

Ori and ors. Vs. Rex

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Court : Allahabad

Decided On : May-06-1949

Reported in : AIR1952All453

Judge : Kidwai, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149; [Evidence Act, 1872](#) - Sections 3

Appeal No. : Criminal Appeal No. 48 of 1949

Appellant : Ori and ors.

Respondent : Rex

Advocate for Def. : Assitt. Govt. Adv.

Advocate for Pet/Ap. : H.G. Walford, ;Ram Asre Misra and ;K.S. Varma, Adv.

Judgement :

Kidwai, J.

1. Eight person, 1 ori, 2 Chokhey, 3Ishwar Din, 4 Brij Lal, 5 Moti, 6 Bhailal, 7Bipat and 8 Har Bhajan were convicted by theCivil and Sessions Judge of Lucknow for offencesunder sections 147, 325/149 and 323/149, Penal Code.Under sections 147 they were sentenced to two years'rigorous imprisonment each, under section

325/149 to three years' rigorous imprisonment and under sections 323/149 to one year rigorous imprisonment; the sentences were to run concurrently. They come up in appeal.

2. The prosecution story as sought to be established at the trial was that on the 21st of May 1947, at about 8 in the morning while Dhanpat's son Ram Nath and Rampal went to Dhanpat's grove to irrigate the trees, 18 persons, including the present eight appellants, attacked them. Ram Nath ran away and informed his uncle Mahabir and other members of the family. Thereupon Mahabir, his son Babu Lal, his wife Ram Piari and Dhanpat's wife Ram Dulari all reached to the help of Dhanpat and Rampal. The concurrence took place not from the village site of Ghuskar, hamlet of Hussainpur, which is at a distance of about four miles from police station Gosainganj. When Mahabir and others reached the place of occurrence and remonstrated with the assailants of Dhanpat and Rampal, violence was used against them also. Information of the occurrence reached Mohan, a relation of Dhanpat who lives in another village. He came to Ghuskar, and having ascertained the facts from such of the victims of the assault as could speak, went and made a report at thana Gosainganj at 7-20 p.m. It appears that Dhanpat had received serious injuries and was unconscious. Mahabir had also been badly beaten. Some of the other members of the family also received minor injuries. In the report made by Mohan, 18 persons, including the 8 appellants, were named as the assailants of Dhanpat and his companions.

3. It may be mentioned that another report was made at thana Gosainganj at 11-30 a.m. by Chokhey appellant. His brother Ori had also accompanied him to the thana. Chokhey's report is a very brief one. He stated that he was removing earth from the nala when Dhanpat belaboured him with lathis and that his brother Ori who came to his help was also assaulted.

4. Dhanpat died in the Balrampur hospital where he was sent for treatment of his injuries on 16th June 1947. As a result of the investigation, the police submitted a charge sheet against 18 persons. Two of them died before the case was committed to the Court of Sessions. One was discharged by the Committing Magistrate and the remaining 15 persons were committed to the Session for trial. The defence

put forward on behalf of Ori and Chokhey at the trial was not the same as mentioned in the first information report made by the latter at thana Gosainganj. In the Court of Session it was stated by them that on the morning of 21st May 1947, there was a quarrel between Dhanpat and Mahabir on the one side and their brother Mahangu on the other. That Ori and Chokhey attempted to intervene whereupon they were assaulted by Dhanpat and his associates. This defence was not accepted by the learned Sessions Judge. He held that though the witnesses for the prosecution had grossly exaggerated matters, falsely implicated a number of innocent persons and given a version of the affair which was not accurate, still there could be no doubt on the evidence that there was a fight in which the present appellants participated, and that they were responsible for inflicting injuries upon Dhanpat, Mahabir, Ram Piari, Ram Dulari and Babu Lal. He acquitted seven of the accused against whom the case was held not to be established, and convicted the present eight appellants under sections 325/149, 323/149 and 147, Penal Code as already stated.

5. It was strenuously argued by the learned counsel for the appellants that in view of the observations made by the learned Sessions Judge in his judgment against the prosecution witnesses, the appellants' conviction could not stand. It was pointed out that according to the learned Sessions Judge no independent witnesses had been produced to support the prosecution case, though a number of them were named in the first information report. The learned Judge has further observed that the statements of the witnesses produced in the Courts were not convincing. That though the witnesses had stated that Ori, Bipat and Har Bhajan had used sharp cutting instruments like a khulari, tabbal, and spears, no injuries evidencing the use of such weapons were found on the person of any of the victims of the assault. It was argued that in these circumstances the case was not free from reasonable doubt even so far as the present eight appellants were concerned and they should be acquitted.

6. The argument is not without force. According to the version given by Mohan in the first information report made by him, first there was a quarrel between Mahabir and Dhanpat on the one side and Mahangu on the other. That Mahangu was belaboured by Dhanpat whereupon Mahangu went and reported the matter to

Oriand Chokhey and other accused who were their associates. That there was enmity between the accused and Dhanpat who were friendly with Mahangu. On hearing from him that he had been belaboured by Dhanpat, the accused went and assaulted Dhanpat and the other members of his family, who came to help him. At the trial a twist was given to this version and part of the story which dealt with the quarrel between Dhanpat and Mahabir and their brother Mahangu was suppressed. On the other hand, a bald story that while Dhanpat, his son Ram Nath and his brother Rampal were irrigating the trees in their grove, the accused went armed with lathis, spears, khularis and tabbals and assaulted them. When Dhanpat's brother Mahabir and other members of his family went to his help they were also assaulted.

7. There can be no doubt that, as observed by the learned Sessions Judge, the statements of the witnesses for the prosecution who were all relations of Dhanpat are not convincing. They have suppressed certain facts and grossly exaggerated others. The issue for determination is, however, not the conduct of the prosecution witnesses; it is whether there is satisfactory evidence on the record to establish that the appellants committed the offences for which they have been convicted. They have been convicted of rioting and causing grievous and simple hurt to a number of persons. That Dhanpat, Mahabir, Babu Lal and Ram Dulari were assaulted on the morning of 21st May 1947, cannot admit of any doubt. That Dhanpat died as a result of the injuries inflicted upon him is also satisfactorily established; in fact this was not and could not be disputed. The only question for consideration is whether these injuries were caused by the present appellants or any one of them. So far as the cases of Ori and Chokhey are concerned the matter is clear. According to the prosecution witnesses they were among the assailants of Dhanpat and other members of his family. It is a legitimate inference from their own version both, as given in the first information report as also what was stated by them at the trial, that they participated in the marpit which resulted in the injuries that led to Dhanpat's death and injuries being carried to other members of his family. I can attach no weight to the argument advanced by the learned counsel that if the story given by the prosecution witnesses was not true, or open to reasonable doubt, the statements made by Oriand Chokhey should be discharged and they should be acquitted. The question

as already observed is whether Ori and Chokhey are proved to have inflicted the injuries found on the person of Dhanpat and other members of his family. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. In judging whether a fact is or is not proved, the Court is entitled to take into consideration not only the statements of the witnesses but also the surrounding circumstances and the probabilities of the case. Even if the statements of the witnesses standing by themselves be open to criticism, a fact may be held established on such evidence read in the light of other circumstances. In the present case, apart from the evidence of the prosecution witnesses who were themselves victims of the assault, great significance attaches to the first information report made by Chokhey and the subsequent statements made by him and his brother at the trial. All these taken together leave no doubt in my mind that the learned Judge came to a correct conclusion when he held that these two accused were responsible for inflicting injuries which resulted in Dhanpat's death and in causing grievous and simple hurt to other members of the family.

8. The case of the other appellants does not, however, stand on the same footing as that of these two persons. It cannot be affirmed with any degree of certainty that on the evidence before us it is established that all the remaining six appellants also participated in the assault upon Dhanpat and his associates. As held by the learned Sessions Judge, a number of innocent persons were wrongly implicated by the witnesses. We cannot be certain that none of the other six appellants was not falsely roped in. In these circumstances the case against them cannot be said to be satisfactorily established.

9. The result, therefore, is that the appeal of Ori and Chokhey is dismissed. It is allowed with regard to the other six appellants, Ishwar Din Brij Lal, Moti, Bhailal, Bipat and Har Bhajan. Having regard to the evidence in the case and to the number of injuries inflicted upon Dhanpat and other members of the family, there can hardly be any doubt that the persons who participated in the occurrence along with Ori and Chokhey were more than five. The conviction of Ori and Chokhey for the offences for which they were convicted, including that of rioting, must therefore

stand. Ori and Chokhey must surrender to their bail and serve out their sentences. The other appellants, Ishwar Din, Brij Lal, Moti Bhailal, Bipat and Har Bhajan are acquitted. They are on bail and need not surrender thereto.

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