
(2018) 12 RAJ CK 0144
In the Rajasthan High Court
Case No : Criminal Appeal No.720 Of 2017

Unkar And Ors

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 302, 304, 307, 323, 324, 325, 447

Code of Criminal Procedure, 1973 — Section 216, 313, 374(2)

Citation : (2018) 12 RAJ CK 0144

Hon'ble Judges : Vinit Kumar Mathur, J;Sandeep Mehta,J

Bench : Division Bench

Advocate : Kalu Ram Bhati, J.P.S.Choudhary

Final Decision : Partly Allowed

Judgement

SANDEEP MEHTA,J.

The matter was listed today for orders on the second application for suspension of sentences [D.B. Suspension Of Sentence {Appeal} No. 1220/2018] preferred on behalf of the applicant appellant No.4 Panna Lal S/o Gamana Ram.

With the consent of learned counsel for the appellants and learned Public Prosecutor, we have heard final arguments on the appeal itself. Thus, the application for suspension of sentences is dismissed as infructuous.

By judgment dated 4.5.2017 passed in Sessions Case No.39/2014, the learned Additional Sessions Judge No.4, Udaipur convicted and sentenced the appellants Unkar S/o Gamana Ram, Shankar Lal S/o Unkar, Bheru Lal @ Bhera s/o Unkar and Panna Lal S/o Gamana as below:

Offence u/s.

Sentence

Fine

Fine Default Sentence

148 I.P.C.

3 years S.I.

Rs.1000/-

1month S.I.

323/149 I.P.C.

1 year S.I.

Rs.500/-

15 days S.I.

324/149 I.P.C.

3 year S.I.

Rs.1000/-

1month S.I.

447 I.P.C.

3 months S.I.

Rs.500/-

15 days S.I.

302/149 I.P.C.

Life Imprisonment

Rs.5000/-

6 months R.I.

Facts in brief:

Shri Rama S/o Maninga Meena (P.W.5) lodged a written report (Ex.P29) at the Police Station Lasadiya on 21.7.2013 alleging inter-alia that in the very same evening at about 5 O'clock, he was lying on a cot in the courtyard of his house. At that time, the accused party comprising of Unkar S/o Gamana (having axe in his hand), Shankar & Bhera sons of Unkar, Panna S/o Gamana and Suresh S/o Panna (having lathis in their hands) came there with a common intent of assaulting and killing him. Unkar exhorted and shouted at the first informant that he was not permitting them to raise a boundary on their land and thus, he would be done to death. The first informant tried to get up from the cot upon which, Unkar inflicted an axe blow with its sharp side on his head resulting into a bleeding wound. Unkar gave him another blow with the reverse side of the axe

on his back. The first informant raised a hue & cry on which, his brother Chokha S/o Gamana Ram came around running and tried to intervene. Bhera gave a lathi blow on the chest of Chokha due to which, he fell down on the floor. While Chokha was lying supine, Shankar, Panna, Suresh and Bhera indiscriminately rained lathi blows upon him, Unkar who was holding the axe continued to exhort that Chokha should be killed. The first informant's wife and his son came out running and intervened upon which, the accused went away. The first informant managed to escape and went to the Police Station for reporting the matter. On the basis of this report, an F.I.R. No.94/2013 was registered at the Police Station Lasadiya for the offences under Sections 307, 143, 447 and 323 I.P.C. and investigation commenced. Chokha succumbed to his injuries upon which, offences under Sections 302, 148 and 149 I.P.C. were added to the case. The first informant Rama was examined by the medical jurist who noticed one sharp weapon injury on his parietal region and multiple abrasions on his lumbo sacral region as well as on right scapular region. Upon X-ray, all the injuries were found to be simple in nature. The dead body of Chokha was subjected to post mortem and as per the post mortem report (Ex.P.28), the deceased was having as many as 5 external injuries on his body. Three of the injuries were opined to be imprint bruises whereas the other two injuries were a bruise and a lacerated wound respectively. The injuries noticed on the body of the deceased are described hereinbelow:-

1

Bruise

24x4 cm

Rt lower Hepatic margin towards xiphisternum till mid clavicular line at 5th ICS

Blunt

2

Imprint Bruise

15x4 cm

Upper scapular region (Lt side)

Blunt

3

Imprint Bruise

8x2 cm

Upper scapular region (Rt side)

Blunt

4

Imprint Bruise

28x4 cm

Lower scapular region of both side

Blunt

5

Lacerated wound

2x1x0.5 cm

Anterior mid tibial region of left leg.

Blunt

The doctors conducting post mortem, noticed fracture of 11th and 12th rib of the hepatic region associated with bleeding underneath the injuries No.1, 2 and 3. About 1.5 litre of blood was collected in the abdominal cavity. A blood clot of 11x7x3 cm was also collected in the abdominal area. After usual investigation, charge-sheet was filed against the appellants herein in the court of the concerned Magistrate, whereas Challan against Suresh who was below 18 years of age on the date of the incident, was filed in the Juvenile Board concerned. The case was committed to the court of Sessions Judge, Udaipur from where, it was transferred for trial to the court of the Additional Sessions Judge No.4, Bikaner. The trial court framed charges against the appellants for the offences under Sections 147, 447, 323, 149, 302/149 I.P.C. They pleaded not guilty and claimed trial. The prosecution examined as many as 21 witnesses in support of its case. The accused, upon being examined under Section 313 Cr.P.C. denied the prosecution allegations and examined two witnesses in defence. After the statements of the accused had been recorded, the trial court exercised powers under Section 216 Cr.P.C. and framed an additional charge for the offence under Section 324/149 I.P.C. against the accused. At the conclusion of trial, the trial court accepted the evidence of the prosecution witnesses, discarded the defence version and proceeded to convict and sentence the appellants as above by the judgment dated 4.5.2017. Being aggrieved, the appellants have preferred the instant appeal under Section 374(2) Cr.P.C. for assailing the impugned judgment.

Shri Kalu Ram Bhati learned counsel representing the appellants did not seriously contest the involvement of the appellants in the incident. However, he urged that the accused and the complainant party are closely related to each other. The incident occurred at the spur of moment and a quarrel took place with the complainant who was meddling in the right of the accused to raise a boundary wall at their own land. In the ensuing quarrel, the first informant Rama P.W.5 was beaten and received simple injuries. When Chokha intervened to save Rama and he received the injuries during the melee. Thus, as per Shri Bhati, the

common object of the accused party was to assault Rama and not to commit murder of the intervenor Shri Chokha and at best, they can be imputed the knowledge that by inflicting the injuries of the nature, they were causing to the intervenor Chokha, they might endanger his life. Referring to the statement of Dr.Harendra Meena P.W.17, who conducted postmortem upon the dead body of Shri Chokha, Shri Bhati submitted that the Medical Officer did not opine that the injuries caused to the deceased were sufficient in the ordinary course of nature to cause death. He contended that as per the highest prosecution case, the deceased was lying supine and was at the mercy of the accused but not a single injury was inflicted upon his head or any other vital part of the body. The accused Unkar, though armed with an axe, did not use it to assault the deceased. He thus urged that conviction of the accused appellants for the offence under Section 302 r/w Section 149 I.P.C. is bad in the eye of law and at best, they are liable to be convicted for the offence under Section 325 I.P.C. He thus craved acceptance of the appeal to this extent urging that the conviction of the appellants for the offence under Section 302 I.P.C. be set aside and while altering their conviction to the offence under Section 325 I.P.C., the sentences awarded to the appellants be reduced to the period already undergone by them.

Per contra, Shri J.P.S.Chouhdary, learned Public Prosecutor vehemently and fervently opposed the submissions advanced by learned counsel for the appellants. He urged that the appellants were armed with dangerous weapons. They went to the house of the first informant Rama and started assaulting him mercilessly. On hearing the hue and cry, the deceased Chokha came to the spot and tried to intervene so as to save the first informant Rama from graver harm at the hands of the accused on which, he too was indiscriminately belabored by lathis etc. The assault made by the accused with full fledged blows of lathis resulted into fracture of two of his ribs leading to excessive bleeding causing hemorrhagic shock and death. He submitted that merely because the doctor conducting the post mortem did not opine that the injuries caused to Chokha were self sufficient in the ordinary course of nature to cause death, that by itself cannot be a ground to discard the medical testimony and this Court can very well rely upon the opinion of the medical experts and draw inference regarding the nature and consequences of the injuries caused to the deceased. He submitted that in view of the fact that almost 1.5 liters blood was found collected in the abdominal cavity of the deceased, it can be presumed that the injuries inflicted by the accused were so severe that there was no possibility of survival of the deceased. He thus craved dismissal of the appeal in entirety.

We have given our thoughtful consideration to the arguments advanced at the Bar and have carefully re-appreciated the evidence available on record.

Since the appellants' counsel has not challenged the findings recorded by the trial court against the appellants to the extent of participation in the incident and has limited his arguments only to nature of the offence, the evidence of the first informant Rama and the medical evidence are being briefly referred to.

In the F.I.R. Ex.P30 as well as in his sworn testimony, the first informant Rama clearly stated that he was lying on a cot outside his house when the accused party came around and exhorted as to why he was not allowing them to build a boundary on their own land. Unkar was armed with an axe whereas, the others were having lathis in their hands. Saying so, the accused started assaulting the first informant Rama and inflicted three simple injuries to him. The accused persons (including Suresh, who was charge-sheeted in the Juvenile Board) being five in number, were all armed with lathis and axes. Chokha rushed to the scene of occurrence on hearing the hue and cry and tried to intervene and soon thereafter, the accused shifted their attention to him and started belaboring him by lathis. Admittedly, as per the statement of first informant Rama, the accused Unkar who was having an axe in his hand, did not cause any injury to Chokha nor was any injury by sharp weapon noticed when post mortem was carried out upon his dead body. As per the post mortem report Ex.P28 and the statement of the Medical Officer Dr.Darendra Meena, P.W.17, as many as 5 injuries were noticed on the dead body of the deceased Chokha, out of which, the injuries No.2, 3 and 4 were imprint bruises. It is doubtful as to whether imprint bruises could have been caused by blunt weapons like lathis unless of course the lathis were embedded with wires in which case, the wired part would leave an impression bruise. None of the lathis recovered at the instance of the accused appellants vide recovery memos Ex.P10 (Bheru), Ex.P13 (Shankar Lal) and Ex.P14 (Panna Lal) was wired. Be that as it may. The Medical Officer, while deposing in the court did not state that either any individual injury or the cumulative effect of the injuries caused to Chokha was sufficient in the ordinary course of nature to cause his death. Admittedly, the accused went to the house of the first informant Rama and were heckling with him on the issue as to why he was not allowing them to construct the boundary wall on their own land. During the course of this quarrel, accused started inflicting injuries to the first informant Rama, who raised a hue and cry. Chokha intervened and he received injuries in that course of events. Therefore, without any doubt, the accused never intended to assault and kill Chokha. Their primary target was to settle an issue with Rama. The accused Unkar was armed with an axe but he did not inflict a single injury to the deceased Chokha. The external injury No.1 caused below the chest area of the deceased resulted into fracture of two of his ribs and laceration of the liver leading to bleeding and caused his death. In view of these facts, this Court is of the firm opinion that the intention of the accused was not to cause death of Chokha and at best, they can be inferred with the knowledge that the injuries inflicted by them to him could endanger his life and as such, the conviction of the appellants for the offence under Section 302 I.P.C. cannot be sustained. Instead, they deserve to be held guilty for the offence under Section 304 Part II read with Section 149 I.P.C. However, the conviction of the appellants for the other offences does not warrant any interference. Our view is fortified by the ratio of the Hon'ble Supreme Court decision in the case of Abani K. Debnath & Ors. Vs. State of Tripura reported in AIR 2006 SC 518 wherein it was held as below:

"4 . The common intention as is well known in criminal jurisprudence is the premeditated meeting of mind. No doubt the common intention can also be formed on the spot. But in the instant case since the original quarrel was between Anil Das PW.1 and Amar Debnath A-5, in our view, it is difficult to say that there was common intention either pre- meditated or formed on the spot with regard to the murder of Ranjit Das. We have already noted that Ranjit Das was an intervenor to save Anil Das and in such a situation the incident appeared to have been in a spur of moment. By no stretch of imagination, it can be said that the murder of Ranjit Das can be said to be with the common intention of A-1 and A-5. From the evidence on record it clearly appears that the dao blow was dealt by only A-1. If at all a conviction under Section 302 IPC is maintained, the death was resulted by an independent act of A-1. In such a situation, A-5 cannot be roped with the aid of 34 IPC. We are clearly of the view that a conviction of A-5 under Section 302 IPC with the aid of 34 IPC is not sustainable and, therefore, conviction qua A-5 under Section 302/34 IPC is set aside."

Thus, while setting aside the conviction of the appellants for the offence under Section 302/149 I.P.C. recorded by the trial court vide impugned judgment dated 4.5.2017, they are held guilty and convicted for the offence under Section 304 Part II read with Section 149 I.P.C. and are sentenced to 7 years R.I. and a fine of Rs.2000/- in default to further undergo 2 months S.I. The conviction and sentences awarded to the appellants for the remaining offences are maintained. The impugned judgment is modified accordingly. All sentences shall run concurrently.

The appeal is partly allowed in the above terms.