camel and after taking water he and his father started from village Sheikhchoolia when the sun was going to set. According to Rameshwar P.W. 4 he was on the back of his camel and was ahead of his father and his father was following him on a camel's back and when he and his father reached in the field of Beenjha Jat, he heard someone saying from behind, "stop, we will teach a lesson for slapping and will not leave alive". Rameshwar P.W. 4 has added that on hearing these words, he turned around and saw that Mania, Kishnia and Karnail Singh was there. Mania and Kishnia were armed with Lathies and Karnail Singh was armed with Sela and all the three started inflicting injuries to his father Rawata. As a consequence, Rawata fell on the ground from the camel back and the three accused continued inflicting injuries on him. Rameshwar P.W. 4 has further added that he stepped down from the camel back and ran away towards his Dhani and on reaching his Dhani he told brother Mamraj and his mother about the incident and since he was terrified he sought refuge in the bed and slept and early in the morning when he woke up, he came to know that his father had died and at noon the Police Officers came and at that time he was called and his thumb impression was obtained on the site plan and other documents were prepared by the Police Officers. Rameshwar P.W. 4 has described his age as 14 to 15 years. In cross-examination Rameshwar P.W. 4 has revealed that formerly he along with his parents used to live in village Sheikhchoolia. It is further stated by him that when he saw the accused persons inflicting injuries to his father, the accused had already stepped down from their camels. He has further admitted that at the time of incident he had raised the alarm, because he was afraid and his father did not raise any alarm.

19. Mamraj P.W. 2 and Tulsi P.W. 5 were told about the incident by Rameshwar P.W. 4. Tulsi P.W. 5 has deposed that her husband and her son Rameshwar had gone to village Sheikhchoolia to bring water and when the sun had set, they were returning from village Sheikhchoolia. At that time Rameshwar returned to the house running and he told that in the field of Bheenja Jat, Mania, Kishnia and Karnail Singh had killed his father and that before they started the attack they had said that they would teach a lesson for slapping and would not leave him alive. Tulsi P.W. 5 has further added that when Mamraj intended to go to the scene of occurrence, she asked him not to go for fear that he too might have been killed and after sometime the camels returned, but Rawata was not with the camels. She has further added that after about one hour she and Mamraj went towards the field. Rameshwar did not accompany them and he went to bed. It is further stated by her that when she and Mamraj were at a distance of 10 paces from her Dhani, she heard some sound and Mamraj inquired "who was there" and then someone told Mamraj that his father had been killed and he would also be killed in the same manner. Tulsi P.W. 5 has added that she had recognised the person, who said these words. These words were uttered by all the three accused persons. It is further stated by her that she had recognised the accused persons who were standing in the field as there was moonlight. It is further stated by her that the accused persons brought the dead body of her husband to her field and then the accused went away and that she had recognised the accused persons when they brought the dead body of her husband to the field and that at that time Kishnia and Mania were armed with Lathies and Karnail Singh was armed with Sela.

20. Mamraj P.W. 2 is the author of the First Information Report Ex. P/2. He has given the statement similar to the statement given by Tulsi P.W. 5. It is also stated by him that after the arrival of camels, he and his mother went towards the field, and there the sound of talking was heard and when he called who was there, the three accused persons replied that his father's dead body was lying and he should take care of it and threatened to kill in the event he reported the matter anywhere. It is also stated by him that the accused persons placed the dead body of his father in the field and ran away and he had identified the three accused persons in moonlight. Mamraj P.W. 2 and Tulsi P.W. 5 have stated that cause of incident was the earlier incident, which occurred on the previous day when Mania accused inflicted injuries to the cow and the deceased Rawata went to Mania to ask not to beat the cow. At that time, Mania abused Rawata and Rawata then gave a slap to Mania. Mania then went away. On that day he was living with Karnail Singh in village Sheikhchoolia.

21. We have carefully considered the evidence of Mamraj P.W. 2, Rameshwar P.W. 4 and Tulsi P.W. 5. These witnesses have been examined at length, but their testimony could not be shaken during the cross-examination. We, therefore, find no reason to disbelieve the testimony of these witnesses. It is true that in the First Information Report Ex. P/2, it has not been stated by Mamraj that he had recognised the accused persons in moonlight, but in view of the fact that he has

stated that three accused persons had been recognised, it is not proper to doubt the testimony of Mamraj P.W. 2. In our opinion, the evidence of Mamraj P.W. 2, Rameshwar P.W. 4, Tulsi P.W. 5 and Ramdayal P.W. 6 proves it beyond reasonable doubt that Mania, Kishnia and Karnail Singh attacked the deceased and inflicted injuries on him with lathies and sela. The medical evidence shows that there were several injuries and according to the opinion of the doctor the injuries which would be caused by Sela and there were injuries which could have been caused by blunt weapons like Lathi. We broadly agree with the learned Additional District and Sessions Judge who held that it has been proved by the prosecution that the accused persons jointly inflicted injuries on the deceased.

22. In the facts and circumstances of the case having regard to the incident which had occurred on. 17th April, 1976, the words uttered by the accused persons when they were just going to attack the deceased, the number of injuries inflicted on the deceased Rawata and the conduct of the accused after the incident, all lead to the conclusion that the accused persons had shared the common intention to cause the death of Rawata, and, therefore, all the three accused persons are liable to be convicted u/s 302 read with 34, I.P.C. We, therefore, do not find any force in the submission that the learned Additional District and Sessions Judge has committed any error in convicting the accused appellants u/s 302 read with 34, I.P.C.

23. So far as sentence is concerned, the learned counsel for the appellants has submitted that on the date of occurrence, accused Mania was 16-17 years old and accused Kishnia as according to his statement was 20 years old, and therefore, these accused persons should be given the benefit of the Juvenile Justice Act.

24. We do not find any force in the submission made by the learned counsel for the accused. There is nothing to justify the conclusion that accused Mania and Kishnia were juveniles on the date of the commission of the offence. Even if they were juveniles on the date of commission of the offence the benefits of Section 3 of the Juvenile Justice Act, 1986 could not be available to them because the provisions of Section 3 apply to enquiry only and have no application to trials and appeals. Section 26 of the Juvenile Justice Act, 1986 does not apply to the case of the accused because on the date of the conviction by the learned Sessions Judge they were not juveniles.

25. For reasons mentioned above we do not find any force in this appeal, it deserves to be dismissed and is hereby dismissed. The accused-appellants are on bail. Their bail bonds are hereby cancelled. They are hereby directed to surrender before the learned Additional District and Sessions Judge No. 2, Hanumangarh within a period of 15 days failing which non-bailable warrants of arrest shall be issued against them and after their surrender or arrest as the case may be they shall be committed to jail to serve out the sentence awarded to them.