

(2008) 07 RAJ CK 0104
In the Rajasthan High Court

Raja Ram @ Raju and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2008) 4 RLW 3495

Hon'ble Judges : Shiv Kumar Sharma, J; Mahesh Bhagwati, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—Trifle dispute over cakes of cow-dung resulted in death of Ram Nath. Cause of death was hemorrhagic shock due to laceration of spleen and fractures of 8th, 9th and 10th ribs. The appellants, eight in number, were put to trial for having committed murder of Ram Nath before learned Additional Sessions Judge (Fast Track), No. 1, Bundi, who vide judgment dated April 24, 2003 convicted and sentenced them as under:

Raja Ram @ Raju, Ratnya @ Ram Ratan, Dhan Raj, Arjun @ Urjan, Mohan, Sheo Karan, Harnath and Ram Nivas:

Under Section 302/149 IPC:

Each to suffer imprisonment for life and fine of Rs. 1000/-, in default to further suffer simple imprisonment for one month.

Under Section 148 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 100/-, in default to further suffer simple imprisonment for ten days.

Under Section 325/149 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 100/-, in default to further suffer simple imprisonment for fifteen days.

Under Section 323 IPC:

Each to suffer simple imprisonment for six months and fine of Rs. 50/-, in default to further suffer simple imprisonment for five days.

Under Section 147 IPC:

Each to suffer simple imprisonment for six months and fine of Rs. 50/-, in default to further suffer simple imprisonment for five days.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on October 14, 1994 Ram Nath (since deceased) along with Dakha (PW.5) and Kali (PW.7) reached to the police Station Dei and orally informed that on the said day while Dakha was collecting Uplas (cakes of cow dung), Sheo Karan, Ratanya Raju, Mohah, Dhanraj, Ram Nhvas and Arjun got Uplas scattered and started beating Dakha. When Ram Nath intervened and made attempt to rescue her, Raju inflicted blow with Gandasi on his head and others also gave beating to him. Kali was also beaten up. The information was recorded and on that report, case under Sections 147, 148, 149, 307 and 323 IPC was registered and investigation commenced. Necessary memos were drawn and statements of witnesses were recorded. During the course of investigation Ram Nath succumbed to his injuries and Section 302 IPC was added. The appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 1 Bundi. Charges under Sections 147, 148, 149, 307, 302 and 323 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 13 witnesses. In the explanation u/s 313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. We have heard the submissions advanced before us by learned Counsel for the appellants and learned Public Prosecutor and with their assistance scanned the material on record.

4. As per injury report (Ex.P-33) Ram Nath sustained following injuries:

1. Lacerated wound 3 x 2 x 1cm at scalp occipital region.

2. Lacerated wound 2 x 2cm left leg below knee joint.

3. Contusion 2 x 2inch back of left elbow.

4. Contusion 5 x 3inch left side chest wall at ant. auxiliary line

5. Abrasion 1 x 1cm at Rt. leg ant. aspect.

5. Ram Nath succumbed to his injuries and according to post mortem report (Ex.P-34) the cause of death was hemorrhagic shock due to laceration of spleen

and fracture of 8th, 9th and 10th ribs Ant. aspect.

6. Kali Bai (PW.7) vide injury report (Ex.P-32) received following injuries:

1. Contusion 2" x 2" above left iliac fossa.
2. Contusion 1" x 3/4" left mid arm posterior aspect.
3. Abrasion 1 1/2" x 1" lateral aspect of left leg.

7. As per injury report (Ex.P-31) Dakha (PW.5) received injuries as under:

1. Contusion 2" x 2" left wrist joint.
2. Contusion 2" x 2" left shoulder joint
3. Contusion 1 1/2" x 2" left thigh lateral & posterior aspect.

8. The prosecution case is founded on the testimony of Dakha (PW.5) and Kali (PW.7), who were examined as injured eye witnesses of the occurrence. In her deposition Dakha stated that on the day of incident around evening while she went to take Uplas (cakes of cow dung) she found that the same were broken thereupon she asked the accused persons as to why they had broken the same. Thereupon Arjun pelted stone at her and Sheo Karan gave beating to her. When her father-in-law Ram Nath intervened he was beaten up with Gandasi and lathis. Kali was also beaten up by the assailants. Testimony of Dakha gets corroboration from the evidence of Kali (PW.7).

9. Factual situation that emerges from the material on record may be summarized thus:

(i) The report lodged by Ram Nath, being his dying declaration, is admissible in evidence. In the said report fatal injuries on the ribs have not been attributed to any assailant.

(ii) The injury inflicted over head of Ram Nath was found simple. Ram Nath died on the next day of the incident.

(iii) As per autopsy report, cause of death was hemorrhagic shock due to laceration of spleen and fracture of 8th, 9th and 10th ribs Ant. aspect.

(iv) The appellants were the members of unlawful assembly and the common object of the assembly was to cause grievous hurt to Ram Nath. The nature of Injuries and the manner of attack, as stated In the FIR and deposed by witnesses Dakha and Kail, indicate that the appellants did not have Intention to cause the death of Ram Nath.

10. In State of Haryana Vs. Prabhu and Others, the Apex Court found the accused guilty u/s 325 read with Section 149 IPC and observed as under:

...In our opinion it may well be that the fracture of the ribs or at least of some of them was caused as a result of injury No. 6. In such a situation the laceration on

the right lung could not be connected positively with Injury No. 3 alone....

11. In *State of Andhra Pradesh v. Naragudem Papireddy* AIR 2004 SC 2787 their Lordships of the Supreme Court indicated thus:

...It is to be noted herein also that if really the intention was to cause the death of this victim we fail to understand why at least one of the assailants did not wield his weapon so as to attack the victim on a vital part of the body. The nature of injuries and the manner of attack as stated by the victims themselves indicates that the respondents did not have either the intention to cause the death of Narsimha Reddy or to cause injuries which they knew to be so imminently dangerous as would cause his death in all probability.

12. In the instant case also as already noticed, the appellants did not wield lathi so as to attack Ram Nath on the vital parts of the body. The nature of injuries and the manner of attack demonstrate that the appellants did not have either the intention to cause the death of Ram Nath or to cause injuries which they knew to be so imminently dangerous as would cause his death in all probability. On a careful examination of the entire prosecution case and the surrounding circumstances, we find that the common object of the unlawful assembly was only to cause grievous hurt and all the appellants can be convicted u/s 325 read with 149 IPC.

13. Taking stock of the wide and varying range of facts of the Instant case, we are of the view that Imposing sentence on each of the appellants to suffer rigorous imprisonment for three years and fine of Rs. 5000/- would meet the ends of justice, to *State of Karnataka Vs. Sharanappa Basnagouda Aregoudar*, . Their Lordships of the Supreme Court propounded thus: (Para 6)

...Of course, the courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum sentence, but the discretion shall be exercised with due regard to larger Interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system.

14. For these reasons, we dispose of the Instant appeals in the following terms:

i) We partly allow the appeal of the appellants (i) Raja Ram @ Raju, (ii) Ratnya @ Ram Ratan, (iii) Dhan Raj, (iv) Arjun @ Urjan, (v) Mohan, (vi) Sheo Karan, (vii) Harnath and (viii) Ram Nivas and instead of Section 302 read with 148 IPC we convict these appellants u/s 325 read with Section 149 of the IPC and sentence each of them to suffer rigorous Imprisonment for three years and fine of Rs. 5,000/- in default to further suffer six months rigorous imprisonment. However we maintain their conviction and sentence under Sections 148 and 323 IPC. The sentence shall run concurrently. We however acquit them of the charge u/s 147 IPC.

(ii) Appellants Raja Ram @ Raju, (ii) Ratnya @ Ram Ratan, (iii) Mohan, (iv) Harnath and (v) Ram Nivas are in custody for a period of more than seven years.

Looking to the fact that they have suffered the sentence awarded to them, they shall be set at liberty forthwith, if they are not required to be detained In any other case.

(iii) Appellants (i) Dhan Raj, (ii) Arjun @ Urjan and (iii) Sheo Karan are on bail. Their bail bonds stand cancelled and they shall surrender forthwith to serve out the remaining sentence awarded to them.

(iv) The impugned judgment of the trial Court stands modified to the extent indicated above.