

Hans Raj and Others Vs. State of Rajasthan

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Court : Rajasthan Jodhpur

Decided On : Mar-03-2015

Judge : Kanwaljit Singh Ahluwalia & The Honourable Mrs. Justice Nisha Gupta

Appeal No. : Criminal Appeal Nos. 639 of 2006 & 666 of 2006

Appellant : Hans Raj and Others

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Anoop Dhand, Shri. Ashvin Garg

Judgement :

By the Court: (Ahluwalia, J.) (Oral):

Hans Raj, Gopal, and Bholu, sons of Ram Ratan, Gopal and Jagdish, sons of Banna, all resident of Village Morla, Police Station, Lamba Harisingh Distt. Tonk have preferred two separate appeals to assail the impugned judgment dated 16th June, 2006 rendered by Court of Additional Sessions Judge, Malpura, Distt. Tonk whereby all appellants were held guilty of offences under Sections 148, 447, 323 read with Section 149 IPC. Appellant Hans Raj was substantively convicted for offence under Section 302 IPC, whereas remaining accused were convicted with aid of Section 149 IPC.

Vide a separate order of even date, the trial Judge had sentenced the appellants as under:-

Accused appellants Hansraj, Bholu, Gopal sons of Ram Ratan, and Gopal and Jagdish sons of Banna:-

For offence under Section 148 IPC : to undergo one year rigorous imprisonment, and to pay a fine of Rs. 1000/-, and in default thereto, to further undergo one month imprisonment.

For offence under Section 447 IPC : to undergo one month rigorous imprisonment, and to pay a fine of Rs. 500/-, and in default thereto, to further undergo 15 days imprisonment.

For offence under Section 323/149 IPC : to undergo six months rigorous imprisonment, and to pay a fine of Rs. 1000/-, and in default thereto, to further undergo one month imprisonment.

Accused appellant Hans Raj

For offence under Section 302 IPC : to undergo life imprisonment, and to pay a fine of Rs. 5000/-, and in default thereto, to further undergo five month imprisonment.

Accused appellants Bholu, Gopal sons of Ram Ratan, and Gopal and Jagdish sons of Banna :

For offence under Section 302/149 IPC : to undergo life imprisonment, and to pay a fine of Rs. 5000/-, and in default thereto, to further undergo five month imprisonment.

All the sentences were ordered to run concurrently.

Sons of Ram Ratan namely Hans Raj, Gopal, and Bholu have preferred D.B.Criminal Appeal No.639/2006, and two sons of Banna namely Gopal, and Jagdish have instituted D.B.Criminal Appeal No.666/2006.

By this common judgment, we shall decide both the appeals together.

Criminal proceedings were set into motion on the basis of written report (Ex.P/7) lodged by Bajrang Lal Gurjar (P.W.4). Bajrang Lal Gurjar (P.W.4) had presented written report (Ex.P/7) before Head Constable, Bhanwar Singh (P.W.13). Bhanwar Singh (P.W.13) while appearing in the Court stated that on 01st November, 2004 he was posted as Head Constable at Police Station, Pachavar. At 2.30 P.M., a telephonic information was received from Village Sothwada that a fight had taken place, and injured have been brought to Malpura hospital. Station House Officer of Police Station, Pachavar upon receiving the information directed the Head Constable to record the statement of injured. He reached the hospital where Bajrang Lal Gurjar (P.W.4) had presented written report (Ex.P/7). On the basis of written report (Ex.P/7), formal FIR (Ex.P/31) was registered for offences under Sections 143, 447, 341, 323 IPC.

The written report (Ex.P/7) when translated into English reads as under:- To

Station House Officer,

Police Station, Pachavar.

Subject : For taking legal action.

Sir,

It is submitted on 1st November, 2004 at about 9.00 A.M. I, and Kanaram Jat on the land allotted to Kana Jat were sowing crop in the field at Sothwada with our tractor. At about 10.30 A.M. Hansraj, Gopal, Bholu sons of Ramratan Jat, and Gopal, and Jagdish, sons of Bana resident of Morla came armed with sticks and farsi's, having entered into the fields of Kanaram Jat, they started abusing. They were saying that land belong to them, and we should run away from the fields. Upon our refusal, they attacked us with sticks and farsi's. Gopal and Bholu, dragged me from the tractor, and attacked me. Hansraj, Jagdish and Gopal caused injuries with lathi to Kanaram Jat. At that time, Raghunath Singh and Ramjilal Jat who were working in the nearby field came to separate us, otherwise they would have killed us. Kanaram Jat became unconscious at the spot. I was

also feeling unconscious. Then, Raghunath Singh and Ramji Lal Jat both brought us on tractor of Raghunath to Malpura Hospital where we were got admitted .

I am presenting the report, and request that legal action be taken against the accused.

Signed

Bajrang Lal s/o Banna Lal Gurjar.

R/o Morala, Tehsil: Malpura Distt. Tonk.

As is evident from the perusal of the written report (Ex.P/7), on the basis of which formal FIR was registered, in the occurrence Kana Ram Jat, and Bajrang Lal Gurjar (P.W.4) had received injuries.

They were medico-legally examined by doctor Tarun Patni (P.W.1). He has proved on record injury report of Bajrang Lal (P.W.4) as (Ex.P/1), and injury report of Kana Ram, deceased as (Ex.P/2).

We reproduce the injuries received by Bajrang Lal (P.W.4) as per injury report (Ex.P/1) as under:-

1. Abrasion-bruise with swelling 12x6 cm at anterior aspect of middle 1/3 of left leg. Red in colour.
2. Bruise 8 x 4 cm at anterior aspect of middle 1/3 of Right thigh. Red in colour.
3. Abrasion 1 x 1 cm at dorsal aspect of proximal end of Index finger of Right hand. Red in colour.
4. Bruise 2 in no. 8 x 3cm each, at Right scapular region. Red in colour.
5. Bruise 6 x 4 cm at mid thoracic region of left side of back. Red in colour.
6. c/o pain at right side temporo-parietal region of head.
7. c/o pain at superior aspect of left shoulder.

8. Lacerated wound 3 x 1cm, muscle deep at antero-medial aspect of right leg, covered with freshly clotted blood.

It will be apposite for us to reproduce the injuries on the person of Kana Ram Jat (deceased) as per injury report (Ex.P/2) as under:-

1. Bruise with swelling 10 x 4cm at postero medial aspect of upper 1/2 of left forearm. Red in Colour.

2. Lacerated wound 2 x cm, scalp deep at left parietal region of Head, covered with freshly clotted blood.

3. Bruise with swelling 6 x 4 cm at anterior aspect of lower end of left thigh and knee. Red in colour.

4. Abrasion 6 x 4 cm at anterior aspect of upper 1/2 of left leg. Red in Colour.

5. Bruise with swelling 6 x 4 cm at lateral aspect of upper 1/2 of left leg. Red in colour.

6. Bruise with swelling 6 x 4 cm at lateral aspect of lower 1/2 of left leg. Red in colour.

7. Bruise with swelling 8 x 4cm at lateral aspect of upper 1/2 of Right leg. Red in colour.

8. Bruise with swelling 8 x 4 cm at lateral aspect of lower 1/2 of Right leg. Red in colour.

9. Abrasion 4 x 2 cm at lateral aspect of Right knee. Red in colour.

10. Abrasion bruise, 4 in No. 12 x 2 cm each, postero-lateral aspect of upper 1/2 of Right thigh. Red in colour.

11. Abrasion 1 x 1 cm at medial malleolus of Rt. Ankle. Red in Colour.

12. Bruise 10 x 2 cm at lateral aspect of lower 1/2 of left thigh. Red in colour.

13. C/o pain at Right shoulder. Having reproduced the injuries of both the injured, we must highlight a glaring feature of the prosecution case.

All injuries on the person of Bajrang Lal (P.W.4) are abrasions or bruise. Only injury No.8 is a lacerated wound on the right leg. Injury No.6 and 7 are complain of pain. Injuries suffered by Bajrang Lal (P.W.4) are on the non-vital part of the body i.e. left leg, right thigh, index finger of right hand, right scapular region i.e. (shoulder), and left side of back.

Kanaram had received thirteen injuries. Out of the thirteen injuries, except injury No.2 which had proved fatal, other injuries are also bruise accompanied by swelling on the non-vital parts of the body. Kanaram had received injuries on the left forearm, left thigh and knee, left leg, right leg, right knee, right thigh, right ankle, and left thigh, and same were declared simple in nature.

Kanaram after he was admitted in the hospital, died after six days i.e. on 06th November, 2004 at 8.30 P.M. His Post-Mortem was conducted on 07th November, 2004 at 11.45 A.M. Almost similar injuries were noted in the Post-Mortem Report (Ex.P/17) except that on opening of the skull, fracture of left parietal bone with extra dural hematoma over left parietal right parietal and right temporal region were found and subdural hematoma was present over both parietal region. This injury had also caused contusion on the brain.

As per opinion of the doctor cause of death was coma as a result of injury No.1 i.e. head injury which has been described as injury No.1 in injury report (Ex.P/2) too.

Prosecution in all had examined 19 witnesses. It has proved on record 36 documents as (Ex.P/1 to Ex.P/36).

Most of the documents are disclosure statement made by the accused leading to recovery of weapon, and site plan of the place from where the recovery of weapon was effected.

Bajrang Lal injured appeared as P.W.4. Beside him, Raghu Nath Singh (P.W.8), and Ramjilal (P.W.10), appeared as eye witnesses.

Bajrang Lal (P.W.4) who appeared in Court has reiterated as to what was stated by him in his written report (Ex.P/7). He further improved the case of prosecution by assigning injury on the head of Kanaram to Hansraj.

Raghu Nath Singh (P.W.8), and Ramjilal (P.W.10) have supported the prosecution case.

We have heard Shri Anoop Dhand appearing for appellants to D.B.Criminal Appeal No.639/2006, and Shri Ashvin Garg, appearing for the appellants to D.B.Criminal Appeal No.666/2006, Shri Rajendra Singh Shekhawat, learned Public Prosecutor, and Shri Nawal Singh Sikarwar, and Shri Laxmi Kant, counsel for the complainant.

Admittedly, there is a dispute between the parties regarding the possession of the field. It is a case of the prosecution that accused on the fateful day, armed with lathies and farsi's came to assert their possession. Taking a holistic view, and looking at the injuries received by Bajrang Lal (P.W.4), and Kana Ram, deceased which are abrasions and bruises on the non-vital portion of the body, and fact that except one injury on the head of Kana Ram, all other injuries are bruises and abrasions on the non-vital portion of the body, and same have been declared as simple injuries caused with blunt weapon, we have no hesitation to hold that accused came armed with lathies and farsi's to assert their possession with common object to give beating and cause simple injury to Kanaram Jat and Bajrang Lal (P.W.4) on non-vital parts of the body. This is also borne from injury report (Ex.P/1) and (Ex.P/2) as except one injury on head of deceased Kana Ram which had proved fatal, all injuries on their person are simple being abrasions and bruises on non-vital parts of the body. Hansraj by opting to cause an injury on the head of Kana Ram Jat which had proved fatal had exceeded common object of the assembly. We cannot wish away that all the accused-appellants had caused simple injuries on the non vital portion of the body. Had accused who came armed with lethal weapons intended to open murderous assault, they would have caused much more harm, and would have caused injuries on the vital portion of the body of both injured and deceased. Bajrang Lal (P.W.4) had received eight injuries, Kanaram had received thirteen injuries. Out of 21 injuries, only one injury has

been caused on head which is attributed to Hansraj, and same has proved fatal, rest all, injuries are abrasion and bruise on non-vital part of body that too have been declared as simple. It is to be noted that two injuries allegedly noted on the head of Bajrang Lal (P.W.4) are only complain of pain, and they have no external mark of injury. Five persons who came armed with weapons would have minced Kana Ram or Bajrang Lal (P.W.4), but instead they have only caused simple injuries, and that too, on the non-vital portion of the body. This being a striking feature of the case, has compelled us to arrive at a conclusion that common object of the assembly was only to give beating by causing simple injuries to assert their possession or to put Kana Ram under fear to leave possession in favour of the accused. Hansraj having exceeded the common object of the assembly is solely responsible for causing death of Kanaram.

Hence, we uphold the conviction of Hansraj who has been substantively convicted by the trial Court for offence under Section 302 IPC.

However, we set aside the conviction of the other appellants namely Gopal s/o Ram Ratan, Bholu s/o Ram Ratan, Gopal s/o Banna, and Jagdish s/o Banna with aid of Section 149 IPC for offence under Section 302 IPC.

Consequently, appellants Gopal s/o Ram Ratan, Bholu s/o Ram Ratan, Gopal s/o Banna, and Jagdish s/o Banna stand acquitted for offence under Section 302 readwith Section 149 IPC.

However, we maintain the conviction of all the five appellants for offences under Sections 148, 447 and 323. We also reduce the sentence awarded upon Gopal s/o Ram Ratan, Bholu s/o Ram Ratan, Gopal s/o Banna, and Jagdish s/o Banna on these count by the trial Court to period already undergone while maintaining sentence of fine and default clause. However, conviction and sentence of Hansraj on all counts is also maintained.

With the above modification qua offence in respect of Gopal s/o Ram Ratan, Bholu s/o Ram Ratan, Gopal s/o Banna, and Jagdish s/o Banna and reduction of sentence, both the appeals stand disposed of.

However appeal preferred by Hansraj is dismissed, being devoid of merit.

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