
(1988) 03 RAJ CK 0014

In the Rajasthan High Court

Case No : Criminal Appeal No. 104, 103 of 1977 and 916 of 1976

State of Rajasthan and Others

APPELLANT

Vs

Dayal and Others

RESPONDENT

Date of Decision : 16-03-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 114, 147, 149, 302, 325

Citation : (1988) WLN 384

Hon'ble Judges : Shyam Sunder Byas, J; N.C. Sharma, J

Bench : Division Bench

Judgement

N.C. Sharma J.

1. This judgment will decide D.B. Criminal Appeal No 9/6 of 1976 filed by Dayal and three others against their conviction u/s 325 read with Section 149 and also u/s 147, IPC by the Sessions Judge, Merta on November 10, 1976, D.B. Criminal Appeal No, 103 of 1977 filed by Gheesa Ram and Mukna Ram complainants against Dayal and five others against outright acquittal of Raghunath and Mool Chand and acquittal of remaining three accused for the offence u/s 302, IPC and also the State D B. Criminal Appeal No 104 of 1977 against the acquittal of Dayal and three other accused of the offences charged u/s 302 and Section 302 read with Sections 149 and 114, IPC by the said Sessions Judge in consolidated Sessions Cases Nos. 49 of 1975 and 26 of 1976 of this Court.

2. Facts leading to the filing of these appeals are that on December 12, 1974 at about 500 p.m. Bhagirath deceased, Hema Ram, Gheesaram and few others were sitting on a Chabutri of Hanuman Purohit in village Sabalpur, Tehsil Parbatsar. District Nagaur. At that time Dayal, Jeewan, Misariya, Bhuraram, Raghunath, Nathmal and Mool Chand came there armed with lathies and immediately thereafter Dayal inflicted a lathi blow on the head of Bhagirath. Nathmal gave the second lathi blow on the head of Bhagirath. Other accused persons also started beating Bhagirath by lathies. Hemaram and Gheesaram,

who were sitting on the Chabutari, raised an alarm and on hearing the noise, Amarsingh, Rajendra Singh, Bhanwar Lal and Muknaram came to the place of occurrence and on being scolded by Amar Singh, the assailants went away inside the house of Misariya accused. Bhagi Rath was made to lie on a cot but he died soon after. Gheesaram asked Muknaram to lodge a report in the police and accordingly a telegram was sent to the police. After necessary investigation, the police filed a charge-sheet against Dayal, Misariya, Bhura, Raghunath, Jeewan, Moolchand and Ors. . As the complainants were not satisfied with that, they filed a private complaint against 12 persons in the Court of the Judicial Magistrate, Parbatsar for the offence punishable u/s 302, IPC. Both the cases filed by the police as well as by the complainants were committed by the Judicial Magistrate for trial to the Court of Sessions and since they related to the same incident, they were consolidated by the Sessions Judge, Merta and a common trial was held. After trial the Sessions Judge held that the presence at the time of and participation of Moolchand and Raghunath in the incident was highly doubtful. According to him, it were Dayal, Jeewan, Misariya, Nathmal and Bhura who had come on the spot to beat Bhagirath and they gave beating to the latter. The Sessions Judge held that the deceased side and the accused party had long standing enmity between them and several litigations had taken place amongst them. The accused party had come to the place of occurrence only with an intention to give a beating to Bhagirath by forming an unlawful assembly. Their intention was not to murder Bhagirath in as much as only one lathi blow was inflicted on the head of Bhagirath. The accused inflicted only one lathi blow each on Bhagirath and it was only by chance that one of the blows inflicted by any of the five accused happened to strike on his head. It was not established in the case as to which of the accused inflicted the head injury on Bhagirath. The Sessions Judge, therefore, did not hold any of the accused guilty for the offence u/s 302 IPC. He only held four accused persons named Dayal, Jeewan, Misariya and Bhura guilty for the offence u/s 325 read with Section 149 IPC and also u/s 147 IPC. Each of these four accused were convicted for the said offences and sentenced to undergo rigorous imprisonment for five years and one year respectively for the two offences and the same were to run concurrently. Nathmal accused had died pending trial. Mool Chand and Raghunath were given benefit of doubt and acquitted of all the charges. The four convicts have filed D.B. Criminal Appeal No. 916 of 1976 against their conviction under Sections 325 read with Section 149 and Section 147, IPC. D.B Criminal Appeal No. 104 of 1977 has been filed by the State against the acquittal of the four accused for the offences u/s 302 and Section 302 read with Sections 149 and 114 IPC. Complainants Gheesa Ram and Mukna Ram have filed D.B. Criminal Appeal No. 103 of 1977 against outright acquittal of Mool Chand and Raghunath and acquittal of Dayal, Jeewan, Misariya and Bhura for the offence u/s 302 IPC. All these three appeals were heard by us together.

3. The learned Sessions Judge, Merta held that it was very well established that there was enmity between Bhagirath deceased and some of the prosecution

witnesses on the one part and the accused on the other side. A litigation had taken place between Bhagirath deceased and Hema Ram PW 2 on the one side and the accused Jeewan and Bhura regarding boundry dispute of fields. Mool Chand had contested election for the office of Sarpanch against Gheesa Ram PW 5. Amar Singh PW 3 admitted that there were two parties in the village one of Mool Chand and his party men and the other of deceased Bhagirath and Ors. . Amar Singh PW 3 had also himself launched a criminal case against Misariya accused. Mool Chand had launched a criminal case against Bhanwar Lal, PW 7 regarding theft of a camel Amar Singh PW 3 had also launched a criminal case u/s 447 IPC against Misariya in which Bhanwar Lal was witness from the side of Amar Singh. Bhagirath deceased had also filed a criminal complaint u/s 107 Cr. PC against Dayal, Jeewan, Misariya, Nathmal and Ors. and also a civil suit against Misariya. There were also some other litigations between them. From the evidence of prosecution witnesses Amar Singh, Rajendrasingh, Bhanwar Lal, Mukna Ram, the Sessions Judge inferred that the presence of Mool Chand and Raghunath and their participation in the incident was doubtful. The Sessions Judge also held that Amar Singh, Rajendra Singh and Bhanwar Lal were not eye-witnesses to the incident as the incident was over before they arrived on the spot. He reached the conclusion that the prosecution witnesses Hema Ram PW 2 and Gheesa Ram PW 5 can be accepted to the extent that Dayal, Jeewan, Misariya, Bhura Ram and Nathmal participated in the incident. The Sessions Judge referred to the evidence of Dr. Manohar Lal, PW 1 who had conducted the autopsy of the deceased and who had deposed that injuries Nos. 2, 3 and 5 can be sustained by a single blow and injury No. 1 can be sustained by a fall on the ground. Taking that into account, Bhagirath deceased had sustained four or five injuries. According to the Sessions Judge, it was not established as to which of the accused had inflicted the head injury on Bhagirath and, therefore, it could not be held that the common object of the accused persons was to murder Bhagirath. According to him, the common object of the unlawful assembly was only to give a beating to Bhagirath and it was per chance that one of the injuries on the head sustained by Bhagirath proved to be fatal. The Sessions Judge, therefore, only convicted and sentenced the accused persons Dayal, Jeewan, Misariya and Bhura u/s 325 read with Section 149, IPC and u/s 147, IPC. Mool Chand and Raghunath were acquitted of all the charges. The above named four accused were acquitted of the offence u/s 302 or u/s 302 read with Section 149, IPC. As already stated, Nathmal had already died.

4. It is clear from the evidence of Dr. Manohar Lal, PW 1 that he performed the post-mortem examination of the body of deceased Bhagirath. He found the following seven external injuries--

- [1] Abrasion 1" x 1/2" on right shoulder;
- [2] Lacerated wound 2" x 1/2" bone deep on right parietal;
- [3] Lacerated wound 2" x 1/2" by bone deep on right parietal;

[4] Lacerated wound through and through tearing the ear size 1" x 1/2" upper half of right ear;

[5] Lacerated wound 1" x 1/2" by bone deep on posterior aspect of right ear;

[6] Contusion of half of right ear;

[7] Contusion length 2-3/4" x 1-1/4" from right xygone of right ear.

On internal examination, the doctor found injuries on scalp containing lot of clotted blood on the base of injuries Nos. 2, 3 and 5. There was multiple fracture of right parietal bone below injury No. 3 and fracture of ramus of right mandible and mastoid processes was seen. Membrances were torn below injury No. 3 due to fractures and ends of right parietal bone causing tear, brain injured and coming out from membrane in base of injury No. 3 on right parietal region. The cause of death of Bhagirath was fracture of right parietal bone below injury No. 3 causing tearing of membrane and injury to brain. Dr. Manohar Lal has admitted in his cross-examination that internal injuries on the right scalp and the fracture of parietal bone were the result of external injuries Nos. 3, 4 and 5 which could be result of single blow injury No. 1 could be the result of a fall on a hard object. Thus it is clear that not more than five lathi blows were inflicted on deceased Bhagirath.

5. It is also clear that there was enmity not only between deceased Bhagirath and the accused party but also between various prosecution witnesses and the accused party. Hema Ram PW 2 has admitted that Dayal accused had filed a case against him and Bhagirath regarding dismantling of boundry between the fields of Dayal and Bhagirath. Amar Singh PW 3 had launched a criminal case against Misariya accused. He had also filed a case against Bhura and Nathmal. Gheesa Ram PW 5 had contested election for the office of Sarpanch of the Gram Panchayat against Mool Chand. Mool Chand had launched a case against Bhanwar Lal PW 7 for taking away a camel in which the latter was found guilty and given benefit under the Probation of Offenders Act. Mukna Ram PW 6 does not remember if he had given evidence from the side of Amar Singh PW 3 in case against Misariya. Thus there were litigations between Bhagirath and prosecution witnesses on the one part and one or more accused persons on the other part. The evidence of the prosecution witnesses, therefore, deserved close scrutiny.

6. Hema Ram, PW 2 had stated in his police statement Ex D/1 that Mool Chand did not have lathi in his hand which he disowned in his court statement. In the police statement, Hema Ram had not stated that it was Dayal accused who had inflicted lathi blow on the head of Bhagirath deceased. Hema Ram PW 2 admitted in his cross-examination that incident was over before Amar Singh PW 3 came on the spot. It is also admitted that Hema Ram's house is at a great distance from the house of Hanuman Purohit. Hema Ram is not only a chance witness but he also belies the prosecution version that Amar Singh, PW 3 was an eye-witness. In his police statement, Hema Ram did not state that Rajendra Singh PW 4 and Bhanwar Lal PW 7 had also come on the spot Rajendra Singh PW 4 did not name

Raghunath as stated as of Bhagirath. So also Amar Singh PW 3 did not name Raghunath. The learned Sessions Judge, therefore, rightly doubted the presence of and participation by Moolchand and Raghunath in incident.

7. So far as the remaining five persons i.e. Dayal, Misariya, Bhura Jeewan and Nathmal are concerned, their presence and participation is very well established by the evidence of Gheesa Ram PW 5 and Mukna Ram PW 6. Telegraphic First Information Report was sent by Mukna Ram PW 6 at the instance of Gheesa Ram PW 5. There is contradiction in the prosecution evidence with regard to the accused who inflicted the head injury on Bhagi Rath deceased. Hema Ram PW 2 deposed that it was Dayal accused who had inflicted lathi blow on the head of Bhagirath and it was the first injury that was inflicted Amar Singh PW 3 stated that it was Nathmal who inflicted the first blow. Rajendra Singh PW 4 stated that he did not know which of the accused inflicted on what part of the body of Bhagirath Gheesa Ram PW 5 did not state in his police statement that Dayal inflicted lathi blow on the head of Bhagirath. This it could not be found from the prosecution evidence as to which of the accused inflicted fatal blow on the head of Bhagirath.

8. As to the offence made out against the four convict accused, it may be mentioned that in all five injuries had been inflicted according to the statement of the Doctor in cross-examination. Had there been a common intention to murder Bhagirath. all the five accused would have hit Bhagirath on his head and would not have been content with only one Lathi blow on the head and three other minor injuries. The offence made out against the four convicted accused persons can only be that of Section 325, IPC and not u/s 302 or u/s 302 read with Section 149, IPC. Fifth person Nathmal has already expired.

9. We, therefore, uphold the acquittal of Mool Chand and Ragunath of all the charges framed against them. We also uphold the conviction of Dayal, Jeewan, Misariya and Bhura Ram u/s 325 read with Section 149 IPC As regards the sentence, looking to all the facts and circumstances of the case, we reduce it to the period during which these four accused persons had already been in jail during the investigation, trial and after conviction by the Sessions Judge, Merta. How ever, we impose on all the four convicts, namely Dayal, Jeewan, Misariya and Bhura Ram a fine of Rs. 3000/-each. In default of payment of fine within a period of three months in the Court of Sessions Judge, Merta each of the aforesaid four accused would undergo rigorous imprisonment for one year. Out of the fine amount deposited by each of the four accused, an amount of Rs. 2500/- out of the amount deposited by each accused would be paid by the Sessions Judge, Merta to the widow of deceased Bhagirath.

10. The result is that D.B. Criminal Appeal No. 103 of 1977 filed by Gheesa Ram and Mukna Ram complainants and D.B. Criminal Appeal No. 104 of 1977 filed by the State of Rajasthan are dismissed. So far as D.B. Criminal Appeal No. 916 of 1976 filed by Dayal and three others against their conviction is concerned, their conviction u/s 325 read with Section 149, IPC and u/s 147 IPC is maintained but

the sentences awarded to them are reduced to the extent they have already undergone. However, a fine is imposed on each of them as mentioned above with the aforesaid directions to pay an amount of Rs. 2500/- to the widow of deceased out of the fine amount of Rs. 3000/- that may be deposited by each of the accused as compensation. In default of payment of the fine of Rs. 3000/- by all or any of the four accused-appellants, they or the defaulter would undergo rigorous imprisonment of one year. D.B. Criminal Appeal No. 916 of 1976 is accordingly partly allowed.