
(2018) 02 RAJ CK 0030
In the Rajasthan High Court
Case No : 5 of 2008

Magni Ram s/o Shri Bhaguji

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 313](#), [Section 437A](#)
- Examination of witnesses by police - Power to examine the accused
[Indian Pe](#)

Citation : (2018) 02 RAJ CK 0030

Hon'ble Judges : Sangeet Lodha, Virendra Kumar Mathur

Bench : Division Bench

Advocate : Arun Kumar, Kalu Ram Bhati, JPS Choudhary

Final Decision : Allowed

Judgement

1. These appeals are directed against judgment dated 17.12.07 passed by the Additional Session Judge, Nimbahera in Sessions Case No.5/06,

whereby the accused appellants have been convicted for offence under Section 302/34 IPC and sentenced to undergo life imprisonment with fine

Rs.1,000/-; in default in payment of fine to further undergo three months" rigorous imprisonment.

2. In the nutshell, the prosecution story may be summarized thus: On 23.10.05 at 6.30 P.M., Magani Ram s/o Bhagu Balai and Ganesh s/o Dal,

residents of Geeda Kheda both having lathis in their hands, made Dayaram running ahead and while chasing him, when he reached in the guwari of

Rughnath, Goverdhan & Prabhu Banjara, gave lathi blows on his head and other parts of the body. Dayaram fell down and blood started oozing

out of his head. After belabouring Dayaram, Magani Ram and Ganesh fled away.

Rughnath apprised Narayan (PW 1), the elder brother of

Dayaram, about the incident occurred. On the information being received about the incident of beating at 7.30 P.M. at village Bhatoli Gujaran.

Narayan (PW 1) gave oral information to the Police Station, Bhadsoda. Dayaram, who was taken to the hospital at Sawanliyaji, after first aid was

referred to the hospital at Udaipur, however, he died while on the way to Udaipur. Thereupon, the police registered the FIR for offence under

Section 302/34 IPC and the investigation commenced.

3. During the investigation, necessary memos were prepared. Accused persons were arrested and at their instance, blood stained lathis were

recovered. The blood smeared soil, blood stained baniyan of the deceased and lathis recovered at the instance of the accused Magani Ram and

Ganesh were sent for examination to Forensic Science Laboratory. After inquest proceedings, body of deceased was subjected to autopsy by Dr.

Parth Sarthi (PW 16).

4. After completion of investigation, the police filed charge sheet against accused appellants for offence under Section 302/34 IPC before the

Judicial Magistrate, Badi Sadri. The matter was committed to the Court of Additional Sessions Judge, Nimbahera for trial.

5. The trial Judge framed the charges against the accused appellants for offence under Section 302/34. The accused appellants pleaded not guilty

and claimed trial.

6. During the trial, the prosecution got examined as many as 17 witnesses (PW 1 to PW 17) and documentary evidence was exhibited as Ex.P/1

to Ex.P/27 and the lathis recovered were produced as Article 1 & 2. After completion of prosecution evidence, the statements of the accused

appellants were recorded u/s. 313 Cr.P.C., wherein they denied their involvement in the commission of the crime as alleged and expressed the

desire to lead evidence in defence. No oral evidence was produced on their behalf, however, the statements of witnesses recorded by police under

Section 161 Cr.P.C. were exhibited in evidence as Ex.D/1 to D/4.

7. The learned trial Court after consideration of the rival submissions and the evidence on record, convicted and sentenced the accused appellants

as indicated above. Hence, these appeals.

8. Heard the learned counsels for the appellants and learned Public Prosecutor.

9. Mr. Kalu Ram Bhati, Amicus Curiae appearing on behalf of the appellant Ganesh and Mr. Arun Kumar, the counsel appearing on behalf of the appellant Magani Ram submitted that the learned trial Judge has failed to examine the evidence on record in correct perspective. The conduct of the eye witnesses Rughnath (PW 2), Goverdhan (PW 3), Leela (PW 4) in not attempting to rescue the deceased is absolutely unnatural, which makes their presence at the place of occurrence doubtful. The statements of the eye witnesses who are related to the deceased suffer from self contradictions and embellishments. The deposition of eye witnesses is in contradiction with their statements recorded by the police under Section 161 Cr.P.C. on the material points. Yet another eye witness Prabhu Lal Banjara (PW 10) has turned hostile and not supported the prosecution story. As per eye witness Goverdhan (PW 3), 50 lathi blows were inflicted on the person of the deceased and as per Rugnath (PW 2), 15-20 blows were inflicted on the head of the deceased and number of blows were inflicted on legs, waist and the back, whereas as per post mortem report only 12 injuries which include 7 lacerated wound and 5 bruises were found on the person of the deceased and thus, these eye witnesses cannot be placed in the category of "wholly reliable witnesses". The recoveries of lathis at the hands of appellants have not been proved with cogent and convincing evidence and the FSL report also does not connect the accused with the commission of crime. It is submitted that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and therefore, they deserve to be acquitted. In the alternative, learned counsels submitted that none of the injuries on the person of the deceased is found fatal and even as per deposition of Dr.Parth Sarthi (PW 16) had the medical treatment been made available to the deceased at the higher medical centre, he could have been saved and thus, on the facts and in the circumstances of the case, no intention of the accused to cause death or to cause any bodily injury likely to cause death is established in the instant case. It is submitted that there is absence of the motive and thus, the appellants could not have been convicted for offence under Section 302 IPC. Learned counsel would submit that the offence committed by the accused if found proved cannot travel beyond Section 304 Part II/34

IPC. In support of the contention, learned counsel Mr. K.R.Bhati has relied upon the decision of the Supreme Court in the matter of "State of Rajasthan vs. Poona Ram & Ors.", AIR 2017 SC (Criminal) 144 and a Bench decision of this court in the matter of "Ratan Singh vs. State of Rajasthan", 2015(2) Cr.L.R. (Raj.) 1021 and a decision of the Supreme Court in the matter of "Ram Autar & Ors. vs. State of Uttar Pradesh", (2017(1) CJ (Cri.) (SC) 235 .

10. Per contra, learned Public Prosecutor submitted that the guilt of the accused appellants stand proved beyond reasonable doubt on the basis of the testimony of the eye witnesses and other corroborative evidence on record. Learned Public Prosecutor submitted that the credit of the eye witnesses is in no manner impeached in the cross examination and they are wholly reliable witnesses. Learned Public Prosecutor submitted that it is incorrect to state that only 12 injuries were caused on the person of the deceased. Drawing the attention of the court to the post mortem report (Ex. P/20), learned Public Prosecutor submitted that injury no.11 includes multiple bruises of different sizes found over the back of the deceased and thus, that cannot be considered to be a single injury. It is submitted that out of multiple injuries caused, most of the injuries were inflicted on vital part of the body and thus, the contention sought to be raised on behalf of the appellant that none of the injury was found fatal is absolutely baseless.

11. We have considered the rival submissions and scanned the evidence on record carefully.

12. The Medical Officer Dr. Parth Sarthi (PW 16) conducted autopsy of the dead body of Dayaram. As per the post mortem report (Ex.P/20), following ante mortem injuries were found on the person of the deceased Dayaram:

1. Lacerated wound 10 cm x 2.5cm x bone deep margin eroded, mark of bleeding positive on manipulation blood came out from the lesion. As per diagram, the said injury was on right side and back of the skull.
2. Lacerated wound 4 x 2 1/2 cm x bone deep horizontally placed on the occipital region of the skull Rt. side margin eroded.
3. Lacerated wound 3x1 1/2 x bone deep on the lower region of the right occipital area of the skull.

4. Lacerated wound 3x1 cm x muscles deep on the left temporal and occipital region of the skull, margin eroded. Mark of bleeding positive.

5. Lacerated wound 2 1/2 x 1.25 cm x bone deep on the lower portion of the left occipital region of the skull margin eroded mark of bleeding present.

6. Lacerated wound 3 x 2cm x bone deep obliq placed on the mastoid region of the Rt. Ear. Margin eroded, mark of bleeding positive.

7. Lacerated wound 2 x 1 1/2 cm of the left ear pinna so that the lower part of pinna found separated margin eroded.

8. Bruise 4 x 3 cm oral shaped on the angle of the mandible -Rt. Side.

9 Bruise 3 x 2 cm on the left cheek region middle zone.

10. Bruise 8 x 3 cm obliquely placed on the Rt. side of the back running from right scapular region to the middle of thorax.

11. Multiple bruises of different sized and size 4 cm x 1.5 cm in varied direction present all over the back more so on the thoracic region.

12. Chop wound 6 x 3 cm x 4 cm at the level of L1 vertebrae of the spinal cord of the back, margin clear cut.

-Spinal cord -torn at this level.

- Vertebrae found fractured.

-Small part of intestine ruptured.

-Spleen found injured.

The cause of death was opined to be severe traumatic assault to brain & other vital organs associated with hemorrhagic shock.

13. Dr. Parth Sarthi (PW 16) in his deposition has categorically confirmed the injuries sustained by the victim as also the cause of death. Thus,

looking to the nature of injuries and the medical evidence on record the death of Dayaram was concededly homicidal in nature.

14. The prosecution case is founded on testimony of eye witnesses Rughnath (PW 2), Goverdhan (PW 3) & Leela (PW 4) and Prabhu Lal (PW

10), who reached the place of occurrence immediately after the incident as also other corroborative evidence.

15. Rughnath (PW 2) deposed that on fateful day at 6.30 p.m. while having meal alongwith his wife and children, he heard the sound of uninterrupted blows being inflicted. Thereupon, he immediately came out of the house and saw Magani Ram and Ganesh belabouring Dayaram lying on the ground by lathis. He asked Magani Ram and Ganesh as to why they are beating Dayaram but they did not stop and continue to beat him. In the meantime, his brother-in-law Goverdhan (PW 3) also came there and both of them rushed to Sanwariyaji and informed the Sarpanch about the incident. The information was given to the SHO, Police Station, who came in a jeep and Dayaram who was still breathing was taken to Sanwariyaji Hospital. He deposed to have seen the incident alongwith his wife and Goverdhan (PW 3), who later joined them. In the cross examination, he deposed that Magani Ram was on the head side and Ganesh was on the feet side of deceased Dayaram. He did not count the blows inflicted on the head of the deceased but indiscriminate blows were inflicted for about 10 minutes. He further deposed that more than 15-20 blows were inflicted on the head and innumerable blows were inflicted on feet, waist and back of the deceased. When he was confronted with his statement recorded by the police under Section 161 Cr.P.C. (Ex.D/2), he responded in terms that he does not know why the police has not recorded the facts in the terms stated.

16. The deposition of Leela (PW 4) is in line of the deposition of her husband Rughnath (PW 2). She deposed that Dayaram was belaboured in front of the gate of her house. Ganesh and Magani Ram both were inflicting indiscriminate lathis blow on Dayaram on the head and other parts of the body. After the incident, she alongwith her sister-in-law (bhabhi) went to the houses of Magani Ram and Ganesh which were found locked. In the cross examination, she disclosed that Dayaram had relationship of rakhi tying with her husband as also with her bhabhi. She deposed that Magani Ram was on the head side and Ganesh was on the feet side of deceased Dayaram. She further deposed that Dayaram suffered head injuries and blood was oozing out. She denied the suggestion that Magani Ram and Ganesh were falsely implicated on account of land and cattle dispute.

17. Goverdhan (PW 3) deposed that hearing the hue and cry of his brother-in-

law Rughnath, he rushed to his house where he saw Magani Ram and Ganesh inflicting lathi blows on Dayaram. He deposed that he tried to catch hold of Magani Ram and Ganesh, but since they pointed lathi towards him, he kept himself away from them. He deposed that Ganesh and Magani Ram inflicted 5- 50 blows on Dayaram. He and his brother-in-law (Rughnath- PW 2) rushed to Sanwariyaji; met Sarpanch and information was given to the police station on telephone. He deposed that besides him, his brother-in-law Rughnath (PW 2), sister Leela (PW 4) and his wife Mangi and children had seen the incident and no one else was there.

In cross examination, he stated that he had seen Dayaram lying on the ground but he had no knowledge as to how Dayaram reached there.

Dayaram was lying on the ground and both the accused were belabouring him. He could not point out exactly as to how many blows were inflicted by the accused on the person of the deceased. He deposed that neither he nor Rughnath accompanied Dayaram to the hospital.

When confronted with his statement recorded by the police under Section 161 Cr.P.C. (Ex.D/2), the part of the statement which was said to be contrary to his deposition before the court, was not accepted him as correct.

18. Indisputably, the incident has occurred in the precincts of the guwari wherein inter alia the house of the eye witnesses Rughnath (PW 2) and

Leela (PW 4) is situated and thus, their presence at the place of occurrence is natural and cannot be doubted. Merely because, the eye witness

Rughnath (PW 2) had relationship with Dayaram of rakhi tying, his evidence cannot be discarded as untrustworthy and unreliable being an

interested witness. A close scrutiny of the evidence of eye witnesses reveals consistency in all material particulars. The contradictions in deposition

of the witnesses with their statement recorded by the police under Section 161 Cr.P.C. are not of much significance. The discrepancy sought to be

pointed out in the testimony of eye witnesses regarding the number of lathi blows being given by the appellants to the deceased in no manner

makes the presence of the eye witnesses at the place of occurrence doubtful. As a matter of fact, when indiscriminate blows are given, nobody

witnessing the incident could be expected of pointing out the number of blows given with exactitude. Moreover, as indicated by the Public

Prosecutor, out of the 12 injuries found on the person of the deceased, as per the post mortem report (Ex.P/20), the injury no.11 indicates number

of bruises over the back of the deceased and thus, the injuries on the person of the deceased sought to be restricted by the counsel for the

appellants as aforesaid, is found contrary to the evidence on record.

19. There is no reason why the eye witnesses would falsely implicate the appellants herein rather, being the persons related to the deceased, they

would be interested in getting the real culprit punished. Thus, we do not find any good reason to doubt the testimony of eye witnesses, they are

found wholly reliable.

20. The testimony of the eye witnesses stands corroborated by the evidence of recovery of the lathis at the instance of the appellants and further by

medical evidence discussed hereinabove. Further, as per FSL report (Ex.P/27), the lathis recovered at the instance of the appellants were found to

be stained with "O" group blood i.e. the blood group of the deceased. In this view of the matter, the guilt of the accused in inflicting injuries to the

deceased by lathi blows and causing his death stands proved beyond reasonable doubt.

21. Coming to the question of absence of motive, we do not find any substance in contention of the learned counsels for the appellants. As a

matter of fact, it is not on the prosecution to establish the existence of any motive for which accused may be charged. If the facts establishing the

charge are clear and duly proved on the basis of evidence on record then it is absolutely immaterial that the motive has not been established. In

other words, it is not sine qua non for the prosecution that the motive must be proved. The reliance in this regard may be placed on decision of the

Supreme Court in the matter of "Krishna Pillai vs. State of Kerala" (1981 Cr.L.R. (SC) 252.

22. This takes us to consider whether there was pre meditation and common intention on the part of the appellants to commit murder of the

deceased Dayaram. There is no evidence on record suggesting that the accused appellants had any enmity with the deceased Dayaram and they

had assaulted him with pre mediated mind to cause his death. There is no specific evidence on record as to who amongst the accused appellants

caused fatal injuries on the head of the deceased. But the fact remains that the

accused appellants gave indiscriminated blows by lathis inter alia on the head of the deceased. Suffice it to say that on the facts and in the circumstances of the case, the intention to cause death on the part of the appellants cannot be said to be established beyond doubt but it can be safely concluded that the accused had intention to cause such bodily injury which are likely to cause death.

23. In Poona Ram's case (supra), where the fatal injuries were caused by the number of accused persons on the head and ribs and some of the injuries proved fatal, the court observed:

7. Having considered all the relevant materials and the impugned judgment, as well as the rival contentions, we are of the view that the High Court

erred in applying Section 304-II to the offence at hand. Section 304-I of the IPC would clearly cover such an offence where the accused persons

caused indiscriminate assault and some of the injuries proved fatal. By the rashness of their act, the accused persons must be treated to be fully in

know of the consequence of their acts including possible death. Hence, in the facts of the case, we set aside the impugned judgment and order

under appeal and convict the respondent Nos. 1 to 4 for offence under Section 304-I of the IPC. The facts of the case and the ends of justice

require that the accused persons should serve at least eight years of rigorous imprisonment and also pay a fine of Rs.25,000/- (Rupees twenty five

thousand) each and in default undergo further rigorous imprisonment of six months. We order accordingly. If the fine is realized, the same should

be paid as compensation to the heirs of the deceased, if any." (emphasis supplied)

24. In view of the discussion above, we are of the considered opinion that the conviction of the accused appellants under Section 302/34 IPC

deserve to be set aside and instead they deserve to be convicted for offence under Section 304 Part I/34 IPC.

25. In the result, the appeals are partly allowed. The conviction of the accused appellants Magani Ram and Ganesh under Section 302/34 IPC is

set aside. They are convicted for offence under Section 304-I/34 IPC and sentenced to suffer rigorous imprisonment for ten years. The accused

appellants have already undergone the sentence for the period more than the sentence awarded. Accordingly, they are directed to be released

from the custody forthwith if they are not required in any other case. Their bails bonds shall stand discharged. However, each of them shall execute a bail bond in sum of Rs. 25,000/- to the satisfaction of the trial court in terms of provisions of Section 437A Cr.P.C.