

Jagmohan Son of Datai, Vs. the State of U.P.

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Court : Allahabad

Decided On : Jul-08-2005

Reported in : 2005(2)ALD(Cri)4

Judge : M.C. Jain and ;M. Chaudhary, JJ.

Acts : Indian Penal Code (IPC) - Sections 147, 149, 304 and 323; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 3356 of 2000 and Government Appeal No. 1149 of 2001

Appellant : Jagmohan Son of Datai, ;ganga, Yamuna and Sheo Prasad Sons of Nohar (In Jail)

Respondent : The State of U.P.

Advocate for Def. : Usha Kiran, Adv. and ;A.G.A.

Advocate for Pet/Ap. : P.N. Mishra, ;Apul Mishra and ;S.K. Lal, Advs.

Judgement :

M.C. Jain, J.

1. Both these appeals have arisen out of the judgment dated 12.12.2000 passed by the IV Additional Sessions Judge, Basti in Sessions Trial No. 24 of 1996 and

they are being decided by this common judgment. There were five accused- Jagmohan and his brother Nohar as also three sons of Nohar, namely, Ganga, Jamuna and Shiv Prasad. Nohar died during the pendency of the trial and as such the remaining four faced the trial. The trial court convicted all of them under Section 147 I.P.C. with a sentence of one year's rigorous imprisonment and a fine of Rs. 300/- (in default of payment of fine one month's further simple imprisonment has to be undergone); seven years' rigorous imprisonment under Section 304 I.P.C. read with Section 149 I.P.C. and a fine of Rs. 2500/- (in default of payment of fine six months' additional simple imprisonment has to be undergone) and under Section 323 I.P.C. read with Section 149 I.P.C. with six months' rigorous imprisonment and a fine of Rs. 200/- (one month's additional simple imprisonment has to be undergone in default of payment of fine). All the substantive sentences have been ordered to run concurrently.

2. The State has preferred the appeal for enhancement of sentences whereas the represented appeal is directed against the conviction and sentences passed by the trial court.

3. The incident took place on 25.4.1995 at about 6 A.M. in village Narkhoriya within P.S. Sonha at a distance of about 11 kms. from the police station. The report was lodged the same day at 7.30 A.M. by an eyewitness Panchu PW 1. Tameshar (uncle of Panchu) and Somai-brother of Panchu lost their lives in the incident and Akalpati PW 2 wife of Somai sustained injuries. A criminal litigation was pending between the prosecution side and the accused when this incident took place. On the fateful day and time, the two deceased with their family members were carrying the harvested foodgrains from their field to their barn (Khalihari). Because of the enmity owing to litigation, the five accused allegedly came with lathis and assaulted Somai and Tameshar therewith. They sustained a number of injuries and were rendered unconscious at the spot itself. Akalpati also sustained injuries at the hands of the accused. Somai and Tameshar were admitted in hospital and the report was lodged by Panchu. The information regarding the death of Tameshar was received from the hospital the same day at 10.45 A.M. Initially, Tameshar, Somai and Akalpati were examined by Dr Arun Kumar Gautam PW 7 on 25.4.1995 at P.H.C. Bhanpur. The two injured had

received blunt weapon injuries including on the head. He (Tameshar) had died at 7.50 A.M. Somai was referred to District Hospital and was admitted there on 25.4.1995 at 11.50 A.M. He also died there at 12.50 P.M. The injuries of Akalpati were also of blunt object in the form of two contusions. Both of them were simple. The autopsy on the dead body of Somai was conducted by Dr G.P. Verma PW 3 and that on the dead body of Tameshar by Dr V.S. Srivastava PW 5. Jagdish Singh S.I. PW 8 was the Investigating Officer.

4. The prosecution examined in all the nine witnesses including three Doctors, Investigating Officer and other formal witnesses. The eyewitnesses were Panchu PW 1 and injured Akalpati PW 2.

5. The defence of the accused was of denial.

6. We have heard Sri P.N. Misra, learned counsel for the accused and Miss Usha Kiran, learned A.G.A. from the side of the State. The record has been received which was perused.

7. So far as the State appeal for the enhancement of sentences is concerned, we are of the view that the plea for enhancement of sentences is not at all sustainable and justified. With regard to the death of Tameshar and Somai, the accused had been charged also only under Section 304 I.P.C. The weapons of offence were allegedly lathis and it could not be inferred on the scrutiny of the evidence that the death of any of them had been intended. So, the State appeal has no merit at all and is liable to be dismissed.

8. We now take up the represented appeal against conviction. The learned counsel for the accused appellants has first argued that there was no immediate motive on the part of the accused to have committed this Crime. We should point out in this regard that motive is insignificant in the case of direct eyewitness account as the present one. Further, Panchu PW 11 (eyewitness and informant) clearly stated that criminal cases were pending between the two sides since 1991. On one side there were Madhav, Sorhai, Ram Narain and Siyaram and on the other Nohar, Jag Mohan, Shiv Prasad and Ganga accused. This factum was undisputed. We note that the accused persons also admitted it in answer to

question No. 4 in the statement under Section 313 Cr.P.C. The instances are not uncommon when due to ill-will and hostility one perpetrates crime on the opponent. Therefore, judging from any angle, the argument cannot be accepted that there was no motive on the part of the accused to commit this crime or that the prosecution case could suffer a set back owing to insufficiency of motive.

9. Secondly, it has been urged for the accused appellants that there was no mention in the F.I.R. of Akalpati PW 2 (wife of the deceased victim Somai) having also suffered injuries in the same incident at the hands of the accused. It is to be noted that she was medically examined by Dr Arun Kumar Gautam PW 7 at P.H.C. Bhanpur on 25.4.1995 at 8.30 A.M. Two Contusions had been found on her person as visible injuries. Panchu PW, 1 has stated in his testimony before the court that Akalpati PW 2 sustained injuries at the hands of the accused in the same incident. It was also stated by him that Akalpati PW 2 had not bled. It is clear from her injury report also because she had sustained contusions. The injuries sustained by her were of course, of burnt object which could have been caused by lathi blows dealt with by the accused. The Doctor had found her injuries to be fresh which could have been sustained within the duration of preceding 2-3 hours. The version of Panchu PW 1 is supported by the testimony of Akalpati PW 2 herself in all material particulars. She being herself an injured, her presence at the spot is not at all to be doubted. It is also to be borne in mind that as per the testimony of the eyewitnesses i.e. Panchu PW 1 and Akalpati PW 2 (injured), at the time of the incident, they (these witnesses), the two deceased, Vidyawati, Madhav and Madhav's wife Kalawati were engaged in carrying the harvested foodgrain from their field to their barn (Khalihan) when the accused appellants launched assault with lathis injuring Tameshar, Somai and Akalpati. It is common knowledge that able bodied members of the family including ladies take part in such operations in rural areas. To come to the point, the presence of Akalpati PW 2 at the spot and the fact of her having sustained injuries in the same incident at the hands of the accused cannot be doubted. The perplexed state of mind of the informant Panchu PW 1 at the time he lodged the F.I.R. can very well be visualized. His entire attention was engaged and focussed on seriously injured persons, namely, Somai and Tameshar. Both of them died, too, of the injuries sustained by them at the hands of the accused. He immediately took two badly injured persons Somai and

Tameshar as also Akalpati PW 2 through jeep to P.H.C. Bhanpur for their medical treatment.

10. Tameshar and Somai were both unconscious. He then hurriedly went to police station and lodged the F.I.R. Returning back to P.H.C. Bhanpur, he found that Tameshar had died. Somai was taken to Basti Hospital by the police and he also died there the same day. As per the statement of Dr G.P. Verma PW 3 who conducted autopsy on the dead body of Somai, he was admitted in Basti Hospital on 25.4.1995 at 11.50 A.M. and died the same night at 12.40 P.M. Tameshar had died at P.H.C. Bhanpur itself on 25.4.1995 at 7.50 A.M. as per the statement of Dr Arun Kumar Gautam PW.7. Somai was brother of the witness Panchu PW 1 and Tameshar was his uncle. Judging in right perspective, no valid criticism can be made because of non-mention in the F.I.R. of the fact that Akalpati PW 2 also sustained injuries in the same incident.

11. Thirdly, the learned counsel for the accused appellants urged that no independent witness was examined in support of the prosecution case. The learned counsel urged that Wazid Ali and Jhabbar were mentioned in the F.I.R. as independent witnesses of the incident. Despite that, none of them was examined and the prosecution relied only on the testimony of the partisan and interested witnesses. We should say that the prosecution had made an application before the trial court that both these witnesses had crossed over to the side of the accused. These witnesses themselves made affidavits on 10.6.1999 and 24.6.1999 that they be exempted from giving evidence. The fact that they themselves gave affidavits indicated that they had been won over by the accused. Normally, no witness comes forward on his own to make such affidavit. Further, it is common experience that generally the people keep themselves away from courts unless it is inevitable as they do not want to invite trouble themselves. No stigma can be attached to the testimony of Panchu PW 1 and Akalpati PW 2 on the ground that the independent witnesses did not come to support the prosecution case. True, Panchu PW 1 and Akalpati PW 2 are interested witnesses but that can be no ground to reject their testimony. The only requirement is that their statements should be scrutinized with care. We find that both of them stood the test of cross-examination firmly. One of them, namely, Akalpati PW 2 was an injured also of the

same felony. The other, namely, Panchu PW 1 was an eyewitness who had lodged the F.I.R. with promptitude at 7.30 A.M. regarding the incident of 6 A.M. after firstly taking the victims to P.H.C. Bhanpur through jeep and then hurriedly going to police station to lodge the F.I.R. The distance of the police station from the place of occurrence was 11 kms. There was hardly any time for any concoction, fabrication or deliberation. The accused appellants had wielded lathis in hitting the victims and the medical evidence was completely in harmony with ocular version. On proper analysis, we reject the criticism founded on the non-examination of the independent witnesses.

12. It has next been argued for the accused appellants that Panchu PW 1 described Somai and Tameshar as dead at the spot itself. Jo quote, he stated: 'Do laash khet main padi thee. Jeep sarak par khadi thee aur dono laash laadkar Jeep par pahucha diya. Jeep par sath main Akalpati, Madhav aur Kalawati gayee thee. Mere ghar ke logon ne laash khet se uthai thee.... ' We do not think that the accused appellants can gain any point by such statement of Panchu PW 1. Both Somai and Tameshar were found to be unconscious at P.H.C. They were nearly dead at the spot itself, a number of lathi injuries having been caused to them by the accused including on their heads. The statement of a rural rustic witness is to be interpreted logically, and not literally to find fault with it. We see no merit in this argument.

13. The learned counsel for the accused appellants then argued that the incident might have taken place sometime in the night and there was possibility of the accused appellants having been roped in falsely. Our attention has been invited that digested food was found in the stomach of Tameshar as per the post mortem report and the stomach of Somai was empty. The counsel referred to the statement of Panchu PW 1 that the two deceased and other family members had set out from their house for the field at about 5 A.M. without eating anything. It has been urged that the digested food could be there in the stomach of Tameshar if the incident had taken place in the night.

14. It appears to us that Panchu PW 1 unthoughtfully made the above statement under the stress of cross-examination. Tameshar was an old man aged about 70

years. He had to do physical hard work at the field. It is not uncommon amongst the villagers to partake stale food (cooked the previous day) quite in early hours before leaving for work at the field. Tameshar, an old man, might have eaten something before leaving his house for the field to sustain himself. Moreover, the Supreme Court has held in the case of Ram Bali v. State of U.P. [2004(49)ACC 453] that the medical science is not yet so perfect as to be able to tell the precise time of death of the deceased in a computerized mathematical manner on the basis of stomach contents. The time taken normally for digesting food would also depend upon the quality and quantity of food as well, besides others. The time also varies according to the digestive capacity. The process of digestion is not uniform and varies from individual to individual and the health of a person at a particular time and so many other varying factors. So, it is not possible to doubt the prosecution case and the evidence because of the stomach contents of Tameshar.

15. Addressing ourselves to all the arguments advanced at the bar, we find the conviction of the accused appellants to be well sustainable. Lathi injuries had been inflicted on the heads (vital part) of both the deceased. While convicting the accused appellants inter alia under Section 304 I.P.C., the trial judge ought to have specified whether it was under Part I or Part II. The five accused (Nohar deceased and four appellants) participated in the crime striking Lathi blows including on heads (vital part of the two deceased) and it has to be imputed to them that the death was caused with the intention of causing such bodily injuries as were likely to cause death. Therefore, they committed the offence of Section 304-Part I, I.P.C. in causing the death of Tameshar and Somai besides the other offences as held by the trial judge. We shall, therefore, dismiss Criminal Appeal No. 3356 of 2000 with this clarification.

16. In view of the above discussion, we finally order as under:

1. Government Appeal No. 1 149 of 2001 is hereby dismissed.
2. Criminal Appeal No. 3356 of 2000 is dismissed with the clarification that the conviction of the accused appellants, namely, (1) Jag Mohan, (2) Ganga, (3) Yamuna and (4) Sheo Prasad under Section 304 I.P.C. shall be under Part I of the

said section with sentence of seven years rigorous imprisonment and fine as imposed together with conviction and sentences for the other offences as passed by the trial court.

17. In the net result, the accused appellants, namely, (1) Jag Mohan, (2) Ganga, (3) Yamuna and (4) Sheo Prasad shall undergo the following sentences:

(a) Seven years' rigorous imprisonment under Part I of Section 304 I.P.C. read with Section 149 I.P.C. and a fine of Rs. 2500/-. In default of payment of fine, each of them shall undergo further simple imprisonment for six months.

(b) Six months' rigorous imprisonment under Section 323 I.P.C. read with Section 149 I.P.C. and a fine of Rs. 200/-. In default of payment of fine, each would undergo further simple imprisonment for one month.

(c) One years' rigorous imprisonment under Section 147 I.P.C. and fine of Rs. 300/-. In default of payment of fine, each would undergo further simple imprisonment for one month.

(d) Substantive sentences of imprisonment shall run concurrently but the sentences imposed in default of payment of fine on each count shall to be undergone separately.

18. The accused appellants, namely, (1) Jag Mohan, (2) Ganga, (3) Yamuna and (4) Sheo Prasad are on bail. The Chief Judicial Magistrate, Basti shall cause them to be arrested and lodged in jail to serve out the sentences, reporting compliance within two months.

19. Judgment be certified to the lower court.