

(2016) 01 RAJ CK 0202
In the Rajasthan High Court
Case No : Criminal Appeal No. 676/2013

Kishori Lal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, Section 149, Section 300, Section 302, Section 304, Section 307, Section 323, Section 324, Section 34

Citation : (2016) 1 RajCriC 322

Hon'ble Judges : Kanwaljit Singh Ahluwalia and Prakash Gupta, JJ.

Bench : Division Bench

Advocate : Govind Choudhary, Rinesh Gupta and Chandrakala Sahu, for the Appellant; Soniya Shandilya, Public Prosecutor, for the Respondent

Final Decision : Disposed off

Judgement

Kanwaljit Singh Ahluwalia, J.—1. Six appellants belongs to one family. Kishori Lal, Radha Kishan and Heera Lal are three brothers being sons of Birdhi Lal, Kamlesh Kumar, Om Prakash and Leelesh Kumar are sons of appellant No. 3 Heera Lal. They were sent for trial in a case arising out of FIR No. 56/2008, registered at Police Station Ramganjmandi, Kota.

2. The case of the prosecution is that the appellants on 2.3.2008, at about 7:00 AM, in the revenue state of Richhadiya armed with Dhariya, Pharsa, lath and gandas after giving beating caused murder of Jagdish Prasad. It is further alleged that accused appellants caused injuries to Leelesh Kumar (P.W.3), Mahendra Kumar (P.W.5), Mangi Lal (P.W.10) and Babu Lal (P.W.13).

3. The court of Additional Sessions Judge, Ramganjmandi, District Kota, vide impugned judgment dated 25.9.2013 held all the appellants guilty of offences under Sections 148, 302/149 and 307/149 IPC.

4. Having convicted the appellants for the abovesaid offences, the trial court vide a separate order of even date, sentenced them as under:--

"U/s. 148 IPC- to undergo two years R.I.

U/s. 302/149 IPC- to undergo life imprisonment and to pay a fine of Rs. 5000/- each, in default of payment of fine, to further undergo additional three months S.I.

U/s. 307/149 IPC- to undergo seven years R.I. and to pay a fine of Rs. 1000/- each, in default of payment of fine, to further undergo additional one month S.I."

5. The present appeal is directed against the judgment of conviction and order of sentence passed by the trial court and it is prayed that the appellants be acquitted of all the charges.

6. Ishhaq Mohammad (P.W.25) deposed in the court that on 2.3.2008, he was posted as Second Officer in Ramganjmandi, Kota. He received an information at the police station that in village Richhadiya, two factions had resorted to fight and injured have reached Community Health Centre, Ramganjmandi, Kota. Upon receipt of information, Ishhaq Mohammad (P.W.25) reached Community Health Centre, Ramganjmandi, and recorded statement of injured Leelesh Kumar (P.W.3). The statement so recorded was sent to police station and a formal FIR (Exhibit-P/40) was registered. Ishhaq Mohammad (P.W.25) has admitted that on the same day, he had registered a cross case against the complainant party. The cross case was registered on the statement of injured Heera Lal. On the side of accused, Heera Lal, Kamlesh Kumar, Radha Kishan and Kishori Lal were injured. Ishhaq Mohammad (P.W.25) proved on record the cross case (Exhibit-D/8) registered against the complainant party. Thus, it is a case of version and cross version. From the side of complainant party, Jagdish Prasad, father of Leelesh (P.W.3) died and four persons namely Leelesh (P.W.3), Mahendra Kumar (P.W.5), Mangi Lal (P.W.10) and Babu Lal (P.W.13) had received injuries.

7. Leelesh (P.W.3) in written report (Exhibit-P/3) stated that on 2.3.2008 at about 7:00 AM, he was present along with his father at the well in the field. The accused party were having ten cows. The cows of accused party used to damage the wheat crop of the complainant party. Earlier also, the complainant party had asked the accused to tie their cows. A day before the occurrence, eight to ten cows of the accused had entered into the wheat crop of the complainant party. Upon this, in the evening an altercation had ensued between Kishori Lal and Om Prakash and his father was given beating. The accused had given beating to his father with kick and fist blows. His father had returned to the well in the field. Om Prakash, Kamlesh Kumar, Heera Lal, Radha Kishan and Leelesh Kumar all came armed with Dhariya, country made pistol, lath and gandasi on their well. At that time, Mahendra Kumar (P.W.5), Babu Lal (P.W.13), Sandeep Kumar (P.W.4) and Mangi Lal (P.W.10) uncle (Taya) of the complainant were present. The accused started giving beating to his father. The above said persons intervened to save Jagdish Prasad and his brother and they were also caused injuries by the accused. It is stated that Kishori Lal gave a gandasi blow on the head of father Jagdish. Om Prakash also gave a gandasi blow on the head. Later Om Prakash

gave Dhariya blow due to which, his father fell down. The complainant Leelesh and his brother Mahendra Kumar were caused injuries with gandasi by Radha Kishan. They have suffered injuries on right hand. Injury was caused on the head of brother Mahendra Kumar. He had fallen down. When he was lying fallen, all the accused caused him injuries.

8. Before we proceed to appreciate the evidence led by the prosecution, it will be necessary to take note of the medical evidence.

9. Dr. Babu Lal (P.W.14) on 2.3.2008, at 9:30 AM, as per injury report (Exhibit-P/26) had examined Jagdish. This doctor found one injury on the head of Jagdish, as under:--

"Incised wound, 11 x 0.2 x 1 cm, linear, clear cut edge, antro-posterior, severe, vascular injury bleeding not controlled by pressure bandage, margins rolled, 1 cm left to mid on vertex, dangerous to life, sharp."

10. On the same day, Dr. Babu Lal (P.W.14) examined Mahendra Kumar (P.W.5) and in injury report (Exhibit-P/27) had noted the following injuries on his person:--

"Incised wound, 3 x 1/4 x 1/2 cm, linear clear cut edge, scalp anterior 1/3 left side, simple, sharp."

11. Babu Lal (P.W.13) was also examined by Dr. Babu Lal (P.W.14) and as per injury report (Exhibit-P/28), he had noted the following injury on his person:--

"Incised wound, 8 x 0.2 x 0.5cm, linear, clear cut edge, scalp anterior, 1/3 right side, simple, sharp."

12. Leelesh (P.W.3) was also examined by Dr. Babu Lal (P.W.14) and as per injury report (Exhibit-P/29), he had noted the following three injuries on his person:--

"(i) Incised wound, 4 x 0.2 x 0.5cm, linear clear cut edge, bleeding, right forearm, lower 1/3, simple, sharp.

(ii) Lacerated wound, 1 x 1/2 x 1/2 cm, left index finger, simple, sharp.

(iii) Abrasion, 2 x 1/2 cm, anterior abdomen, simple, blunt."

13. Injury No. 1 is an incised injury, whereas injury No. 2 is lacerated wound and injury No. 3 is an abrasion.

14. On the next day, i.e. on 3.3.2008, at 10:45 AM, Dr. Babu Lal (P.W.14) had examined Mangi Lal (P.W.10) and had found following two injuries in the injury report (Exhibit-P/30):--

"(i) Incised wound with clot formation, massive swelling in right hand, 1 1/2 x 1/4 x 1/4 cm, Right index finger, proximal inter-phalanx.

(ii) Abrasion, 1/2 x 1/2 cm, transverse, right hand below middle finger, simple, blunt."

15. On the same day, i.e. on 2.3.2008, when Dr. Babu Lal (P.W.14) examined injured from the side of complainant, he had also examined injured from the side of accused party. This witness had noticed the injuries of Kishori Lal, Kamlesh, Heera Lal and Radha Kishan in bed-head ticket vide Exhibit-D/6 to Exhibit-D/9, respectively.

16. The injuries suffered by four accused can be noticed as under:--

"Accused-Kishori Lal:

(i) Lacerated wound with diffuse swelling around left eye, 1 x 1/2 x 1/2 cm, left eye, simple, blunt.

(ii) Incised wound, 6 x 1/4 x 1 cm, linear clear cut edge, antro-post, scalp right side, simple, sharp.

(iii) Abrasion, 1/2 x 1/2 cm, left leg, upper 1/3, simple, blunt."

Accused-Kamlesh Kumar:

"(i) Lacerated wound, 1 x 1/2 x 1/2 cm, middle finger right hand, simple, blunt.

(ii) Abrasion, red, 3 x 1/2 cm, scalp mid 1/3 left side, simple, blunt.

(iii) C/o pain left shoulder, no external injury seen."

Accused-Heera Lal:

"(i) Abrasion, red, 2 x 1 cm, left wrist, simple, blunt.

(ii) C/o Pain, chest, left ankle, no visible injury seen."

Accused- Radha Kishan:

"(i) Lacerated wound, 9 x 1/2 x 1 cm, linear vertex left side, scalp anterior-left, simple blunt.

(ii) Lacerated wound, 6 x 1/2 x 1 cm, scalp anterior -right, simple, blunt.

(iii) Swelling with abnormal mark, left arm.

(iv) Abrasion, red, 1 x 1 1/2 cm, left leg, anterior 1/3, simple, blunt.

(v) Abrasion, red, 1 x 1 cm, left ankle, simple, blunt."

17. As per CT Scan of head of Radha Kishan, there was mild oedema of the brain due to injury caused to right temporo-parietal region.

18. It is apparent that one of the accused, Radha Kishan has received severe injury on the head. Another accused Kishori Lal had also suffered injury on the head. In the Parchabayan/statement (Exhibit-P/3), the complainant has not explained the injuries on the person of the injured accused, even though, they have reached the hospital at the same time.

19. Dr. Arun Sharma (P.W.19) stated that on 2.3.2008, at 12:15 PM, Jagdish died

in the hospital. In the Post Mortem Report (Exhibit-P/27), this doctor had noted one contusion measuring 4cm x 2cm on the right forearm, and an incised wound on the head of the deceased. As per opinion of doctor, the cause of death was Coma with cumulative hemorrhagic shock as a result of ante mortem injury to the skull, which was sufficient to cause death in the ordinary course of nature.

20. Leelesh (P.W.3) in the court stated that Kishori Lal who was armed with Dhariya had caused injury on the head of his father Jagdish. Thereafter, Radha Kishan had caused injury with Spade on the head of his father. It is to be noted in the medico-legal report (Exhibit-P/26) only one injury has been found on the person of Jagdish. The said injury is on the head. No injury has been attributed to Om Prakash in any statement made to police. Injury attributed to Radha Kishan in deposition of Leelesh (P.W.3) has been found in medico-legal evidence. Leelesh (P.W.3) in cross-examination admitted that in the occurrence Kishori Lal and Radha Kishan had suffered injuries but stated that accused had suffered injuries at the hands of each other.

21. Sandeep Kumar (P.W.4) is the son of deceased Jagdish and brother of Leelesh (P.W.3). This witness in cross-examination admitted that at the time of occurrence, Radha Kishan, Kishori Lal and Mukesh were working in their field. This witness stated as under:--

22. Mahendra Kumar (P.W.5) injured witness stated that Kishori Lal and Radha Kishan had caused injuries to his uncle (Kaka) Jagdish. Kishori Lal had given Dhariya injury (Jhapeta) on the head of his uncle and Radha Kishan had caused injuries with Spade. Other accused also caused injuries. This witness admitted that they are also being prosecuted in a cross case. However, this witness denied having caused any injury to Kishori Lal, Radha Kishan and Kamlesh Kumar. This witness further stated that he cannot explain as to who caused them injuries. It will be apposite here to reproduce the following part of the statement of Mahendra Kumar as under:--

23. We need not refer to the testimony of other witnesses, as it will unnecessarily burden the judgment.

24. Suffice it to say that the injuries on the person of four accused have not been explained by the complainant party. It has come in the evidence that the occurrence had erupted as cows belonging to the accused party had entered the field of Jagdish and had damaged his wheat crop. Non-explanation of the injuries on the person of accused is sufficient to infer that the prosecution has suppressed the origin and genesis of the occurrence by denying that they have not caused injuries to accused who were examined at the same time by Dr. Babu Lal (P.W.14). The prosecution witnesses have not come to the court with clean hands.

25. The learned counsel for the appellants have relied upon the case of Lakshmi Singh and Others v. State of Bihar, reported in , (1976) 4 Supreme Court Cases 394, in which the Supreme Court has held as under:--

"This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In *Puran Singh v. The State of Punjab* Criminal Appeal No. 266 of 1971 decided on April 25, 1975: which was also a murder case, this Court, while following an earlier case, observed as follows:

In *State of Gujarat v. Bai Fatima* Criminal Appeal No. 67 of 1971 decided on March 19, 1975:) one of us (Untwalia, J., speaking for the Court, observed as follows:

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

26. It is urged by counsel for the appellants that we should extend complete right of self defence to the appellants.

27. We have given our thoughtful consideration to the rival submissions.

28. We have to examine as to what led to the occurrence, how the occurrence originated and what was genesis of the occurrence.

29. Due to non-explanation of injuries on the persons of accused, we find that the prosecution witnesses have split the occurrence into two parts. Firstly, when cows had entered in the field of Jagdish, Jagdish was given kick and fist blows and Second part being when accused came armed and caused injuries to Jagdish and other four witnesses namely, Leelesh (P.W.3), Mahendra Kumar (P.W.5), Mangi Lal (P.W.10) and Babu Lal (P.W.13). To us, this seems to be blemish. Sandeep Kumar (P.W.4) brother of the complainant Leelesh (P.W.3) and son of deceased Jagdish admitted that at the time of occurrence, accused were working in their fields and they came from there. Due to non-explanation of the injuries on the person of accused, we are of the view that since the prosecution has suppressed the origin and genesis of the occurrence, it can be safely inferred that the occurrence had taken place in one part alone. It is when cows of the accused had gone to field of Jagdish, at that time, an altercation ensued, hot words were exchanged, the matter had flaired up and parties came to blow and have caused injuries to each other. It is apparent that over a trivial issue, as the accused party had not herded their cows properly, the occurrence had ensued. Therefore, it is a case of sudden fight and the same will fall under Exception 4 of Section 300 IPC.

"Exception 4 -- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

30. We have already held the occurrence to be a sudden fight, which had occurred without any pre-mediation on the part of the accused, on the spur of moment, as the cows belonging to the accused had entered into the field of the deceased Jagdish. In the case of sudden fight, Section 34 IPC is not attracted.

31. It was held by the Hon'ble Supreme Court in the case of Jumman & Ors. v. State of Punjab [, AIR 1957 SC 469] as under:--

"(24). In such a case where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with under S.300, I.P.C., Exception 4.

(25). The matter has to be viewed in this way. It is clear that there was no pre-meditation and therefore when the contending factions met accidentally and

attacked each other, the conflict resulted in a sudden fight, in the heat of passions, upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties had arms, there was no undue advantage taken by either. Hence Exception 4 to S.300, I.P.C., applies with the result that the offence is under S.304 (Part I), I.P.C."

32. A Division Bench of this Court in *Buddhi & Ors. v. State of Rajasthan* [, 2007 (1) RCC 228], relying upon *Dharman v. State of Punjab* [, AIR 1957 SC 324] held as under:--

"13. Coming to the incident that occurred with deceased Saltu we find that he sustained injuries in the course of sudden fight ensued in the field of accused party. The complainant party was also armed with deadly weapons and as many as eight accused persons received lacerated and incised wounds on the vital parts. In *Dharman v. State of Punjab*, , AIR 1957 SC 324 the Supreme Court held that when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner and that the case against the accused falls within Exception 4 of Section 300 of the Indian Penal Code and the accused who caused the injury was guilty under Part I of Section 304 and not under Section 302 of the Indian Penal Code."

33. As per medico-legal report (Exhibit-P/26), the deceased has suffered only one injury on the head. In the Post Mortem Report (Exhibit- P/27), doctor, besides head injury had noted one contusion on the right forearm of the deceased Jagdish. No accused had been attributed injury on the forearm of the deceased Jagdish. The prosecution consistently have attributed injury on the head of Jagdish to Kishori Lal accused/appellant No. 1. Since we have already held the occurrence to be sudden fight, we are of the view that Section 34 IPC cannot be attracted. Each accused is responsible for his own role.

34. In view of above, we convert the conviction of the appellant Kishori Lal from Section 302/149 IPC to Section 304 Part-I IPC. Resultantly, we set aside the life imprisonment and sentence awarded on other counts upon all the appellants under Sections 148, 302/149 and 307/149 IPC and sentence the appellant Kishori Lal to ten years R.I. and order him to pay a fine of Rs. 10,000/- each, in default thereof he shall undergo one year R.I.

35. However, remaining appellants except Kishori Lal namely, Radha Kishan, Heera Lal, Kamlesh Kumar, Om Prakash and Leelesh Kumar are held guilty of offence under Section 323 and 324 IPC.

36. In the present case, occurrence had taken place in March, 2008. The appellants are in the corridors of the court for the last eight years. Taking into consideration their antecedents, age and the fact that they are not previous convicts, we are of the view that no purpose would be served in sending them behind the bars after sufferance of a protracted trial.

37. Therefore, we order that the accused appellants namely Radha Kishan, Heera Lal, Kamlesh Kumar, Om Prakash and Leelesh Kumar shall be released on probation for a period of one year. Each of the appellants released on probation shall furnish personal bond and bonds by the sureties to the satisfaction of the trial court undertaking that during the period of probation, they shall be of good conduct and peace. We also empower the trial court to specify any or all other conditions which it may deem fit, to facilitate undergoing probation of the appellants to whom it has been awarded. The period of probation shall for a period of one year.

38. We also award cost of Rs. 10,000/- on each appellants namely Radha Kishan, Heera Lal, Kamlesh Kumar, Om Prakash and Leelesh Kumar.

39. The cost and fine so imposed shall be deposited by the appellants and same shall be disbursed as compensation to the legal heirs of the deceased Jagdish.

40. With the above modification in conviction and sentence, the appeal stands disposed of.