

(2016) 10 RAJ CK 0048

In the Rajasthan High Court

Case No : Criminal Appeal No. 80 of 1993.

State of Rajasthan - Petitioner @HASH Mag Singh Rajpurohit and Others

Date of Decision : 18-10-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, Section 302, Section 302, Section 34

Citation : (2016) 4 CriLR 1866

Hon'ble Judges : Gopal Krishan Vyas and G.R. Moolchandani, JJ.

Bench : Division Bench

Advocate : Ms. Yogita Mohanani on behalf of Mr. P.N Mohanani, Advocates, for the Respondents; Mr. C.S. Ojha, Public Prosecutor, for the State

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J. - In this cr. appeal filed by the State of Rajasthan, the Agreement dated 21.10.1992 passed by the Sessions Judge, Jodhpur in Sessions Case No. 25/92 is under challenged by which the learned Trial Court acquitted all lie respondents from the charge levelled against them for offence under Sections 147, 302 and in the alternative under Section 302/34 I.P.C. During pendency of this appeal respondent Uttam Singh died, therefore, the appeal against him was abated vide order dated 3.11.1999.

2. As per facts of the case, the statement of the deceased Chen Singh (Ex.P-12) were recorded by the SHO Police Station, Dechu on 23.11.1991 at 10.45 pm. in which, the injured Chen Singh deposed that today in the morning at about 8.00 am I was going from my agricultural field on camel cart carrying certain fodder including Tumbey. When I crossed the agricultural field of Prabhu Ram Meghwal and entered in the agricultural field of Magh Singh, at that time Magh Singh S/o Mangal Singh, Kalyan Singh S/o Mangal Singh, Narpat Singh, Uttam Singh S/o Bheru Singh resident of Nathdau and Balu Devi W/o Late Padam Singh and Rekha Kanwar W/o Kalyan Singh obstructed on the way having Lathis and weapon Dhariya in their hands and gave threat that they will not allow him to cross their agricultural field. As per complainant, in the morning twice he crossed the agricultural field of Magh Singh, but no objection was raised by them,

however, in the evening when 3rd time, he was crossing the agricultural field of Magh Singh, the accused Bali Devi W/o Padam Singh inflicted injury upon my left eye and other male and female persons inflicted injuries by Lathi upon my whole of the body including knee and other parts of the body. As per statement of the deceased all the persons after inflicting injury thought that I am dead, they run away from the place of occurrence. As per statements of the injured Chen Singh, at the time of incident one Binja Ram resident of Nathdau was with him but due to fear, ran away from the place of occurrence, thereafter, when I cried one Vijay Singh came on spot.

3. Upon aforesaid statement (Ex.P-12), a formal F.I.R. No. 115 (Ex.P-13) was registered at Police Station Dechu on 23.11.1991, after registration of the F.I.R., statements of Chen Singh (Ex.P-14) were recorded under Section 161 Cr.P.C. The injured was taken to the hospital but he died after two days on 25.11.1991 in the mid-night at 12"0 Clock. The post mortem of the body was conducted and report (Ex.P-11) was issued by the medical jurist of MG Hospital, Jodhpur and gave opinion that cause of death of Chen Singh was comma as a result of head injury.

4. The Investigating Officer went on spot and prepared site plan (Ex.P-13) in which details of site were also recorded. From the site some pieces of trees having blood upon them were recovered vide Ex.P-14. One Sufa, Towel and pair of sleeper were also taken in possession vide Ex.P-15. The respondent Magh Singh was arrested vide Ex.P-18, Kalyan Singh vide Ex.P-19, Smt. Balu Kanwar vide Ex.P-20, Smt. Rekha vide Ex.P-21 and Uttam Singh vide Ex.P-22.

5. After arrest upon information given under Section 27 of the Evidence Act by Magh Singh one Lathi was recovered vide Ex.P-6, upon information given by Kalyan Singh (Ex.P-24), another Lathi was recovered vide Ex.P-7, upon information given by Smt. Balu Kanwar one Dhariya and pair of sleepers were recovered vide Ex.P-9, upon information given by Smt. Rekha Kanwar vide Ex.P-26, one Lathi and blue coloured sleeper were recovered vide Ex.P-8 on 28.11.1991. All the recoveries were made on 28.11.1991.

6. It relevant to mention here that at the time of arrest of all the respondents, injuries were found upon their body which is evident from the arrest memos of all the respondents. The Investigating Officer after completing investigation filed charge-sheet against all the five persons, the learned Trial Court after framing charge against the respondents recorded prosecution evidence. In support of the prosecution case, statements of 14 prosecution witnesses were recorded, thereafter, statements of the respondents were recorded under Section 313 Cr.P.C. in which they denied all allegations of prosecution witness for causing injuries to the deceased Chen Singh and in defence two witnesses DW-1 Dr. Arvind Solanki and DW-2 Dr. Om Prakash Soni were produced to prove the fact that injuries were caused to them in the said alleged incident, which took place in the agricultural field of respondent Magh Singh.

7. After recording entire evidence, the learned Trial Court finally heard the

arguments and acquitted all the respondents for the charge levelled against them under Sections 147, 302 and in the alternative under Section 302/34 I.P.C. vide judgment dated 21.10.1992.

8. In this appeal, the State of Rajasthan is challenging the validity of the said judgment.

9. Learned Public Prosecutor vehemently argued that the finding given by the learned Trial Court for acquittal on the ground of right of private defence is totally erroneous because the true story was narrated by the injured deceased Chen Singh before his death and the said statement given by him has been supported by other prosecution witnesses during trial, therefore, it is obvious that the learned Trial Court committed a grave error while acquitting the respondents from the charge levelled against them on the ground of right of self defence. Learned Public Prosecutor further submits that the statement of Chen Singh upon which F.I.R. was registered cannot be disbelieved because after recording those statements, Chen Singh died after two days, therefore, obviously, the learned Trial Court is under obligation to treat the statement of deceased as dying declaration. The learned Trial Court instead of accepting the statement of deceased as dying declaration, illegally and contrary to law, acquitted the respondents from the charges levelled against them while giving benefit of right of private defence, therefore, upon the evidence on record, it is abundantly clear that assessment of evidence by the learned Trial Court is totally erroneous because prosecution has proved its case beyond reasonable doubt for the alleged offence under Sections 147 and 302 I.P.C. and in the alternative under Section 302/34 I.P.C.

10. Learned Public Prosecutor further argued that learned Trial Court accepted the incident, so also, participation of respondents in the incident, but granted benefit of doubt as well as benefit of right of private defence in spite of the fact that there is reliable and cogent evidence on record, therefore, judgment impugned may kindly be quashed and the respondents may kindly be convicted for the offence committed by them.

11. Per contra, learned Counsel for the respondents vehemently argued that whole prosecution story is based upon the concocted facts. While inviting attention towards the arrest memo it is submitted that in all the arrest memos, the Investigating Officer observed that number of injuries were found upon the body of all the respondents, for which there is no explanation by the prosecution. While inviting attention towards the statement of Investigating Officer PW-12 Mahendra Singh Choudhary, it is submitted that the Investigating Officer categorically stated in his cross-examination that when I arrested Magh Singh, Smt. Balu Kanwar and Smt. Rekha Kanwar, there were injuries upon their bodies and those injuries were recorded in their arrest memos. It is also stated that respondents were not medically examined by him because they were already examined by the doctor and to prove the said fact in defence, two witnesses DW-1 Dr. Arvind Solanki and DW-2 Dr. Om Prakash Soni. Both were produced,

both the witnesses categorically stated on oath that respondents were examined by them in the Government hospitals and at the time of examination there were number of injuries upon their bodies, therefore, after examination injury reports were issued, those are on record as Ex.D-11 to D-14. It is also important aspect of the matter that deceased injured Chen Singh stated in his statement that incident took place when he was trying to cross the agricultural field of the respondents. The respondents raise objection and inflicted injury upon his body. Meaning thereby, admittedly the incident took place in the agricultural field of respondents and there is evidence on record that number of injuries were found upon the body of four respondents, but all these facts are not disclosed by the prosecution in the trial, therefore, the learned Trial Court acquitted them while giving benefit of right of private defence and benefit of doubt.

12. Learned Counsel for the respondents submits that there is no error in the finding given in the judgment to acquit the respondents from the charges levelled against them. The learned Trial Court minutely assessed the entire evidence led by the prosecution and therefore, no interference is required in the judgment impugned because judgment is perfectly in consonance with law. Hence, this appeal may kindly be dismissed.

13. After hearing the learned Counsel for the parties, we have perused the finding given by the learned Trial Court for acquitted on the ground of right of private defence and doubt. To prove the prosecution case, statements of 14 prosecution witnesses were recorded, out of which PW-2 Vishnu Dev, PW-3 Binja Ram, PW-10 Vijay Singh and PW-11 Arjun Ram appeared before the Court to support the prosecution case. Admittedly, the F.I.R. was registered on the basis of statement of deceased Chain Singh in which it is specifically stated by him that:

"eSa vkt "kke dks djhc 8 cts djhcu vius [ksr ls <+k.kh NdM+k ysdj vk jgk Fkka NdM+s esa ?kkl o rqEck FksA eSa izHkwjke th S/o jkewjkw esxoky ds [ksr esa ls gksdj exflag ds [ksr esa ?kqlus yxk rks exflag] dY;k.k flag filjku eaxyflag] esQflag S/o jk.khnku flag] ujir flag mRre flag filjku esQflag tkfr iqjksfgr fuoklh ukFkM+km o cyh nsok csok ine flag o dY;k.k flag dh vkSjr ,d jk; gksdj /kkjh;k o ykBh;ka ysdj vkM+s fQjs o eq>s [kxflag ds [ksr esa ls fudyus okys jkLrs ls euk fd;kA bls igys eSa vkt fnu esa nks ckj NdM+k ysdj fudyk Fkka "kke ds le; rhljh ckj fudyrs le; cyh nsok W/o ine flag us /kkjh;k dh eSajs Mkoh vkWa[k ds mij ekjh rFkk ckdh ds O;fDr;ksa o vkSjrksa us ykB;ksa ls esjs iwjs "kjhj ij txg&txg pksVsa igqapkbZ ftlls esjs ekSjksa] dksguh ij ykB;ksa ls pksVs vkbZ gSA eq>s [kRe gqvk le> dj ;s yksx Hkkx x;sA esjs lkFk chtkjke S/o eaxykjke esxoky fuoklh ukFkM+km lkFk Fkka"

14. The deceased gave aforesaid statement and accepted that he was carrying camel cart whereas PW-3 Binja Ram, PW-4 Sangh Singh, PW-10 Vijay Singh and PW-11 Arjun Ram stated altogether different story. It is also relevant to mention here that all these witnesses did not accepted the fact that deceased Chen Singh was playing camel cart and started altogether different story than the story which

is said to be narrated by the deceased in his statement. It is also worthwhile to observe that there is no whisper about the injuries upon the body of all the respondents.

15. Admittedly, in the arrest memo of all the respondents the Investigating Officer recorded that there were injuries upon the bodies and these injuries were proved by the defence witness DW-1 Dr. Arvind Solanki and DW-2 Dr. Om Prakash Soni. Both the doctors specifically stated before the Court that there were number of injuries upon the body of the-respondents Magh Singh, Kalyan Singh, Smt. Balu Kanwar and Smt. Rekha Kanwar, but all these injuries are not explained by the prosecution. The learned trial Court after due assessment of evidence observed in the findings that deceased in his statement specifically stated that only one witness Binja Ram was there and Vijay Singh came there afterwards, but in the trial, prosecution has produced four eye-witnesses whose names were not even disclosed by the deceased himself in his statement.

16. Upon perusal of the finding of the fact that all the respondents in their statements recorded under Section 313 Cr.P.C. specifically said that Chen Singh (deceased) assaulted them, so also, it also emerges from the evidence that occurrence took place in agricultural field of respondent Magh Singh, the learner Trial Court held that it is a case of right of private defence. The Investigating Officer PW-12 Mahendra Singh specifically stated in his cross-examination that :

"gekjh rQ~rh"k ds vuqlkj dsoy lkaxflag }kjk exflag ds [ksr esa ls mWaV NdM+s ls pDdj dkVs x;s ftlds lkFk cha>kjke FkkA ;g ckr lgh gS fd HkS:flag vkSj ujirflag }kjk pSuflag ds lkFk ekjihV djus dk rF; b,Dlih&12 o b,Dlih&14 esa vafdr gS tks rQ~rh"k ls lgh ugha ik; x;kA ;g ckr lgh gS fd b,Dlih&12 o 14 esa ";keflag iq= fot;flag dk uke vafdr ugha gSA tc eSaus pkjksa vfHk;qDrx.k exflag] dY;k.k flag] eqLekr ckywdaoj o js[kkdaoj dks fxjQ~rkj fd;k rks muds "kjhj ij pksVs yxh gqbZ Fkh] tks eSa QnkZr ij ,e ls ,u ij vafdr fd;k gSA eSaus bu pkjksa vfHk;qDrx.k dk dksbZ MkWDVjh eqvk;uk ugha djok;k D;ksafd budk MkWDVjh eqvk;uk igys gh gks pqdk FkkA tks dj.kflag gSM eksgfjjZ }kjk djok;k x;k FkkA"

17. The Investigating Officer further stated in the cross-examination that for the same incident Magh Singh also filed complaint, upon which, F.I.R. was registered and in that investigation it is found that deceased caused injuries to the respondents. The following statement has been given by the PW-12 Mahendra Singh, which reads as under:

"bl ?kVuk ds laca/k esa exflag }kjk Hkh eqdnek ntZ djok;k FkkA ftldh rQ~rh"k esjs }kjk dh xbZ FkhA ;g ckr lgh gS fd dkmUVj dsl esa ;g vk;k Fkk fd ekjihV esa vfHk;qDrx.k o pSuflag Hkh "kjhd Fks ekjihV djus esa lkaxflag iq= fot;flag "kkfey ugha FkkA ;g ckr lgh gS fd dkmUVj dsl esa ;g ik;k x;k Fkk fd pSuflag }kjk vfHk;qDrx.k dks pksVsa igqapkbZ xbZ FkhA ;g ckr lgh gS fd oDr odqv k pSuflag ds ikl Hkh ykBh FkhA"

18. In the F.I .R., registered upon the statement of deceased Chen Singh it was not disclosed by him that he has inflicted injuries to the respondents by Lathi but

in the counter case filed by the respondent Magh Singh, the Investigating Officer find that deceased Chen Singh having Lathi in his hand and he has inflicted injuries to the respondents, which is fortified from the evidence of DW-1 Dr. Arvind Kumar Solanki and DW-2 Dr. Om Prakash Soni, who has categorically stated before the Court that they medically examined the respondents and gave injury reports (Ex.D-11 to D-14).

19. Upon consideration of the above statement of Investigating Officer, we are of the opinion that there is no error in the finding of the learned Trial Court that respondents are entitled for benefit of right of private defence.

20. In case of State of Rajasthan v. Madho & Anr., reported in 1991 Cri.L.J. 1343, the Hon'ble Supreme Court held as under:

"2...If we turn to the injuries sustained by the two respondents which have been set out in paragraph 25 of the Trial Court judgment, we find that the respondent Kishna had sustained as many as six injuries, five of them on the skull region. The respondent Madho too had sustained six injuries, two on the skull region, two on the scapular region, one on the forehead and one on the right index finger. Thus some of the injuries were on exposed parts of their bodies and we would expect the prosecution witnesses to explain how the two respondents sustained the said injuries. No explanation worth the name is forthcoming. The Trial Court, however, brushed aside this infirmity by pointing out that in the cross case filed at the behest of the respondent Kishna the evidence disclosed that there was no farsi blow and, therefore, the defence theory was not acceptable. Counsel for the respondents, however, questioned the admissibility of the said evidence. Be that as it may, mere acquittal of the accused (prosecution side herein) in that case does not render the defence version false. The defence version has to be evaluated on the basis of the prosecution evidence tendered in the present case. The fact remains that both the respondents had sustained serious injuries, Kishna mainly on the skull whereas Madho on the skull as well as scapular region. If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the respondents herein it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident. The High Court was, therefore, of the opinion that having regard to the fact that they have failed to explain the injuries sustained by the two respondents in the course of the same transaction, the respondents were entitled to the benefit of the doubt as it was hazardous to place implicit reliance on the testimony of the injured PW-2.

4. In view of the above, we do not think that the High Court had committed any error in the evaluation of the prosecution evidence. The view taken by the High Court cannot be said to be against the weight of evidence or one which has resulted in gross injustice. In our view the evaluation of the prosecution evidence by the High Court in the context of the injuries sustained by the two respondents is quite proper and does not call for interference by this Court.

21. In view of the aforesaid judgment and after due consideration and assessment of the entire evidence coupled with the finding of the learned Trial Court, we are of the opinion that for criminal charge prosecution is required to prove its case beyond reasonable doubt and must have to produce reliable and trustworthy evidence with clean hand so as to held accused guilty for the alleged offence, but here in this case, the witnesses whose names were not even disclosed by the deceased in his statement were produced as eye witnesses and the so called eye-witness Binja Ram whose name was disclosed by Chen Singh stated altogether different story and changed the statement recorded under Section 161 Cr.P.C. in the investigation. Further, three other witnesses Sangh Singh, Vijay Singh and Arjun Ram were not on spot even as per the deceased himself but they were produced as eye-witnesses and none of the witnesses explained how the injuries were caused to all the respondents in the incident took place in the field of respondent Magh Singh.

22. In our opinion, there is no error in the finding given by the learned Trial Court so as to acquit the respondents from the charges levelled against them because defence witnesses are doctors and they categorically said on oath that they examined the respondents and issued injury reports, but Investigating Officer did not make investigation for the injuries caused to all the respondents, therefore, it cannot be said that prosecution has proved its case beyond reasonable doubt.

23. In view of the above discussion, we are of the opinion that no error has been committed by the learned Trial Court in acquitting the respondents from the charges levelled against them on the ground of self defence and benefit of doubt. There is no force in this cr. appeal.

24. Hence, this cr. appeal is hereby dismissed.