

(2006) 01 RAJ CK 0095
In the Rajasthan High Court
Case No : Criminal Appeal No. 763 of 1999

Mukut and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (2006) 3 RLW 2576 : (2006) 2 WLC 132

Hon'ble Judges : Shiv Kumar Sharma, J; Khem Chand Sharma, J

Bench : Division Bench

Advocate : S.C. Sharma, Amicus Curiae, for the Appellant; Brahmanand Sandu, Public Prosecutor, for the Respondent

Judgement

Shiv Kumar Sharma, J.—The appellants, four in number, along with co-accused Banshi Lal, Kanya Bai and Kastrui Bai were indicted before the learned Additional Sessions Judge Chhabra District Baran in Sessions Case No. 242/1992. Learned Judge vide Judgment dated November 5, 1999 convicted and sentenced the appellants as under:

Mukut and Laxmi Chandra:

Under Section 302 IPC:

Each to suffer life imprisonment and fine of Rs. 1000/-. in default to further suffer six months rigorous imprisonment.

Under Section 147 IPC:

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

Under Section 323/149 IPC:

Each to suffer rigorous imprisonment for six months and fine of Rs. 200/-, in

default to further suffer one month rigorous imprisonment.

Babu Lal and Ram Karan:

Under Section 302/149 IPC:

Each to suffer life imprisonment and fine of Rs. 1000/-, in default to further suffer six months rigorous imprisonment.

Under Section 147 IPC:

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

Under Section 323 IPC:

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

Substantive sentences were directed to run concurrently.

Co-accused Kanya Bai and Kasturi Bai were however acquitted of the charges under Sections 147, 302/149 and 323/149 and proceedings against co-accused Banshi Lal stood abated because he had expired.

2. It is the prosecution case that a written report (Ex. P. 1) was lodged on October 1, 1991 with the Police Station Chhipa Barod by informant Kushal (PW. 1) to the effect that on the said day around 11.00 a.m. when the informant was sitting with his brother Kanhaiya Lal (since deceased) in his house the appellant along with Banshi Lal came armed with Lathis and Kuntia. Banshi Lal, Laxmi Narain and Mukut gave beating to Kanhaiya Lai, whereas Ram Karan and Babu Lal inflicted injuries on the person of informant. When Kishan, Ram Prasad and Shanti came to intervene, they were also beaten up. Ram Kalyan took them in bullock cart to Police Station Chhipa Barod. A case under Sections 324, 148, 149, 323 and 307 IPC was registered on the basis of said report and investigation commenced. During investigation Kanhaiya Lal succumbed to his injuries and Section 302 IPC came to be added. Statements of witnesses u/s 161 Cr.P.C. were recorded, accused were arrested, autopsy on the dead body was performed, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Chhabra District Baran, Charges under Sections 147, 302/149 and 323/149 IPC were framed. The accused denied the charges and claimed trial. The prosecution in support of its case examined as many as 30 witnesses. In the explanation u/s 313 Cr.P.C., the appellants claimed innocence. No witnesses in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above. The other co-accused were however acquitted.

3. We have heard the rival submissions and scrutinised the record.

4. A look at the material on record reveals that Kanhaiya Lal died on the next day

of the incident. Prior to his death the injuries sustained by him were examined and according to injury report (Ex. P. 23) following injuries were found on his person:

1. Swelling 10 x 3 cm At Right side of chest
2. Swelling 3 x 1.5 cm on Skull Occipital part
3. Swelling 2 x 3 cm on left shoulder

After the death of Kanhaiya Lal autopsy was performed on the dead body and as per postmortem report (Ex. P. 14) following antemortem injuries were found:

1. Bruise 10 x 2 1/2 on frontal chest right side
2. Abrasion 1 x 1 cm on Occipital region
3. Swelling 7 x 5 cm on right side of scalp x
4. Bruise 3 x 2 cm Lt. Shoulder
5. Fractures of 5, 6 and 7th rib on right side
6. Multiple fractures of both parietal bone.

According to Dr. T.C. Acharya (PW. 19) the cause of death was Intra cranial hemorrhage due to head injury.

5. Other members of the complainant party also sustained injuries. Subhadra daughter of Kanhaiya Lal received following injuries vide injury report (Ex. P. 19):

1. Abrasion 8 x 10 cm on left forearm
2. Swelling 3 x 3.5 on Right Arm near Elbow
3. Swelling 4x5 cm on left hand.

Ram Prasad vide injury report (Ex. P. 20) received one lacerated wound of 3.5 x 1.5 cm on little finger of left hand. Shanti vide injury report (Ex. P. 21) received one Abrasion of 4 x 3 cm on Right Shoulder. Hari Kishan vide injury report (Ex. P. 22) received following injuries:

1. Abrasion 3 x 0.5 cm on Left Forearm.
2. Abrasion 0.5 x 1 cm on Right Forearm.

Kushal vide injury report (Ex. P. 36) received following injuries:

1. Swelling 0.5 x 0.5 cm over left leg (calf) (Swelling 15 x 10 cm)
2. Abrasion 1 x 0.5 cm over left leg medially 10 cm above anklet.
3. Abrasion 0.5 x 0.5 cm over left shoulder back
4. Bruise 7 x 1.5 cm over left thigh (medially)

5. Bruise 7 x 3 cm Right Forearm laterally

6. Lacerated wound 1 x 0.5 cm over left parietal region of scalp.

Vide X-ray report (Ex. P. 37) fracture of tibia bone was found.

6. It is contended by learned counsel for the appellant that the fatal injury on head has been attributed to accused Banshi Lal, who expired and proceedings against him stood abated. It is further urged that according to FIR the incident had occurred at the house of the complainant party but at the trial place of incident was changed and it was stated by the prosecution witnesses that the place of incident was a well. The act of the prosecution witnesses in changing the place of incident is fatal to the prosecution. It is also canvassed by the learned counsel that since the injuries sustained by the accused were not explained by the prosecution witnesses adverse inference ought to have been drawn.

7. Learned Public Prosecutor on the other hand supported the impugned judgment and contended that statements of injured eye witnesses have rightly been relied upon by the learned trial judge.

8. Kushal (PW. 1) Hari Kishan (PW. 2), Ram Prasad (PW. 3), Shanti (PW. 4), Subhadra (PW. 5) and Dropdi Bai (PW. 7) have been examined as eye witnesses of the occurrence. All these witnesses deposed that the accused belaboured all of them at the well and inflicted injuries. Injury on the head of the deceased, which was found fatal, is alleged to have been caused by appellant Mukut with Kharla (small prop used in bullock cart). Factual situation emerged from the material on record may be summarised as under:

(i) Sarjeet Singh, IO, (PW. 29) admitted in the cross examination that cross case of the same incident bearing No. 209/91 was registered on the report of Banshi Lal against Kanhaiya Lal, Kushal and Hari Kishan under Sections 307, 324 and 323 IPC at Police Station Chhipa Barod and injuries sustained by Banshi Lal were medically examined. Sarjeet Singh also stated that at the place of incident there was a heap of stones.

(ii) As per arrest memo (Ex. P. 28) appellant Laxmi Chand at the time of arrest had two injuries on the left side of head. Appellant Babu Lal also had two injuries over left shoulder vide arrest memo (Ex. P. 29).

(iii) Injury report as well as arrest memo of Banshi Lal were not placed on record.

(iv) The prosecution witnesses did not explain the injuries sustained by the accused.

(v) Only one injury with kharla has been attributed to Mukut and he did not repeat the same.

9. In Mohar Rai and Bharath Rai Vs. The State of Bihar, their Lordships of the Supreme Court laid down that in a murder case, the non explanation of the injuries sustained by the accused at about the time of occurrence is a very

important circumstance from which the court can draw the following inferences:

(a) that the prosecution has suppressed the genesis and the origin of the occurrence and has not presented the true version;

(b) 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;

(c) 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.

10. However in *Lakshmi Singh and Others Vs. State of Bihar*, it was propounded that the non-explanation of the injuries by the prosecution will not affect the prosecution case where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disintended so probable, consistent and creditworthy, that it far out weights the effect of the omission on the part of the prosecution to explain the injuries.

11. Upon a conspectus of many other decisions rendered by the Apex Court we are of the view that the question as to the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. If the prosecution witnesses are believed by the Court in proof of the guilt of the accused, the question as to obligation of the prosecution to explain injuries of the accused will not arise.

12. Coming to the facts of the instant case we notice that in the FIR (Ex. P. 1) Kushal (PW. 1) stated that Banshi Lal, Laxmi Chand, Babu Lal, Ram Karan and Mukut reached to his house and when Kushal and his brother Kanhaiya (deceased) came out of the house they started beating them with lathis. Babu Lal and Ram Karan gave beating to Kushal with lathis whereas Laxmi Chand and Mukut inflicted lathi blows on the person of Kanhaiya. In his deposition before the trial Court Kushal however changed the place of incident and stated that the incident had been taken place at the well. In the cross examination Kushal admitted that report (Ex. P. 1) was not in his handwriting. Some body at the police station wrote it and he only put his signatures over it. He further stated that he had also named the women accused but money did play its role in erasing their names. Kushal denied this suggestion that Hari Kishan inflicted blow with dharia on the head of Banshi Lal and he (Kushal) gave axe blow on the head of Laxmi Chand. He denied this suggestion that the accused has sustained the injuries. Learned trial Judge put a note in the statement of this witness to the effect that he left the court in the middle of his examination after murmuring some thing. Hari Kishan (PW. 2) deposed that the accused belaboured them at the well and Laxmi Chand gave lathi blow on the chest of Kanhaiya whereas Mukut gave blow with Kharla on his head. Banshi Lal also gave beating to Kanhaiya. In his cross examination when this witness was confronted with his police statement (Ex. D. 2), he deposed that he gave graphic description of

beating to the police but he could not say why it was not written in the police statement. He also denied this suggestion that complainant party had caused injuries to the accused. Ram Prasad (PW. 3) deposed that all the accused had given beating to Kanhaiya Lal. This witness disowned some parts of his police statement (Ex. D. 3), Shanti Bai (PW. 4) also named all the accused including Kailash, Kastoori and Kanya who had beaten up Kanhaiya. She disowned some parts of her police statement (Ex. D. 4). Samundra Bai (PW. 6) deposed that Babu, Laxmi Chand and Mukut gave beating to Kanhaiya at the well. Dropdi Bai (PW. 7) stated that Banshi, Babu and Hari Singh gave beating to Kanhaiya.

13. Having scrutinised the prosecution evidence we find that the accused Banshi Lal, Laxmi Chand and Babu Lal had sustained injuries. Injuries received by Banshi Lal got examined but the injury report was withheld. Laxmi Chand had received two injuries over left side of his head, whereas Babu Lal sustained injuries on his shoulder. The prosecution could not however establish that the injuries received by the accused were minor and superficial. In view of the fact that the prosecution witnesses changed the place of incident and there are material contradiction in their statements possibility of over implication of the accused cannot be ruled out. It appears to us that on the date of incident fight ensued. The deceased died in the course of sudden and free fight by reason of injury inflicted by appellant Mukut. In view of the fact that cross case No. 209/91 under sections 307, 324 and 323 IPC was registered against Kanhaiya Lal, Kushal and Hari Kishan, prior to the institution of FIR (Ex. P. 1) lodged by Kushal, the complainant party appears to have been armed with sharp edged weapons and both the parties clashed and in the course of a free fight some injuries were inflicted on one party or the other. The prosecution evidence in the instant case does outweigh the effect of omission on the part of the prosecution to explain the injuries sustained by the accused in the same occurrence.

14. In the ultimate analysis we find that the prosecution has consistently established that appellant Mukut inflicted one blow with blunt object on the head of Kanhaiya Lal and that proved fatal. Since Mukut had not acted in cruel and unusual manner, the case against him clearly fell within Exception 4 of Section 300 IPC. Charge u/s 302, 147 and 323/149 IPC against the appellant Laxmi Chand and under Sections 302/149, 147 and 323 IPC against appellants Babu Lal and Ram Karan could not be established beyond reasonable doubt. Charge under Sections 147 and 323/149 IPC is also not made out against the appellant Mukut.

15. For these reasons, we dispose of instant appeal in the following terms:

(i) We allow the appeal of appellants Laxmi Chandra, Babu Lal and Ramkaran and acquit them of the charges under Sections 302/149, 147 and 323 IPC. They are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellant Mukut and instead of Section 302, we convict him u/s 304 Part 11 IPC. In view of the fact that appellant Mukut has already suffered the sentence for a period of more than six years and five

months, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We however acquit him of the charges under Sections 147 and 323/149 IPC. Appellant Mukut, who is in jail, shall be set at liberty forthwith if not required to be detained in any other case.

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