
(2004) 04 RAJ CK 0076
In the Rajasthan High Court
Case No : Criminal Appeal No. 277 of 2002

Shiva Ram @ Shiva Lal and Another	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302, 34

Citation : (2004) 4 RLW 2712 : (2004) 3 WLC 418

Hon'ble Judges : Sunil Kumar Garg, J;N.N. Mathur, J

Bench : Division Bench

Advocate : Panney Singh, Public Prosecutor, Sandeep Mehta and Vineet Jain, Sridhar Purohit, in Appeal Nos. 236 and 277/02 and J.S. Choudhary, in Appeal No. 196/2002, for the Appellant;

Judgement

N.N. Mathur, J.—These three appeals arises from the order of Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Bikaner dated 12.02.2002, as such, they are decided by a common order.

2. Thirteen appellants namely A-1 Shiva Ram @ Shiva Lal, A-2 Peera Ram, A-3 Bishna Ram, A-4 Maga Ram, A-5 Chandu Ram, A-6 Ramu Ram, A-7 Lichman Ram, A-8 Kama Ram @ Kanhaiya Lal, A-9 Sunder Lal, A-10 Richpal @ Paliya, A-11 Surja Ram, A-12 Girdhari Ram and A-13 Tikuram were sent for trial before the Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Bikaner in connection with murder of one Chuna Ram and for causing injuries to PW-2 Pema Ram and PW-4 Mst. Pani. They were tried for various offences. Appellants A-1 Shiva Ram and A-2 Peera Ram have been convicted for offence u/s 302 I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/-; in default to payment to further undergo two months simple imprisonment, while remaining appellants have been acquitted of offence u/s 302/149 I.P.C. They have been convicted and sentenced as follows:-

(A) Section 324/149 I.P.C. One year's rigorous imprisonment and to pay a fine of Rs. 500/-; in default of payment to further undergo one month's simple

imprisonment. (B) Section 323/149 I.P.C. Three month's rigorous imprisonment and to pay a fine of Rs. 100/-; in default of payment to further undergo fifteen days simple imprisonment. (C) Section 323 I.P.C. One year's rigorous imprisonment and to pay a fine of Rs. 500/-; in default of payment to further undergo one month's simple imprisonment. (D) Section "152 I.P.C. One year's rigorous imprisonment and to pay a fine of Rs, 200/-; in default of payment to further undergo one month's simple imprisonment. (E) Section 148 I.P.C. One year's rigorous imprisonment and to pay a fine of Rs. 500/-; in default of payment to further undergo one month's simple imprisonment.

3. All the sentences have been ordered to run concurrently. Out of total fine of Rs. 12,000/-, a sum of Rs. 3,000/- has been directed to be paid to the legal heirs of deceased Chuna Ram.

4. Briefly stated that facts of the case are that First Information Report Exhibit P-54 was registered at Police Station Jamsar on the basis of purcha bayan Exhibit P-I recorded by PW-9 Jagdish Prasad Vyas in presence of PW-1 Rewant Ram on 29.05.1997 at 10:00 P.M. in P.B.M. Hospital at Bikaner. The narration of the incident as given by PW-1 Rewant Ram is as follows:-

(i) On 18th May, 1997, there was a marriage of the daughter of informant's brother namely Shankar in village Sobhasar. Baraties, from the village Ridmalsar included A-I Shiva Ram and A-2 Peera Ram. Both the appellants consumed liquor and took up quarrel. However, on intervention by the relatives, any mishap was averted.

(ii) A day before from the incident which took place on 29.05.1997 at about 5:00 P.M., appellant A-I Shiva Ram took up quarrel in the village.

(iii)fn the morning of the date of incident i.e. 29.05.1997, a Panchayat was convened by the father of informant i.e., deceased Chuna Ram and his uncle i.e., PW-2 Pema Ram at flour mill of village mukhiya Hanuman Maharaj with a view to sort out the differences arising on account untoward incident taken place a day before, The efforts of conciliation failed, as such, deceased, father of the informant and uncle returned to the house.

(iv) On the same day at about 5:00 P.M. while deceased Chuna Ram and PW-2 Pema Ram were sitting in the drawing room of the house, abruptly, all the accused persons arrived. The appellants Vishna Ram and Peera Ram dragged the deceased Chuna Ram to bhakha (compound) of the house. Pema Ram was dragged out by A-I Shiva Ram, A-12 Surja Ram, A-8 Kama Ram @ Kanhaiya Lal and A-10 Palu Ram. Appellant Shiva Ram and Peeru Ram were armed with barchhies, Surja Ram was having a sela, Ramu Ram, Bishna Ram, Paliya, Sunder Lal, Chandu Ram, Kama Ram, Maga Ram, Lichman Ram, and Girdhari Ram were armed with lathis and Tiku Ram was armed with jaie. Shiva Ram and Peeru Ram each of them gave separate barchhi blows on the head of deceased Chuna Ram. Palu Ram and Sunder Lal inflicted injuries by lathis on the foot of deceased Chuna Ram. Surja Ram gave a sela blow causing injuries on the hand of PW-2

Pema Ram. Ramu Ram, Chandu Ram and Kama Ram also inflicted lathi blows to Pema Ram. Hearing the cries, his wife Teeja, elder brother's wife, PW-3 Surja and his son's wife PW-4 Pani also arrived on the spot. Bishna Ram, Maga Ram and Tiku Ram inflicted injuries to them by lathis and jaie. Informant's father deceased Chuna Ram and uncle Pema Ram became unconscious.

(v) Deceased Chuna Ram and Pema Ram were immediately removed to hospital for treatment. Chuna Ram succumbed to the injuries in the hospital.

5. Police proceeded with investigation. Dead body of Chuna Ram was sent for post mortem. PW-5 Dr. S.S. Kachhwaha conducted post mortem of the dead body of Chuna Ram vide Exhibit P-24 and noticed following injuries:-

- "1. Stitched wound 2.5 cm long on centre of scalp more on left side.
2. Stitched wound 2.1 cm long on centre of scalp more on left side just above the injury No. 1.
3. Two parallel bruise each of about of 2.5 cm x 2.1 cm to 2,5 cm x 1.2 cm on centre of forehead.
4. Abrasion on left knee joint 2.1 cm x 1.2 cm.
5. Abrasion on right knee joint 3.2 cm x 1.2 cm.
6. Lacerated wound 3.2 cm x 1.2 cm on left scapular area."

6. In the opinion of Doctor, the cause of death was head injury which was self sufficient to cause of death in ordinary course of nature. PW-7 Dr. Mahesh Khargawat examined the injuries of PW-2 Pema Ram vide Injury Report Exhibit 1-26 and noticed following injuries:-

- "1. Incised wound 2 cm x 0.2 cm x ? deep on left position parietal region.
2. Lacerated wound 1.5 x 0.2 cm on middle 1/3 of left forearm posteriorly.
3. Incised wound 1 cm x 0.2 cm x ? deep on left index finger at dorsal surface of first inter.
4. Bruise 2 cm x 1.5 cm on left shoulder.
5. Bruise 10,5 x 2 cm on left scapular region on posteriorly with undefined swelling on left scapular region.

7. He has also proved the X-Ray report Exhibit P-27. PW-7 Dr. Mahesh Khargawat also examined PW-4 Pani vide Injury Report Exhibit P-29 and noticed following injuries:-

- "1. Abrasion 6 cm x 0.1 cm on left knee joint anteriorly with c/o pain and mild tenderness.
2. C/o pain on right chest latero-posteriorly mild tenderness. No external injury seen."

8. He has also proved the X-Ray report Exhibit P-30, During the investigation, police also made certain recovery of weapons of offence from different accused persons. After usual investigation, police laid charge sheet against all the accused persons for offence u/s 147, 148, 302, 302/149, 324, 323 and 452 I.P.C. and u/s 3(2)(V) of SC/ST (Prevention of Atrocities) Act.

9. Appellants denied the charges leveled against them and claimed trial. Prosecution adduced oral and documentary evidence. Appellants denied the correctness of the prosecution evidence appearing against them in their statement u/s 313 of the Code of Criminal Procedure. Trial Court relying on the statement of eye witnesses namely PW-1 Rewant Ram, PW-2 Pema Ram, PW-3 Surja Devi and PW-4 Pani corroborated by the medical evidence and other circumstances found the prosecution case proved beyond reasonable doubt and convicted and sentenced the appellants in the manner already noticed.

10. We have scrutinised the prosecution evidence carefully with the assistance of learned counsel for the appellants Shri Sridhar Purohil and Shri J.S. Choudhary. The contention of the learned counsel is in two folds. Firstly, efforts have been made to satisfy this court that four eye witnesses produced by the prosecution did not witnessed the incident and, as such, Trial Court has committed error in placing reliance on them. In alternate, it is vigorously argued that as per the medical evidence only one head injury was responsible for causing death of deceased Chuna Ram and since it is not ascertainable with certainty as to which single head injury by whom is responsible for the death of Chuna Ram, the conviction u/s 302 I.P.C. is not sustainable. Conviction of appellants Shiva Ram and Peera Ram does not travel beyond Section 302/149 I.P.C. Reliance is placed on Shri Kishan and Others v. State of U.P. (1), and Ram Lal v. Delhi Administration (2). On the other hand, learned Public Prosecutor has supported the judgment of the Trial Court.

11. The prosecution case rests on the testimony of eye witnesses viz., PW-2 Pema Ram and PW-4 Mst. Pani. PW-2 Pema Ram has stated that while he along with his brother were talking in their house, all the thirteen accused persons armed with diverse weapons arrived. Appellant Surja Ram was armed with sela, Tiku Ram was armed with jaie, Shiva Ram and Peeru Ram were armed with barchhies and rest of nine accused persons were armed with lathis. Shiva Ram gave a barchhi blow on the head of his brother Chuna Ram. Thereafter, Peeru Ram gave another barchhi blow on the head of Chuna Ram on account of blows, Chuna Ram fell down. When he tried to intervene, Surja Ram gave a sela blow causing injury on the finger of left hand. Shiva Kant gave a barchhi blow on his head. Tiku Ram gave a jaie blow causing injury on his left shoulder. Appellants Kami Ram and Maga Ram gave lathi blows on his back. Ramu Ram gave a lathi blow on his hand. On account of concentrated attack on him, he fell down and became unconscious. He also stated that PW-1 Rewant Ram was also standing at the door of the house. Cries attracted the ladies of family namely Pani, Pura, Teeja and Surja etc. Maga Ram gave a lathi blow to Mst. Pani, Similarly, Tiku

Ram also gave jaie blow on Pani. There is a lengthy cross examination but nothing has been elicited to discredit the testimony of this witness. Another injured eye witness PW-4 Mst. Pani stated that on the date of incident, she was working in the kitchen. Hearing the cries, she came out and found that thirteen accused persons were giving beating to her grandfather-in-law Chuna Ram and father-in-law PW-2 Pema Ram. Appellants Shiva Ram and Peeru Ram were armed with barchhies, Tiku Ram was armed with jaie, Surja Ram was armed with sela and all the other accused persons were armed with lathis. She also stated that on intervention, Tiku Ram and Bishna Ram assaulted her. She was also being assaulted by Mega Ram and Shiva Ram. Statement of PW-3 Surja Devi is almost on the line of PW-4 Pani Devi, PW-1 Rewant Ram is the informant and he has reiterated what he has stated in the First Information Report,

12. Major criticism leveled against the eye witnesses is that they being the closed relatives of the deceased are highly interested witnesses. The contention deserves to be rejected. It is well settled law that evidence of eye witnesses cannot over thrown above board simply because they are the closed relatives of the deceased; The only caution is that evidence of such witnesses is to be scrutinised with greater care and caution. On careful scrutiny of the evidence, we find the evidence of eye witnesses trustworthy. There is no reason for them to falsely rope in innocent persons and leave out the real culprits. On further scrutiny of the record, it clearly appears that common object of unlawful assembly was limited to attack on Pema Ram and did not extend to cover the murder of Chuna Ram. Pema Ram apparently received the injuries when he intervened during the course of occurrence. Thus, Trial Court has rightly found that the accused persons who actually caused the injuries to deceased Chuna Ram were responsible for the murder of Chuna Ram and all others could not be held liable for murder either with the aid of Section 149 or Section 34 I.P.C.

13. As regards second contention, after due consideration of evidence particularly the statement of eye witnesses and medical evidence, we are unable to persuade us to concede the submission. PW-7 Dr. Mahesh Khargawat has stated that on opening the skull it was found that there was a multiple fracture of parietal bone, frontal temporal and occipital bone. It will be convenient to extract the position of skull from the Post Mortem Report Exhibit P-24, which reads as follows:-

"There is extravaration of clotted blood in scalp tissue. Extravaration of sub doral hametoma on centre of scalp. There is multiple fracture of parietal bone, frontal temporal and occipital bone more on lift side into various pieces. Multiple laceration of supiro-leteral aspect of both cerebral hemisphere and extensive subararhaerd hemorrhage. Brain membranes rapture at site of brain lacerated."

14. Two fatal injuries have been attributed to both the appellants by the injured eye witness PW-2 Pema Ram. He has categorically deposed that Shiva Ram gave a barchhi blow on the head of deceased Chuna Ram. Thereafter, another barchhi blow was given by Peera Ram. Thus, we are in agreement with the Trial Court

that two fatal blows to deceased Chuna Ram had been inflicted by the appellants Shiva Ram and Peera Karri.

15. It is lastly contended that the sentence awarded to the appellants other than Shiva Ram and Peera Ram who have not been convicted for offence u/s 302 I.P.C. is excessive and, as such, be reduced to the period already undergone. It appears from the record that such appellants have undergone substantive part of the sentence. The end of justice would meet if the sentence awarded to them is reduced to the period already undergone.

16. Thus, for what has been stated above, conviction and sentence of the appellants for various offences as recorded by the Trial Court are well founded and do not suffer from any infirmity, whatsoever.

17. Consequently, all the three appeals are disposed of as follows:-

(a) D.B. Criminal Appeal No. 277/2002 Shiva Ram and Anr. v. State of Rajasthan is dismissed. The appellants Shiva Ram and Peera Ram are in jail, they will serve out the remaining part of the sentence.

(b) S.B. Criminal Appeal No. 236/2002 Bishna Ram and Ors. v. State of Rajasthan is partly allowed. Conviction of the appellants awarded by the Trial Court for various offences is confirmed. However, the sentence awarded on each count is reduced to the period already undergone. Appellants are on bail, their bail bonds stand discharged.

(c) S.B. Criminal Appeal No. 196/2002 Tikku Ram v. State of Rajasthan is partly allowed. Conviction of the appellant Tikku Ram as awarded by the Trial Court on each count, is confirmed. However, the sentence awarded on each count is reduced to the period already undergone. He is on bail. The bail bonds stand discharged.