
(1980) 02 RAJ CK 0041
In the Rajasthan High Court
Case No : Criminal Appeal No. 247 of 1975

Padmaram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 07-02-1980

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 393

Citation : (1980) WLN 34

Hon'ble Judges : S.N. Deedwania, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Deedwania, J.—Appellant Padmaram has preferred this appeal against the judgment dated March 18, 1975 by the learned Additional Sessions Judge No. 1, Jodhpur convicting him under Sections 325 and 323 IPG respectively.

2. Briefly stated the facts according to the prosecution were these. On 20-10-1967 at about 8 a.m. Kishanpuri was going to his field through the field of Padmaram. Appellant Padmaram and the other co-accused were threshing their "bajra" crop rear the "pagdandi" on which Kishanpuri was proceeding to his field All the accused persons seven in number armed with lathis, all of a sudden encircled Kishanpuri and give him a severe beting. Padmaram inflected a la(sic)hi blow on the left leg of Kishanpuri resulting in a fracture. The lady accused were having "dantalis" in their hards. Kishanpuri raised an alarm which attracted Bania, Anchi and Sunder at the scene of the incident. They were also given a beating Padmaram also caused some injuries to the eyes of Kishanpuri. After the incident, first information report was lodged by Mst. Sunder wife of Kishanpuri at Police Station, Mahamandir at 11.30. a.m. The usual investigation including the med cal examination of the injured was made. After completing the investigation the police put up a challan in the court of the Munsif Magistrate, Jodhpur who committed the accused persons to the court of Sessions The appellant and other co-accused pleaded not guilty. Their defence appears to be that a well known as

"khariberia" is owned & possessed by Padmaram According to Padmaram. the complainant party wanted to demolish his well When he resisted, the complainant party attacked his party and caused various injuries Kishanpuri inflicted a lathi blow which resulted in the fracture of his hand. The learned Additional Sessions Judge believed the prosecution case partially & convicted Padmaram for the offence under Sections 325 and 393 IPC. However, the other co-accused viz, Mst Chhoti, Dakuri, Seemli and Kamli were acquitted of all the charges levelled against them. The learned Additional Sessions Judge was also of the view that it was not a case where Kishanpuri was attacked suddenly by the accused party. According to him it was a case of free fight and in arriving at this conclusion he thus observed:

It seems that the two parties met without any intention to quarrel, but all of a sudden a fight ensued in which both sides used force. It cannot be said to be a case of rioting in the absence of any evidence to prove previous concert. It cannot be, inferred from the mere fact of joint action, for, such action might have been spontaneous and not necessarily the result of a previous design Of course, surh preconcert and design may be as much the result of mutual understanding as of a previous deliberation, but in such a case there must be facts from which such an inference may be drawn. Mere use of force by a number of persons assembled does not render them liable for rioting. This implies some degree of previous concert & deliberation which is not found in the instant case. It is significant to that Mst. Sundri (PW 4) who is an eye witness of the occurrence and was also injured has lodged the FIR. She mentioned nothing what so ever about the exhortation by Padmaram in that first information report. However, when examined in Court, she stated that Padmaram had exhorted his companions twice. That fact is missing in the FIR which is a fairly detailed one Hence, in my opinion, the alleged exhortation by Padmaram is not established

3. I have heard the learned Counsel for the parties and the learned Public Prosecutor and perused the record of the case carefully.

4. It was argued by the learned Counsel for the appellant that the learned Sessions Judge was in error in negating the defence story and in arriving at a finding of free fight. This was not even the prosecution case. There is no evidence to prove or indicate that it was a case of free fight It was neither the case of the prosecution nor that of the defence. I have considered the argument carefully and in my opinion the learned Additional Sessions Judge was badly in error in arriving at a finding of free fight. There is no evidence worth the name to indicate that the parties had assembled with a pre-determined intention to have a fight It was thus observed in Gajanand and Others Vs. State of Uttar Pradesh,

A free fight is "when both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders.

Before proceeding further in the case at this stage I may notice the injuries received by both the sides:

Kishanpuri

1. Bruise red transverse 6 cm x 1 cm on left buttock over hip joint
2. Bruise red 14 cm x 2cm placed obliquely on posterior aspect of left thigh upper 1/3rd portion.
3. Bruise red 12 cm x 13/4 cm on outer aspect of middle 1/3rd portion at left thigh placed obliquely.
4. Bruise red 16 cm u 18/4 cm on outer aspect of left thigh middle 1/3rd portion placed obliquely 4 cm in front of injury No. 3.
5. Bruise red 8 cm x 5 cm on outer aspect of left thigh middle portion adjacent to lower end of injury No. 3.
6. Bruise as swelling 9 cm x 6 cm on laterel maloutous of left leg.
7. Bruise as swelling 5 cm x 3 cm on anterior medial aspect of left leg, fracture tivia present underneath it.
8. L. wound vertical 2 cm x 1/2 cm on anterier aspect of right leg 5 cm belong tivial tubercle.
9. L. would I cm x cm 1/2 x joint cavity deep present on knuckle promimol of left inder finger, disiocatiod present under it.
10. Bruise red on mucosal surface 4 cm x 2 cm on upper lip right side.
11. Incised wound oblique 2 cm x 2/10 cm x 2/10 cm on upper lip below left nostle.
12. Incised wound veritcal 2 cm x 1/2 cm x 3/4 cm right side of note at the root.
13. L. wound transverse 2 1/2 cm x 3/4 cm x bone deep 2 1/2 cm above the root of the nose on forehead.
14. L. wound oblique 2 cm x 2/10 cm x 2/10cm joining injury No. 13 at its middle placed on forehead.
15. L. wound 3 cm x 1/2 cm x bone deep on scalp frontal region left side near hair margin. Frontal bone found fractured underneath it.
16. L wound v. snape 6 cm x 2cm upto bone deep placed on the top of head parital region medial line.
17. L wound transverse 3 1/2 cm x 1 cm x skin deep on lower left eye lid.
- 18 L. wound 1 1/2 cm x 1/2 cm x skin deep present on upper lid lateral portion left side.

19. L. wound 2 cm x 3/4 cm x skin deep on upper lid medial portion left side subconjunctival haemorrhage present left side.

20 Incised wound 2 cm x 1/10 cm x skin deep on face right side 2 1/2 cm in front of right ear placed transversely.

21. Incised wound 2 1/2 cm x 1/3 cm x skin deep on face right side malar region placed obliquely.

22 L. wound 1 1/2 cm x 1/2 cm x 1/2 cm on posterior aspect of left arm lower 1/3rd portion.

Sunder

L. wound 1 cm x 1/2 cm x skin deep on tip of right great toe.

Bania

1. L. wound 4 cm x 3/4 cm x bone deep placed vertically on scalp right side, parietal region.

2. L wound 4 cm x 1/2 cm x 3/4 cm placed behind injury No. 1.

3. Bruise with abrasion, vertical 3 cm x 1 cm on top of left shoulder joint.

4. Abrasion 1 1/2 cm x 1/2 cm x 1/2 cm on posterior aspect of left arm lower 1/3rd portion.

Padmaram

1. Lacerated wound wavy 3 1/2 cm x 1/2 cm x 1/2 cm placed obliquely on palmar aspect of proximal portion of left thumb.

2. Bruise as swelling on distal knuckle of left little finger.

3. Bruise red, oblique, 5 cm x 1 cm on posterior medial aspect of right forearm lower 1/3rd portion, fracture.

4. Bruise red oblique 18 cm x 1 1/2 cm crossing the vertebral column at mid dorsal region.

5. Bruise with abrasion 2 cm x 1 1/3 cm on the back, right side just below the inferior angle of the scapulae.

Harin

1. Bruise red, 7 cm x 13/4 cm placed obliquely on back of left hand.

2. Bruise red, oblique, 8 cm x 1 1/2 cm on back of left forearm lower 1/3rd portion.

3. Bruise red, transverse, 3 cm x 1 1/2 cm on posterior aspect of left arm middle 1/3rd portion.

4. Bruise red 2 cm x 1 cm on top of left shoulder joint.

5. Bruise with abrasion 3 cm x 1 1/2 cm on back left side over scapulae placed transversely.

6. Abrasion 1 cm x 3/4 cm on back of right hand.

It may be stated that the prosecution has totally failed to explain the injuries received by the accused side. The effect of this omission has been considered by their lordships" of the Supreme Court in the case of Lakshmi Singh and Others Vs. State of Bihar,

In a murder case, the explanation of the injuries sustained by the accused at about the lime 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 had 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 AIR 1968 SC 1281 and AIR 1975 SC 1974 Rel on.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution case.

There may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. AIR 1975 SC 1478 Rel.

5. The prosecution evidence consists solely of the interested testimony of FW 1 Kishanpuri, PW 2 Bania who is brother of appellant Padmaram, PW 3 Auchi wife of Banaram and PW 4 Sunder wife of Kishanpuri. The defence case is put forward by the statement on oath as DW 1 Padmaram, He stated that he was owner of the well "Khariberia". The villagers had tiled a case against him with regard to this well but it was decided in his favour vide Ex.D.6. He also won in appeal vide the judgment Ex D. 7. He further stated that there was no pathway through his field leading to the field of Kishanpuri. Kishanpuri, Banaram, Anchi and Sunder came there and damaged his well and also gave him a beating and also to Haria Be right hand was fractured. Seemli and Kamli had gone to their in-laws on that day.

6. On the other hand PW 1 Kishanpuri stated that he was going on the pathway and was suddenly attacked by the accused party. Padmaram gave him a lathi blow resulting a fracture to his left leg. Padmaram gave another lathi blow to his right leg. Haria also gave him a lathi blow. The, lady accused also caused him various injuries. Wife of Pad ma gave him an axe blow in the head Thereafter Padma sat on his chest and tried to injure his eyes by "dantli". According to him the motive for beating was that he sided with Bania the brother of the appellant in the litigation relating to this well. I have considered the statement carefully but it does not inspire confidence. It may be stated that in the FIR it was not mentioned that it was Padmaram who caused injuries to his eyes He had the audacity to state that he did not remember whether he gave statement Ex D 1 A.B that Seemlf and Kamli caused injuries to his eyes in the court of the Munsif Magistrate, Jodhpur. He also admitted that a case relating to the same incident was pending against him in the court. PW 2 Bania stated that he heard the cry of Kishanpuri. The appellant and the other co-accused were beating him. He tried to intervene. Then Padmaram also gave him a beating. He also stated that Padmaram caused injury to the eyes of Kishanpuri. With minor variations to the same effect are the statement of Anchi and Sunder. It may be observed that the prosecution evidence is now improving upon its case that it was Padmaram who caused injuries to the eyes of Kishanpuri because it was not so stated in the FIR or in the statements given in the committing court. In my opinion there was no motive or reason on that fateful day for Padmaram and the other co-accused to attack Kishanpuri. This would show that the prosecution has suppressed the cause and origin of the incident. Even the learned Addl Sessions judge did not believe this part of the prosecution case that Kishanpuri was suddenly attacked by Padmaram and others. He was of opinion that it was a case of free fight. I may also state another noteworthy feature of the incident and that is that the hand of Padmaram was fractured and therefore, he could not have caused all these injuries to Kishanpuri This fact makes the prosecution case doubtful. There is no doubt that Kishanpuri received a number of injuries including some grievous ones and so also Sunder and Bania However, this would not mean that the accused party attacked Kishanpuri when he was alone in as much as these witnesses have failed to explain serious injuries caused to Padmaram and also some injuries to Haria. I am of the view that these witnesses were pre-judging on an essential part of vital importance of the entire incident. In such circumstances it is not normally safe to believe the prosecution evidence when it happens to consist solely of the interested witnesses. The litigation and enmity between Padmaram and his brother Bannaram is established. Even Kishanpuri gave the motive for the attack that he was attacked of because he sided Bannaram. In such circumstances the defence version as is disclosed by the testimony of DW 1 Padmaram becomes probable and in any case a grave doubt is thrown on the prosecution case that Kishanpuri was first attacked by Padmaram and the other co-accused It is not possible to determine in the facts and circumstances of this case that Padmaram and his party were the aggressors and the incident happened in the manner alleged by the prosecution For all these reasons I am of

the view that it is not safe to convict) Padmaram on the interested and inimical testimony of the aforesaid prosecution witnesses. In my opinion appellant Padmaram is entitled to the benefit of doubt.

7. In the result the appeal is accepted, the judgment of the learned Additional Sessions Judge No. 1, Jodhpur is set aside and Padmaram is acquitted of the offence u/s 325 and 323 IPC. He is on bail and need not surrender to his bail bonds which are hereby cancelled.