

(2008) 05 RAJ CK 0115
In the Rajasthan High Court

Smt. Kanchan and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304, 323, 325

Citation : (2008) 3 RLW 2571

Hon'ble Judges : Shiv Kumar Sharma, J;M.C. Bhagwati, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—Two groups indulged in a free fight resulting in injuries to persons of both groups and death of one. The appellants, three in number, were indicted before the learned Special Judge SC/ST (PA) Cases and Additional Sessions Judge Sawai Madhopur, for having committed murder of Jagdish. Learned Judge vide judgment dated November 25, 2003 convicted and sentenced the appellants as under:

Narendra:

Under Section 302 IPC:

To suffer imprisonment for life and fine of Rs. 5000/-, in default to further suffer imprisonment for five months.

Under Section 323/34 IPC:

To suffer rigorous imprisonment for six months.

Ramesh:

Under Section 302/34 IPC:

To suffer imprisonment for life and fine of Rs. 5000/-, in default to further suffer imprisonment for five months.

Under Section 325 IPC:

To suffer rigorous imprisonment for two years and six months and fine of Rs. 1000/-, in default to further suffer imprisonment for one month.

Under Section 323 IPC:

To suffer rigorous imprisonment for six months.

Smt. Kanchan:

Under Section 302/34 IPC:

To suffer imprisonment for life and fine of Rs. 5000/-, in default to further suffer imprisonment for five months.

Under Section 325/34 IPC:

To suffer rigorous imprisonment for two years and six months and fine of Rs. 1000/-, in default to further suffer imprisonment for one month.

Under Section 323 IPC:

To suffer rigorous imprisonment for six months.

Sentences were ordered to run concurrently.

2. Briefly stated the prosecution case is that on December 7, 2002 Sumer Singh, SI (Pw.15) recorded Parcha Bayan (Ex.P-1) of Ram Swaroop, who stated that on the said day around 2.30 PM while informant, his two brothers Kailash and Jagdish and two labourers viz. Rasheed and Banwari were installing fencing wires on the boundary of their field and the field of accused the accused Narendra, Mukesh, Ramesh and Kanchan, armed with Gandasi and lathis came over there and started hurling abuses and pelting stones. Narendra inflicted blow with Gandasi on the head of Kailash, Ramesh inflicted lathi blow on informant's head and right shoulder whereas Mukesh gave lathi blow on his left shoulder. Kanchan Devi and Mukesh inflicted lathi blow on the person of Jagdish. As a result of which Kailash fell down. Hearing hues and cry Prabhu, Latoor and others reached there and removed the injured to hospital at Sawai Madhopur. On that parcha bayan, case under Sections 341, 323, 504 and 34 IPC was registered and investigation commenced. During the course of investigation injured Jagdish succumbed to his injuries and Section 302 IPC was added. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge SC/ST (PA) Cases and Additional Sessions Judge Sawai Madhopur. Charges under Sections 302, 302/34, 325, 325/34, 323 and 341 IPC were framed against the appellants, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 16 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 scanned the material on record.

4. Injuries of Jagdish were examined prior to his death vide injury report (Ex.P-7), according to which following injuries were found on his person:

1. Bruise red 15 x 8cm with swelling R. shoulder
2. lacerated wound cm x cm x BD on Lt. Forehead.

Jagdish succumbed to the injuries and according to Dr. O.P.Saini (Pw.16), who performed the autopsy and drew postmortem report (Ex.P-16), the cause of death was coma due to head injury.

5. Ram Swaroop (Pw.1) vide injury report (Ex.P-8) received following injuries:

1. Lacerated wound 4 x ? cm x BD surrounding swelling on Lt. front parietal region.
2. Diffuse swelling (Bruise) with lacerated wound 1 x ? x BD on Rt. shoulder.

6. Kailash vide injury report (Ex.P-9) received one lacerated wound 3 x cm x BD surrounding diffuse swelling over Lt. fronto parietal region.

7. At this juncture it will be appropriate to consider the injuries received by appellants. Appellant Ramesh vide injury report (Ex.D-3A) received following injuries:

1. Diffuse swelling R. forearm 1 and wrist with tender and abrasion x cm with fresh clotted blood.
2. Lacerated wound 1 x x MD over L. hand
3. Lacerated wound 1 x x MD on L. parietal region.
4. C/o pain Rt. shoulder.

8. Appellant Narendra vide injury report (Ex.D-5A) received following injuries:

1. Lacerated wound 3 x x BD mid parietal region with swelling and fresh clotted blood.
2. Lacerated wound x x BD on L. occipito parietal region.
3. Lacerated wound 2 x cm x BD on L. parietal region.
4. Bruise reddish diffuse swelling R. hand
5. Abraded swelling diffuse Lt. elbow and tenders & fresh clotted blood.

9. Injuries received by appellant Kanchan have been incorporated in the injury report (Ex.D-6A) thus:

1. Lacerated wound 2 x ? x BD with surrounding swelling with fresh clotted blood on L. frontal region.

2. C/o pain R. shoulder chest & back.

10. Coming to the evidence of Ram Swaroop (Pw.1) we notice that in the cross examination he admitted that there was no enmity between the accused party and complainant party and the incident did occur all of a sudden. Banwari (Pw.3) and Rasheed (Pw.4), who were named as eye witnesses of the occurrence, did not however support the prosecution case and they were declared hostile.

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

(i) Cross case bearing FIR No. 162/2002 (Ex.D-8A) was registered against the complainant party.

(ii) Complainant party was putting fence on the boundary wall, when objection was raised by the accused party members of both the parties indulged in a free fight.

(iii) The injuries sustained by the members of the accused party were not explained.

12. In Dharman Vs. State of Punjab, there was a dispute regarding Shamlati land existed between the parties. The accused claimed that the land was in their possession whereas the party of the deceased put forward the claim that the land had been in their possession for many years. On the date of the incident a fight ensued. The deceased died in the course of a sudden and free fight by the injury inflicted by the appellant. The deceased's party was also armed with dangerous weapons. It was held by the Supreme Court, that when two such contending parties, each armed with weapons, when clashed and in the course of free fight some injuries were inflicted on one party or the other, it could not be said that either of them acted in cruel or unusual manner and the case against the appellant clearly fell within Exception 4 to Section 300 IPC. that the land was in their possession whereas the party of the deceased put forward the claim that the land had been in their possession for many years. On the date of the incident a fight ensued. The deceased died in the course of a sudden and free fight by the injury inflicted by the appellant. The deceased's party was also armed with dangerous weapons.

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injuries. Thus origin and genesis of the incident appears to have been withheld by the prosecution. Evidently the incident did occur all of a sudden and both parties fought freely. The injury on head received by deceased, which proved fatal had been attributed to appellant Narendra Kumar and he did not behave in an unnatural or cruel manner. Thus the case against Narendra Kumar comes within the purview of Exception 4 to Section 300 IPC.

14. That takes us to the allegations made against other appellants. In *Kanbi Nanji Virji and Others Vs. The State of Gujarat*, their Lordships of the Supreme Court indicated that where there was a melee at the time of incident and the two groups indulged in a free fight resulting in injuries to persons of both groups and death of two, if the court comes to the conclusion that the injuries sustained by the persons were in the course of a free fight then there is no question of common object and only those persons who are proved to have caused injuries or death can be held guilty for the offence individually committed by them.

15. Having carefully considered ocular and documentary evidence we find that complainant party and accused party had no previous enmity and there was a melee at the time of incident and two groups indulged in a free fight resulting in injuries to persons of both groups and death of Jagdish. Members of complainant party were also armed with weapons and in the fight and appellants Smt. Kanchan, Ramesh and Narendra Kumar had sustained injuries, which were not explained by the prosecution witnesses. This fact gives rise to the inference that the prosecution is guilty of suppressing the genesis and origin of the occurrence. Since it was a sudden fight and without premeditation there was no common intention and only those persons who are proved to have caused injuries or death can be held guilty for the offence individually committed by them. The prosecution in this case, is only able to establish that appellant Narendra Kumar committed offence of culpable homicide not amounting to murder. Charges against Smt. Kanchan and Ramesh however could not be established beyond reasonable doubt. There is nothing on record that Smt. Kanchan and Ramesh had shared common intention with Narendra Kumar. Learned trial Judge did not properly appreciate the evidence in the right perspective and committed illegality in convicting and sentencing the appellants Smt. Kanchan and Ramesh.

16. For these reasons, we dispose of instant appeal in the following term:

(i) We partly allow the appeal of Narendra Kumar and instead of Section 302 we convict him u/s 304 part II IPC. Looking to the fact that Narendra Kumar has already suffered confinement for a period of more than five years and six months, the ends of justice would be served in sentencing him to the period already undergone by him in confinement. We however acquit him of the charges under Sections 325/34 and 323/34 IPC.

(ii) We allow the appeal of Smt. Kanchan and Ramesh and acquit them of the charges under Sections 302/34, 325, 325/34 and 323 IPC. The appellants Smt. Kanchan and Ramesh are on bail, they need not surrender and their bail bonds

stand discharged

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