

---

**(2015) 09 RAJ CK 0072**

**In the Rajasthan High Court**

**Case No :** Criminal Appeal No. 1303/2003, Criminal Jail Appeal No. 1261/2003  
and Criminal Appeal No. 1542 of 2003

Rajulal and Others

APPELLANT

Vs

The Sate of Raj.

RESPONDENT

---

**Date of Decision :** 17-09-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374, 437A  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

**Citation :** (2015) 09 RAJ CK 0072

**Hon'ble Judges :** Mohammad Rafiq, J;Prakash Gupta, J

**Bench :** Division Bench

**Advocate :** Kamla Jain and Sunita Vashishtha, for the Appellant; R.S. Raghav, Sudesh Saini and V.S. Godara, P.P., Advocates for the Respondent

**Final Decision :** Partly Allowed

---

## **Judgement**

Prakash Gupta, J—All the three afore mentioned Instant D.B. Criminal Appeals are related to same incident and arise out of a common judgment therefore, they are being decided by this common judgment.

2. These appeals have been filed under Section 374 Cr.P.C. against the judgment dated 24/06/2003 passed by Additional Session Judge (Fast Track) No. 1, Kota in Session case No. 22/2003 whereby, the appellants have been convicted and sentenced as under:-

"Appellant Rajulal:

U/s 302 I.P.C.:— Imprisonment for life and fine of Rs. 5000/-, in default further 2 years imprisonment;

U/s 307 I.P.C.:— 10 years R.I. and fine of Rs. 2000/-, in default of payment of fine further one year additional imprisonment;

Appellant Bherulal:

U/s 307 I.P.C. :- 10 years R.I. and fine of Rs. 2000/-, in default of payment of fine further one year imprisonment;

Appellant Kalulal:

U/s 307/34 I.P.C.:- 10 years R.I. and fine of Rs. 2000/-, in default further one year additional imprisonment;

U/s 324 I.P.C.: - 2 years imprisonment and fine of Rs. 1000/-, in default of payment of fine further 6 months imprisonment;"

3. The brief facts giving rise to these appeals are that Rughnathi Bai PW1 submitted a written report Ex. P-2 on 29/09/2002 at 3:45 AM which is reproduced as under: -

4. On the basis of the said report, FIR No. 105/2002 was registered for the offences under Section 147, 148, 149, 307 and 302 IPC. After completion of the investigation, the police submitted a charge sheet in the Court of Judicial Magistrate against the appellants and two other co-accused namely; Mulya @ Mool Chand and Mukesh. The case was committed to the Sessions Judge, Kota from where the same was transferred for trial to the learned trial Court. The learned trial Court framed necessary charges against the appellants for the offences under Section 148, 302, 307, 324 and 323 read with Section 149 IPC. The accused appellants denied the charges and claimed to be tried.

5. In support of the prosecution story the prosecution examined PW1-Ragunathi, PW2-Vinod, PW3-Syoji, PW4-Manroop, PW5-Gobarilal, PW6-Lekhraj, PW7-Gangaram, PW8-Mahaveer, PW9-Radhyshyam, PW10-Babulal, PW11-Jagnnath, PW12-Rajendra, PW13-Dr. Roopchand Meena, PW14-Ramlal Verma, PW15-Hansraj, PW16-Ramprasad, PW17-Bajranglal, PW18-Ramcharan, PW19-Jaswant Singh, PW20-Praveen Kumar, PW21-Basheer Mohd., PW22-Dr. Pradeep Gupta and PW23-Narsingh and exhibited documents in support of its case. The statement of the accused appellants were recorded under Section 313 Cr.P.C. and no witness/evidence was produced in defence by the appellants.

6. Aggrieved by the impugned judgment and order of sentence dated 24/06/2003 passed by the learned trial Court, the accused appellants have preferred this appeal.

7. We have heard the learned counsel for the appellants and perused the material and evidence on record carefully and minutely.

8. Dr. Roopchand Meena PW13 on 29/09/02 being posted as Medical Officer, conducted autopsy on the dead body of deceased Devishankar and as per postmortem report Ex.-P17 he found the following injuries on the person of deceased Devishankar: -

"(1) Incised wound 6"x2"x1" is placed over scalp Lt. side-which is extended from Lt. forehead to Lt. Parietal reg. and upto Lt. occipital region.

(2) Bruise 4/3 cm - placed on Rt. arm."

9. Upon internal examination, the cause of death was due to head injury which was sufficient in the ordinary course of nature to cause death. The injury report Ex.-P18 of Gangaram-PW7 was prepared by Dr. Roopchand Meena-PW13 and as per the injury report, the following seven injuries were found on the person of Gangaram:

10. As per the statement of injured Gangaram-PW7, the author of injury No. 1 is Rajulal, injury No. 3 is Bherulal and injury No. 2 is Kalulal. Injury Nos. 1 to 3 were caused by sharp weapon and were found to be grievous in nature. Whereas, injury No. 2, caused by accused Kalulal, was found to be simple in nature.

11. Learned counsel for the appellants has submitted that there is an inordinate delay of 5-6 hours in registering the FIR for which no explanation has been given and this delay makes the prosecution story doubtful. We are not impressed by the arguments. The incident occurred at around 9-10 PM in the night and the distance of the police station from the place of occurrence is about 18 Kms. Frequent mode of transportation was not available there. The complainant has stated that she took her injured husband and deceased son to home and thereafter, went to the police station to lodge the FIR. Considering the totality of circumstances, the delay of 5-6 hours is not fatal to the prosecution case.

12. The learned counsel for the appellants has further submitted that injured Gangaram is an interested witness and thus, his testimony cannot be relied upon. It has been contended that the police statement of injured Gangaram was recorded after a considerable delay and therefore, this possibility cannot be ruled out that a deliberate attempt was made by this witness to implicate the accused persons due to enmity.

13. From the record, it is revealed that Gangaram was seriously injured in the incident and his condition was precarious. He had undergone plastic surgery at SMS hospital. This fact has been proved by the testimony of Dr. Pradeep Gupta-PW22 Plastic Surgery Department at SMS Hospital, Jaipur. The gravity of injury and the fact that he was subjected to operation, are the factors which lead delay in recording of the statement of the witness and therefore, the delay cannot be said to be fatal to the prosecution. Further, merely, being a partisan witness is no ground to discard his testimony as a matter of prudence, the Court has to look into it with great circumspection. Since, Gangaram-PW7 was seriously injured in the incident, his presence at the spot is established. Nothing has not been brought on record from the side of the accused that he was having any previous enmity with the accused persons, so as to implicate them falsely and thus, in the circumstances of the case, the testimony of Gangaram-PW7 appears to be trustworthy and worthy credence.

14. The another submission made by the learned counsel for the appellants is that during the course of incident accused Rajulal sustained two injuries by blunt

weapon which were proved by Dr. Roopchand Meena-PW13, who, prepared the injury report Ex.-D3, no explanation has been given by the prosecution in respect of the said injuries and on the basis of it an attempt has been made by the counsel for the appellants to raise the plea of right of private defence in favour of accused Rajulal.

15. We are not convinced with the arguments raised by the learned counsel for the appellants. The injuries sustained to accused Rajulal are simple in nature and can be self inflicted also, even, if, these injuries are not explained by the prosecution, the whole prosecution case cannot be thrown away. Apart from this, the injuries sustained by accused Rajulal are so disproportionate to the injury suffered by the complainant side, so as to make us believe that he was justified in the exercise of his right of private defence.

16. Lastly, it is submitted that the prosecution has failed to establish the motive of the crime. To us motive of the crime to be established is not so essential in cases where direct evidence is available.

17. On the other hand, it is submitted by the learned Public Prosecutor that the evidence of prosecution witnesses is reliable one. The conviction and sentence of accused persons are based upon proper appreciation and no interference is needed.

18. PW1-Rughnathi Bai, PW8-Mahaveer, PW2-Vinod, PW9-Radheshyam and PW12-Rajendra were examined as eyewitnesses but a close scrutiny of their evidence, reveals that they reached the place of incident after incident had occurred. All these witnesses stated that they had seen that the accused persons inflicted injuries to the deceased and injured Gangaram but the statement of these witnesses belies the medical evidence qua the deceased. As per the medical evidence, only one injury by sharp edged weapon was found on the person of deceased. From the testimony of PW1-Rughnathi Bai, it is revealed that the deceased was a intervener and he sustained fatal injury while saving his father and as per the statement of Gangaram-PW7, accused Rajulal hit the deceased with an Axe on the left side of his head. As per the postmortem report, an incised wound on the left side of the head of the deceased was found which persuade us to believe that the author of this fatal injury is none but accused Rajulal. Other incriminating evidence is also available on record against accused Rajulal. Upon his discloser statement, one axe was recovered vide Ex.-P44 and upon which blood group AB of human origin was found which further strengthen the fact that accused Rajulal was the author of fatal injury caused to the deceased. Upon the discloser statement of Bherulal recovery of axe (Ex.-P42) and upon the discloser statement of accused Kalulal Dhariya have been recovered vide Ex.-P30. These recoveries were duly proved by Narsing-PW23 and Manroop-PW4 which substantiate the involvement of the accused persons in the commission of crime and causing injuries dangerous to life of the person of injured Gangaram which finds corroboration from medical evidence on record. Since origin and genesis of the crime have been withheld therefore, the

provisions of Section 34 IPC are not attracted in this case and each accused is responsible for his own individual act. We are also fortified in our view that the solitary blow was caused by accused Rajulal and he has not repeated his blow. The deceased being an intervener in the incident, Rajulal can be held responsible for culpable homicide not amounting to murder. Thus, in the totality of circumstances conviction of the accused Rajulal under Section 302 IPC deserves to be converted in one under Section 304 part I of IPC.

19. Now, we will see as to what offence was committed by accused persons qua injured Gangaram-PW7. As we have held that Gangaram is an eye witness his presence at the spot is established. As per his testimony, the author of injury No. 1 on his person is accused Rajulal whereas, the author of injury No. 2 is accused Kalulal and author of injury No. 3 is accused Bherulal. We have already held that all the accused are liable for their own individual act. Injury No. 2 caused by accused Kalulal is on the eyebrow over the left eye and thus, evaluating the nature of injury caused by him, which is simple we acquit him from the charge of Section 307/34 instead convict him for the offence under Section 324 IPC. The conviction of accused Rajulal and Bherulal under Section 307 is upheld.

20. As a result of the aforesaid discussion, the appeals filed by the appellants are partly allowed. The accused Rajulal is acquitted of the charge under Section 302 IPC and is convicted for the offence under Section 304 part I IPC and the sentence of life imprisonment is reduced to the sentence already undergone by him. However, charge under Section 307 IPC against him is upheld and the sentence for this charge is reduced from 10 years rigorous imprisonment to 7 years of rigorous imprisonment.

21. We have been informed that accused Rajulal has already undergone sentence for a period of more than 12 years, ends of justice would be met if he is released on the sentence already undergone by him. He will be released from Jail forthwith if not required in any other case.

22. The conviction of accused Bherulal under Section 307 IPC is upheld but his sentence is reduced from 10 years rigorous imprisonment to 7 years rigorous imprisonment. His bail bonds are forfeited. He be arrested to serve out the remaining part of the sentence.

23. The conviction of accused Kalulal under Section 307/34 is set aside instead he is convicted under Section 324 IPC and sentenced to the period already undergone by him in Jail. His bail bonds are discharged, and need not surrender.

24. Keeping, however, in view of the provision of Section 437A of Cr.P.C. each of the appellants are directed to forthwith furnish a personal bond in the sum of Rs. 50,000/- along with a surety bond in the like amount before the Dy. Registrar (Judicial). The bonds so furnished shall be effective for a period of 6 months. The bonds shall contain an undertaking that in the event of filing of special leave petition against this judgment or on grant of leave, the appellants, on receipt of notice thereof, shall appear before the Hon''ble Apex Court.