

Amar and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-04-1981

Reported in : 1981WLN(UC)35

Judge : D.P. Gupta, J.

Appeal No. : S.B. Criminal Appeal No. 399 of 1976

Appellant : Amar and ors.

Respondent : State of Rajasthan

Judgement :

D.P. Gupta, J.

1. This appeal has been preferred against the order passed by the Additional Sessions Judge, Jalore convicting the accused appellants Under Section 307 read with Section 149, 147, 148, 324 read with Section 149, and Section 323 read with Section 149. Indian Penal Code and sentencing them to various terms of imprisonment for the aforesaid offences.

2. The prosecution case briefly is that the accused-appellants Amara, Koja, Thana, Raga, Rajiya and Punama left their village Bhawana on account of famine conditions and were staying in the field of Raga Jat in village Ranodar under police station, Sanchore along with their cattle and donkeys. On February 24, 1975 the

donkeys are said to have been let free by the accused appellants for grazing and about noon time they strayed away and caused damage to the crops in the field of Bher Singh. Thereupon, Jogsingh and Bher Singh collected the donkeys in order to carry them to the cattle pound. Rajiya accused is alleged to have met them on the way and asked them to release the donkeys, but then he was told by Bhersingh and Jogsingh that they would take them to the cattle pound, as the donkeys had caused damage to the crop in Bhersingh's field. Rajiya went away and soon thereafter all the six accused persons collected and came to the field of Narayan, which was on the way while Bher Singh and Jogsingh were carrying the donkeys to the cattle pound. Thana was armed with a 'kulhari', Punama with 'Dharia' and the remaining accused appellants were armed with 'lathis'. Rajiya is said to have again asked Bhersingh to release the donkeys but on his refusal to do so all the six accused persons attacked Bher Singh and Jog Singh causing injuries to them. Mal Singh filed a first information report with the police station, Sanchoe stating the aforesaid facts and also that Bher Singh and Jog Singh were lying on the way, out of whom the condition of Bhersingh was serious and that he was unconscious and that Jog Singh had narrated the story to him. Thereafter Bher Singh and Jog Singh were carried to the Civil Hospital at Sanchoe where Bher Singh was admitted at about 3 30 p.m. in semi-conscious state. Both Bher Singh and Jog Singh were medically examined and injuries memos Ex. P.2 and Ex P. 6 respectively were prepared. After the usual investigation a challan was filed in the Court of Judicial Magistrate, First Class, Sanchoe, who by his order dated August 29, 1975 committed the accused appellants to stand their trial before the Sessions Judge, Jalore in respect of offence under Sections 307, 326, 147, 148 and 149, Indian Penal Code,

3. Before the learned Sessions Judge nine witnesses were examined on behalf of the prosecution and the statements of the accused were recorded. According to Amara accused he had gone with his family to village Ranodar on account of famine conditions in his village, but Bher Singh objected to his staying in his village, and desired him to pay tax for their residence in his village, but when he expressed his inability, Bher Singh, Jog Singh, Mal Singh, Ramla Sulhar and others attacked them and inflicted injuries with 'kulharis' and 'lathis'. The other accused persons Thana and Panama also took substantially the same plea as was

taken by Amara, The other three accused Koja, Raga and Rajiya pleaded alibi and alleged that they were falsely implicated in the case though they were not present at the time of occurrence. The accused appellants also produced three witnesses in their defence. Learned Additional Sessions Judge, after hearing the counsel for the accused appellants and the Assistant Public Prosecutor, substantially believed the prosecution story and convicted and sentenced all the accused appellants as mentioned above.

4. In this appeal, the main argument advanced by the learned Counsel for the accused appellants is that the occurrence had taken place not in the field of Narayan as alleged by the prosecution but it had taken place in the field of Raga Jat, where the accused appellants Amara Thana and Punama were staying and that it was actually Bher Singh and Jogsingh and their party who came and started beating the accused appellants and injuries caused to Bher Singh and Jogsingh were inflicted in self defence. In support of his contention, learned Counsel relied upon the statement of the Investigating Officer P.W. 8 Bhanwar Singh who stated in the cross-examination that the field of Narayan Jat was about 2 miles away from the field of Raga Jat and that the occurrence had taken place in the field of Raga Jat, where the accused were staying. P.W. 8 Bhanwar Singh found blood spilled in the field of Raga Jat, and also found signs of a fight having taken place there. The learned Additional Sessions Judge has considered this aspect of the case and has come to the conclusion that the incident in which Bher Singh & Jogsingh had received injuries had taken place in the field of Narayan Jat. Besides the testimony of PW 1 Narayan & PW 2 Jorsingh, the statement of PW 8 Bhanwar Singh, Investigating Officer & PW 7 Bhanwar Singh, Motbir also support the prosecution case that the incident had taken place in the field of Narayan, which lies on the main road between the villages Ranodar & Melawas. The site-plan Ex. P.11 & inspection note Ex.P.7 were prepared by PW8 Bhanwar Singh & it appears therefrom that the incident had taken place on the main road leading from village Ranodar. It may also be mentioned here that according to the prosecution story, the incident had taken place at about 10 or 11 A.M. on February 24, 1975. The first information report in respect thereof was lodged by Malsingh at Police Station, Sanchore at about 12 noon on the same day and Bhersingh, who was then in serious condition and was lying unconscious on the way was taken to the

Sanchoe Hospital and was admitted there at about 3 30 p.m. on the same day. The injury reports of Bher Singh and Jog Singh were prepared at 5 p.m. on the same day and the injuries are said to have been caused with about 6 to 12 hours.

5. The accused appellants Thana, Punama and Amara were examined at Sanchoe Hospital on February 25, 1975 at about 10 A.M. and injury reports Ex. D. 7A, Ex. D. 8A and Ex. D. 9A respectively were prepared in respect of the injuries sustained by them. The duration of the injuries suffered by the accused appellants has been mentioned in the injury reports as about 12 to 24 hours. A first information report was lodged on behalf of the accused appellants at about 12 noon on February 26, 1975 by Amara. From these facts it does not appear that the accused-appellants received injuries in the same incident in which the injuries were caused to Bher Singh and Jog Singh. From the sequence of events narrated above it appears that the injuries were caused to Bher Singh and Jogsingh in an incident which took place earlier in point of time. There might have been a subsequent incident in which accused appellants also might have received injuries and the same could have taken place in the field of Raga Jat. If the accused appellants would have received injuries as a result of the same incident, which took place at about 10 A.M. on February 24, 1975, there was no reason why Amara, Thana and Punama would not have proceeded to Sanchoe and got them medically examined on February 24 1975 itself, particularly when Amara accused is said to have received as many as 11 injuries, including a grievous injury. If there would have been only one incident, as claimed by the accused-appellants, in which Bher Singh and Jog Singh with others had attacked the accused-appellants and caused injuries to them, then it is difficult to understand why the accused appellants did not file a first information report in respect of the incident for almost two days. As I have already pointed out above, Amara filed a first information report Ex. D. 5 at the police station, Sanchoe on February 26, 1975 at about 12 noon, while Mal Singh had filed the first information report Ex. P. 1 at about noon two days earlier and immediately after the incident had taken place on February 24, 1975. Learned Additional Sessions Judge has observed that in the report Ex. D.5 Amara accused had stated that the incident had taken place 'yesterday' at noon time, while he was sitting at his residence and that as the first information report Ex D.5 was lodged on February 26, 1975 the incident to which the said

report related must have taken place on February 25, 1975. However, the learned Additional Sessions Judge is not right in making the above observation because a perusal of the first information report Ex.D.5 shows that the same was prepared on February 25, 1975 and as such the mention of the fact that the incident had taken place, a day earlier at about noon time refers to an incident which had taken place on February 24, 1975. It appears from the aforesaid first information report Ex.D.5 that the incident about which the said report was lodged had taken place at about noon time on February 24, 1975 while Mal Singh had filed the first information report Ex. P. 1 at noon-time on that day at the police station, Sanchore. Ex. D.5 shows that police station, Sanchore was about 21 KMs away from Ranodar and Mal Singh must have taken some time in traversing the distance of 21 KMs before he could lodge the first information report Ex. P.1 at the police station, Sanchore on February 24, 1975. These facts go to show that the incident in which Bher Singh, and Jog Singh received injuries took place earlier in point of time & Bher Singh was left unconscious on the spot and Jog Singh was also left there with injuries sustained by him, while Mal Singh rushed to the police station, Sanchore to lodge the first information report. As already pointed out above, the incident according to the prosecution case had taken place in the field of Narayan which lay on the main road leading from village Ranodar and as it was day time and several persons and cattle would have passed that way and thus it is possible that Bhanwar Singh (P.W.8) did not find blood stained earth at the spot, where the incident had taken place. It is pertinent to note in this respect that Bhanwar Singh had inspected the spot after two days, only on February 26, 1975.

6. The prosecution has produced P.W.I Narayan and P.W. 2 Jor Singh, who were eye-witnesses of the occurrence and they have fully corroborated the prosecution story. It was stated by both these witnesses that Amara inflicted a lathi blow on the right shoulder of Bher Singh and Thana accused gave a 'kulhari' blow on his head, as a result of which he fell down on the ground and became unconscious. Punama gave 'Dhariya' below to Jog Singh which struck him on the left fore-arm causing an incised wound. Bher Singh and Jog Singh were examined at Sanchore Hospital by Dr. N.T Hirani (P.W. 4) on February 24, 1975 on requisition from the police station, Sanchore. Following injuries were found by P.W. Dr. N.T. Hirani on the body of Bher Singh:

1) One incised wound 3 1/2'x1/3'x3/4' on the left side of the scalp, vertical on parietal region:

2) Contusion 3'x3/4' on the right side of the upper part of the back 5' away from the shoulder joint.

As a result of the first injury there was a vertical fracture of the right parietal bone, which was confirmed clinically. Bher Singh was admitted in the Sanchoe Hospital in a serious and unconscious condition, in a state of shock and haemorrhage was continuing from the place of injury No. 1 when he was admitted in the hospital at about 3.30 p.m. on February 24, 1975.

7. The following injuries were found on the body of Jog Singh:

1) Lacerated wound with clotted blood 3/4'x1/10'x1/12' on the scalp, in the parietal region, 6' above the left ear.

2) Incised wound with clotted blood 3/4'x1/10'x1/10' on the left fore-arm, 3' away from olecranon on the posterior aspect.

According to the eye-witnesses P.W. 1 Narayan and P.W. 2 Jor Singh, the injury on the shoulder of Bher Singh was inflicted by Amara, while the injury on his head was caused by Thana with a 'kulhari' as a result of which he fell down. Punama accused appellant is said to have caused the injury appearing on the fore-arm of Jog Singh. It has been stated by these two witnesses that Rajiya accused had exerted all the accused persons to injuries to Bher Singh and Jog Singh, on their refusal to release the donkeys and had inflicted a lathi -blow to Jog Singh. But there is a material discrepancy between the statements of Narayan (P.W. 1) and Jor Singh (P.W. 2) in respect of the role played by Rajiya, inasmuch as according to Narayan, Rajiya inflicted a blow on the back of Jog Singh, while according to P.W. 2 Jor Singh, Rajiya had inflicted a blow on the head of Jog Singh. In view of the conflicting versions given by the two eye-witnesses in respect of the role alleged to have been played by Rajiya, it appears to be doubtful as to whether Rajiya had actually taken part in the incident and inflicted any blow to Jog Singh.

8. As for the other two accused persons, Baga and Koja, they have stated that they had gone to village Datiya and came back after 4 or 5 days. No specific part is alleged by the prosecution witnesses to have been played by these two accused persons. If they would have been present at the place of occurrence armed with 'lathis', it was but natural that they would have inflicted at least some injuries to Bher Singh or Jog Singh or both. But none of the prosecution witnesses have alleged that any injuries were caused by them. In these circumstances, the presence of these two accused persons at the time of the incident appears to be doubtful.

9. Learned Additional Sessions Judge has considered the evidence on record in detail and I do not propose to reiterate and specifically refer to the same again. It would suffice to say that I find myself in agreement with the discussion of the evidence made by the learned Additional Sessions Judge and hold that it is proved beyond doubt from the prosecution evidence that Bher Singh (P.W. 5) and Jog Singh (P.W. 9) received injuries in the incident, which were caused by Thana with a 'kulhari' by Punama with a 'Dhariya' and by Amara with a 'lathi'. As stated earlier, I find that the presence of Rajiya, Koja and Raja at the time of the aforesaid incident appears to be doubtful and in my view they are entitled to benefit of doubt. The three accused persons Thana, Amara and Punama who have caused injuries with 'kulhari', 'lathi' and 'Dhariya' respectively to Bher Singh and Jog Singh are liable for the injuries caused by them. Thana had caused a grievous injury on the head of Bher Singh with a 'kulhari', which resulted in the fracture of the parietal bone and he has been rightly convicted under Section 307, Indian Penal Code. Amara who caused an injury with a 'lathi' to Bher Singh on the back has been convicted Under Section 323, Indian Penal Code, while Punama accused-appellant had caused an incised wound on the fore-arm of Jog Singh with a 'Dhariya' and he has been rightly convicted under Section 324, Indian Penal Code. The conviction of these three accused appellants for the other offences cannot be maintained and must be set aside. The other three accused Koja, Raga and Rajiya are given benefit of doubt and their conviction in respect of all the offences is quashed.

10. In the result, the appeal is partly allowed and while the conviction of Thana accused Under Section 307, Indian Penal Code, and that of Amara accused under

Section 323, Indian Penal Code, and of Punama accused under Section 324, Indian Penal Code is maintained, their conviction for the remaining offences is set aside. The appeal is also allowed in respect of the remaining three accused Rajiya, Koja and Raga and their conviction and sentence in respect of all the offences are set aside.

11. Accused Thana has been sentenced to three years' rigorous imprisonment and a fine of Rs. 1000/- for the offence under Section 307, Indian Penal Code, and in default of payment of fine to undergo six months' imprisonment. The sentence awarded to Thana accused in respect of offence under Section 307, Indian Penal Code is maintained, while as mentioned above, his conviction is set aside, in respect of all other offences. So far as Amara accused is concerned he has been sentenced to three months' rigorous imprisonment and a fine of Rs. 200/- Under Section 323, Indian Penal Code. The sentence awarded to Amara accused appellant is reduced to that already undergone. Accused Punama has been sentenced to six months' rigorous imprisonment and a fine of Rs. 300/- Under Section 324, Indian Penal Code. The substantive sentence awarded to him is also reduced to that already undergone by him, but the sentence of fine is maintained and in default of payment of fine he shall undergo two months' rigorous imprisonment. Punama accused appellant is allowed two months' time to make payment of fine.

12. Thana accused-appellant shall be taken into custody forthwith by the Chief Judicial Magistrate, Jalore in order to serve the remaining sentence. The other appellants viz. Amara, Koja and Rajiya, Raga and Punama are on bail and they need not surrender to the bail bonds. The order of the Additional Sessions Judge, Jalore dated April 30, 1976 is modified to the extent mentioned above.