

(2016) 03 RAJ CK 0001

In the Rajasthan High Court

Case No : Criminal Appeal No. 274/1992 and Criminal Revision Petition No. 262/1993

State of Raj. and Others

APPELLANT

Vs

Bhanwar Lal and Others

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, Section 307, Section 323, Section 324, Section 325, Section 34

Citation : (2016) 03 RAJ CK 0001

Hon'ble Judges : Gopal Krishan Vyas and Jaishree Thakur, JJ.

Bench : Division Bench

Advocate : J.P.S. Choudhary, P.P. and I.R. Choudhary, for the Appellant;
Doongar Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. The above criminal appeal and revision petition has been filed by the State of Rajasthan as well as by complainant to challenge the judgment dated 21.1.1992 passed in Sessions Case No. 40/90 by Addl. Sessions Judge, Nagaur whereby both the respondents were acquitted from the charge levelled against them for offence under Sections 302 and 302/34 I.P.C.

2. During pendency of the aforesaid appeal and the revision, respondent No. 1 Munna Lal died, therefore, the appeal against the respondent No. 1 Munna Lal was dismissed being abated vide order dated 26.7.2010.

3. As per facts of the case, on 2.5.1990 at about 8.30 p.m. a wireless message was received from Government Hospital, Nagaur at Police Station Kotwali, Nagaur in which it was informed by the Medical Officer that one person is admitted for treatment due to head injury and he is unconscious. The said information was entered in the Roznamacha of P.S. Kotwali at Sl. No. 23 on 2.5.1990, after recording the said information, PW-13 - Bhanwar Singh, ASI

along with FC Jethu Singh went to the Hospital for enquiry. In the hospital, they found that Budha Ram S/o Kheta Ram was under treatment in unconscious condition. Upon ascertaining his physical condition, it was informed by the Doctor that he is not in position to give statement but at 11 O' Clock on 2.5.1990 the statement of Smt. Rajudee (Ex-11) wife of Budha Ram were recorded in which it is stated by her that on 1.5.1990, her husband Budha Ram came back to the house at 7 O' Clock from his work place. When her husband came, at that time near to her house, Munna Lal, Laxman and Surja Ram were quarreling with her brother in law for which her husband raised objection and asked them don't fight and use filthy words. At that time, Munna Lal, Laxman and Surja Ram asked him who are you to interfere and if you are over smart then come here. At that time, Budha Ram was standing upon the roof of the house from where he came down and reached at the place of quarrel. When Budha Ram reached near the house of Moti Lal, Munna Lal came there armed with sharp edged weapon "farsi" in his hand and Laxman with lathi so also accused Bhanwar Lal @ Bhanwariya accompanied them with empty hand. All of sudden, Munna Lal inflicted injury upon the head of Budha Ram - husband of complainant and due to said injury, blood came out from head and Surja Ram inflicted injury by lathi due to that injury, Budha Ram - husband of complainant fell down. The incident took place in front of Ramdev, Dev Karan Meghwal and so many other villagers. The complainant stated in her statement that after inflicting the injury by Munna Lal and Laxman, all the four persons ran away from the place of occurrence.

4. According to complainant, her husband Budha Ram was taken to the Hospital of Village Khathu in a cot by his brother in law Kishna Ram, Nanu Ram, Pokar Meghwal and Narayan Ram. The medical officer after providing the formal treatment asked that his condition is serious, therefore, he may be taken to the Nagaur Hospital for further treatment. Deceased Budha Ram was taken to the Hospital at Nagaur in unconscious condition. According to the complainant, there was no enmity in between the complainant and respondent party but only for simple discussion for taking labour for work in the Mines, occurrence took place. Upon above statement of complainant PW-6 Rajudee, FIR No. 25/90 (Ex. P/22) was registered under Section 323, 324, 325 and 307 I.P.C. against four persons.

5. During investigation, Budha Ram died, therefore, postmortem of his body was conducted and report Ex. P/20 was prepared by the medical jurist PW-16 - Dr. D.R. Choudhary. The police added offence under Section 302 I.P.C. and after completion of investigation filed challan only against two persons Munna Lal and Bhanwar Ram in the Court of Addl. Munsif and Judicial Magistrate, Deedwana.

6. After filing challan, case was committed to the Court of Addl. Sessions Judge, Nagaur camp Court Deedwana for trial.

7. The trial Court after hearing arguments framed charges against Munna Lal and Bhanwar Ram for offence under Sections 302 and 302/34 I.P.C. and commenced trial.

8. In the trial, statement of 21 prosecution witnesses were recorded. Thereafter, statement of respondents were recorded under Section 313 Cr.P.C. and in defence, no evidence was produced by the respondents.

9. The learned trial Court after hearing arguments acquitted both the respondents from the charges leveled against them for offence under Sections 302 and 302/34 I.P.C.

10. In the above appeal filed by the State of Rajasthan and in the revision petition filed by the complainant Rajudee, the judgment of acquittal is under challenge.

11. Learned Public Prosecutor as well as counsel appearing for the complainant vehemently argued that the finding arrived at by the trial Court is totally erroneous because although all the witnesses turned hostile but PW-5 Kishna Ram and PW-6 Rajudee categorically stated before the Court that Munna Lal and Bhanwar Ram inflicted injury upon the head and near eyes of deceased Budha Ram but learned trial Court erroneously disbelieved the testimony of these two eye witnesses and acquitted the respondents, therefore, the judgment under challenge deserves to be quashed and the respondent Bhanwar Ram is liable to be punished for the offence committed by him under Section 302 I.P.C.

12. Learned Public Prosecutor as well as counsel for the complainant submits that even if all the witnesses turned hostile, the conviction can be based upon the testimony of author of FIR and eye witnesses and in this case the allegations leveled by PW-5 Kishna Ram and PW-6 Rajudee are proved from other circumstantial evidence, which is post-mortem report in which the doctor has categorically mentioned that there was injury upon the head of deceased, therefore, when corroboration of allegation is in existence, then there was no question to disbelieve the testimony of two eye witnesses but learned trial Court committed serious error while acquitting the respondents, therefore, the judgment impugned may kindly be quashed and set aside and respondent Bhanwar Ram may kindly be convicted for offence under Sections 302 and 302/34 I.P.C. because he was present on spot and participated in the incident.

13. Per contra, learned counsel appearing for the respondent submits that during the pendency of this appeal and revision, Munna Lal against whom there is allegation for inflicting the head injury died and in the FIR no specific allegation was leveled against the respondent Bhanwar Ram, so also all the witnesses turned hostile, therefore, it cannot be said that the prosecution has proved its case beyond reasonable doubt, therefore, the finding arrived at by the trial Court does not suffer from any illegality.

14. Learned counsel for the respondent further submitted that the incident took place in the year 1990 and after considering the entire evidence and upon the fact that challan was filed by the police only against two persons while disbelieving the allegation against four persons, therefore, it is obvious that false and concocted story was framed by the prosecution so as to connect the

respondent with the crime.

15. Learned counsel for the respondent further submits that except PW-5 Kishna Ram and PW-6 Rajudee, all the prosecution witnesses turned hostile and did not support the prosecution story, so also, there is no evidence of motive and intention on record, therefore, the judgment impugned does not suffer from any illegality and infirmity, which warrants interference, therefore, the appeal as well as the revision petition may be dismissed.

16. After hearing learned counsel for the parties, we have minutely considered the entire evidence so also the finding given by the trial Court for acquittal. Admittedly, the respondent Munna Lal died during the pendency of the appeal and, therefore, the appeal against him was dismissed as abated vide order dated 26.7.2010. We have examined the entire evidence for the purpose of allegations leveled against the respondent Bhanwar Ram. It is obvious from the record that there is no specific allegation against the respondent Bhanwar Ram in the FIR for inflicting any injury upon the body of deceased, more so, in the FIR, which is registered on the basis of the statement of PW-6 Rajudee, there is no allegation that Bhanwar Ram was having any weapon in his hands nor there is any allegation for inflicting any injury to the deceased - Budha Ram by him. PW-1 Hanuma Ram, PW-2 Moti Lal, PW-3 Dev Karan, PW-7 Asu Ram, PW-9 Ramdev, all turned hostile and did not support the prosecution case. In view of above facts, there is no material evidence on record against accused Bhanwar Ram so as to connect him with the crime.

17. We have perused the statement of PW-5 Kishna Ram and PW-6 Rajudee. PW-6 Rajudee - author of FIR specifically stated in her statement, upon which FIR was registered that Munna Lal was having weapon "farsi" in his hands and Laxman Ram was having "lathi" in his hands and Bhanwar Ram and Surja were not having any weapon in their hands but it is very strange that in the statement recorded in the trial, she made specific allegation against Bhanwar Ram that injury by "lathi" was inflicted by him upon left eye of deceased. In our opinion, allegation of PW-6 Rajudee against the respondent Bhanwar Ram cannot be accepted because soon after the occurrence, it is stated by her that Bhanwar Ram was not having any weapon in his hands but in the trial she improved her statement and made allegation against Bhanwar Ram that he has inflicted injury by "lathi". Similarly PW-5 Kishna Ram leveled allegation against Surja and Bhanwar Ram for inflicting injury but he said that injury was inflicted upon right side of eye of deceased, which is corroborated by any other evidence on record. It is also material to observe that in the FIR, allegations were leveled against four persons namely Munna Lal, Surja, Bhanwar Ram and Laxman but after investigation, challan was filed by the police only against two persons Munna Lal and Bhanwar Ram and all the witnesses who were named by the complainant in her FIR, they were present at the time of occurrence did not support the prosecution case.

18. In view of above, we are of the opinion that the finding given by the trial

Court in para No. 32 of the judgment does not suffer from any illegality, more so, the learned trial Court appreciated the entire evidence and after discussing evidence of PW-5 Kishna Ram and PW-6 Rajudee gave finding that the prosecution has failed to prove its case beyond reasonable doubt.

19. In view of above, the instant criminal appeal filed by the State of Rajasthan as well as the revision petition filed by the complainant are hereby dismissed.