

(2001) 07 RAJ CK 0022
In the Rajasthan High Court
Case No : Criminal Appeal No. 539 of 1995

Smt. Umli and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

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

Citation : (2002) 2 WLN 509

Hon'ble Judges : N.N. Mathur, J;D.N. Joshi, J

Bench : Division Bench

Judgement

N.N. Mathur, J.—This appeal is directed against the judgment dated 18.11.1995 passed by the Additional Sessions Judge, Ratangarh, convicting the appellants of offence u/s 302/149 I.P.C. and sentenced each of them to undergo imprisonment for life and to pay a fine of Rs. 100/-. They have also been convicted of the offence u/s 325/149 I.P.C. and sentenced to undergo three years" rigorous imprisonment. They have also been convicted of the offence under Sections 148 and 323/149 I.P.C..

2. Briefly stated the prosecution case is that on 15.7.1988, PW-2 Smt. Kishna had gone to her field alongwith his minor son Ashok. Her field is adjacent to the field of accused Teja Ram. Appellant Teja Ram blocked the way passing through her field. This was objected by her deceased husband Chhagan Lal, when he visited the field in the evening alongwith PW-3 Bajrang Singh. Teja Ram gave him no care reply. On his call, Teja Ram's sons Mohan, Likhma and one Dhanna Ram s/o Kalu Ram arrived. The wife of Likhma Ram also accompanied them. She took cut a "Gandasi" from the heap of sticks and passed on to Likhma Ram. All other accused persons were armed with "Chausangi". Appellant Teja Ram challenged and all the accused persons attacked on her husband. In order to save, she lay on her husband. It is alleged that a "Parcha Bayan" of PW-2 Smt. Kishna was recorded by PW-13 Munshi Ram, S.H.O., Police Station, Ratangarh. The said statement was recorded in the Government Hospital at 8.50 P.M. On the

basis of the said "Parcha Bayan". F.I.R. Ex.P.30 was registered. Chhagan Lal succumbed to the injuries and, as such, offence u/s 302 I.P.C. was added. The police prepared the inquest and sent the dead body for post mortem. After usual investigation, police laid chargesheet against the appellants for the offence under Sections 302, 307, 147, 148 I.P.C.

3. The appellants denied the charges levelled against them and claimed trial. The prosecution in support of the case examined 14 witnesses. The appellants in their statement u/s 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against them. Accused Teja Ram stated that he had not visited the field for last 8 to 10 years because of his old age of 80 years and extremely poor vision. The defence examined DW-1 Hans Ram. The trial court found the prosecution case proved and, as such, convicted and sentenced the appellants in the manner noticed above.

4. Assailing the conviction, it is contended by Mr. Doongar Singh, learned Counsel for the appellants, that the entire case is false and fabricated. It is submitted that it is difficult to comprehend that the old man of 80 years would have acted in the manner described by the prosecution. It is also submitted that there is no evidence as to which of the accused gave fatal blow on the head of deceased Chhaganlal and, as such, the conviction of the appellants u/s 302 I.P.C. with the add of Section 149 I.P.C. is not sustainable. It is urged that at the most, the appellants can be convicted of the offence u/s 326 read with Section 34 I.P.C. On the other hand, learned Public Prosecutor has supported the judgment of the learned trial Court.

5. We have scanned, scrutinised and evaluated the prosecution evidence exhaustively. PW-6 Dr. B.L. has stated that he conducted the post mortem of the dead body of Chhagan Lal and noticed the following injuries:

1. Incised wound with Comp. Fracture. Dislocation of Rt. ankle. Bones-lower end of tibia & fibula;
2. Incised wound 6 cm x 1.5 cm x 1 cm post medial aspect, Rt. Heal;
3. Two incised wound 2 cm x .75 cm x .5 cm, 3 cm x 1 cm x .5 cm parallel horizontally above medial malleolus of Left Ankle;
4. Bruise 10 cm x 2 cm vertically on Left upper arm post laterally;
5. Bruise 7 x 2 cm oblique left upper arm;
6. Lac. wound 5 cm x 1.5 cm x bone deep Rt. occipital region of scalp;
7. Lac. wound 4 cm x 1 cm x bone deep left upper pot parietal region of scalp;
8. Lac. wound 4cm x 1.5 cm x bone deep post to Rt. ear;
9. Teeth left upper 1st, 2nd incisor absent-fresh socket present.

He has proved the injury report Ex.P/21. In his opinion, the cause of death was

shock due to injury to the vital organ the Brain. On opening the skull, he found the fracture of right occipital bone. He also noticed three linear fractures of 2 cm x 1.5 cm size.

6. In order to establish the case, the prosecution has examined P.W. 2 Smt. Kishna and P.W. 5 Mohan Lal as eye witnesses of the occurrence. P.W. 2 Smt. Kishna stated that in the forenoon of 15.7.1988, she went to her field. After sometime, her deceased husband Chhagan Lal and PW-3 Bajrang Singh arrived. Their field is adjacent to the field of appellant Teja Raj. In addition to Teja Ram, Mohan Ram, Likhma Ram, Umli w/o Mohan Ram and Dhanna Ram were present in the field. She also stated that they used to pass through the field of Teja Raj. This was objected by Teja Ram. He was trying to make a way through their field. This was objected by her husband Chhaganlal, on which Teja Ram gave him no care reply. Appellant Teja Ram called Mohan, Likhia, Dhanian and Mohini in their field and talked to them. Thereafter, Teja Ram challenged them. He was armed with "Chausangi", Mohan was carrying "jeli" and Likhma with "Gandasi" in their hands. She also stated that "Gandasi" was given to Likhia by his wife, which was taken out from the heap of sticks. Teja gave a Lathi blow on the head of her husband. She also stated that injuries were caused on the head by Teja Ram using "Chausangi", "Gandasi" and "Jayee". She was standing at a distance of about ten steps. She implored them not to do so. Her husband had fallen on the ground. In order to protect him, she also lay on him. Other accused persons thrashed her as well. Teja Ram asked his son Mohan to bring "Gandasi". The wife of Mohan viz; Umli brought "Gandasi". She also stated that "Gandasi" was brought from the heap of sticks. Appellant Mohan inflicted injuries on the leg of her husband. She also stated that the incident was also witnessed by Bajrang Singh, who called Madan Lal from his field. The incident was narrated to Madan Lal. In the cross-examination, she admitted that the Umli is the wife of Mohan and not of Likhma Ram. She also admitted that in her statement Ex.P.6, she referred to wife of Likhma Ram. She stated that her statement was also recorded by the learned Magistrate vide Ex.D.2. She stated that she had referred the name of Umli w/o Mohan Ram but she does not know as to why the learned Magistrate did not record her statement correctly in that regard. There is a lengthy cross-examination but nothing substantial has been elicited to discredit her statement.

7. P.W. 3 Bajrang Singh has stated that he had gone to collect the charges for the tractor from Chhaganlal. He was told by Chhaganlal that key was with his wife, who had gone to the field, therefore, they also went to the field, where a quarrel took place between Chhaganlal and Teja Ram. Teja Ram committed mischief by blocking the passage. This was objected by Chhaganlal. This led to quarrel between them. Teja Ram called his sons. Mohan Ram was carrying "Jayee" in his hand and Likhma Ram having "Gandasi", which was given to him by wife of Mohan Ram from the heap of sticks. Likhma Ram inflicted a Gandasi blow on the leg of Chhaganlal on account of which he fell down. He also stated that Mohan Ram, Likhma Ram, Teja Ram, Dhanna Ram and wife of Mohan Ram

were present on the spot but only three accused persons participated in the quarrel. He stated that Mohan Ram's wife and Dhanna Ram did not participate in the "Maarpeet". There is a lengthy cross-examination but nothing substantial has been elicited to discredit the testimony of this witness.

8. As regards the recovery, though the weapons of offence have been recovered from all the accused persons but the blood was found only on the weapons recovered from Mohan Ram and Likhma Ram. As such, the weapons recovered from them only, were sent to the Forensic Science Laboratory. In pursuance of the information given by the appellant Mohan Ram vide Ex.P.34, the blood stained "Jayee" was recovered vide Ex.P.17, which was sealed and packed on the spot. In pursuance of the information given by accused Likhma Ram vide Ex.P.35, a "Gandasi" was recovered vide Ex.P.18, which was also sealed and packed on the spot. Both the articles were sent to the Forensic Science Laboratory. The prosecution has led evidence to demonstrate that the said articles were not tampered with from the point recovered till they reached to the Forensic Science Laboratory. As such it is not necessary to deal with the evidence in that regard. The F.S.L. report Ex.P.40 shows that the recovered "Jayee" and "Gandasi" were stained with human blood.

9. P.W. 2 Mst. Kishna, who is star witness, has not named Mst. Umli in her "Parcha Bayan" Ex.P.6. She has referred to wife of Likhma Ram, whereas appellant Mst. Umli is the wife of Mohan Ram. Her statement was recovered by the learned Magistrate vide Ex.P.2. There also, she has not referred to Mst. Umli.

10. Another important eye witness Bajrang Singh has categorically stated that it is only three accused persons, who participated in the occurrence. He has clearly stated that Mst. Umli and Dhanna did not participate. The prosecution witness has tried to assign some role to Mst. Umli i.e. "Gandasi" was brought by her from the heap of sticks and passed-on to Likhma Ram. This part of the statement is patently false as Likhma Ram was already armed with "Gandasi". The "Chausangis" have been recovered from both the accused but there is no blood thereon. The blood stained weapons have been recovered only from Mohan Ram and Likhma Ram. Thus, the participation of Mst. Umli and Dhanna in the occurrence is doubtful. They are entitled to benefit of doubt. As regards Mohan Ram and Likhma Ram, there is consistent evidence that they inflicted injuries to Chhagan Lal. This finds corroboration from the medical evidence and the recovery of blood stained weapon of offence.

11. Appellant Teja Ram was an old man of 80 years at the time of incident. It is reported that he has died. In view of this, the appeal, filed by him stands abated.

12. Consequently, this appeal is partly allowed. The conviction of appellants Smt. Umli and Dhanna Ram for the offence under Sections 302/149 and allied offences is set aside. They are acquitted of all the charges levelled against them Mst. Umli is on bail. Her bail bonds stand discharged. Dhanna Ram is in jail. He shall be released forthwith, if not required in any other case. The conviction of appellants

Mohan Ram and Likhma Ram for the offence u/s 302/149 I.P.C. is converted into 302/34 I.P.C. The sentence of imprisonment for life and to pay a fine of Rs. 100/- remains intact. Similarly, their conviction for the offence under Sections 325/149 and 323/149 I.P.C. is converted into 325/34 and 323/34 I.P.C. Their conviction u/s 148 is set aside. Both the appellants are in jail. They will serve-out the remaining part of the sentence.