

Hari Narain Vs. the State

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Court : Rajasthan

Decided On : Jan-17-1974

Reported in : 1974WLN(UC)106

Judge : V.P Tyagi and; J.P. Jain, JJ.

Appeal No. : D.B. Criminal Appeal Nos. 284 and 383 of 1972

Appellant : Hari Narain

Respondent : The State

Disposition : Appeal dismissed

Judgement :

J.P. Jain, JJ.

1. These are two appeals from an order of the Additional Sessions Judge No. 1, Jaipur City, by which Harain was convicted under Section 304 Part II, I.P.C. and sentenced to there years' rigorous imprisonmenet and find a fine of Rs. 500/-, in defaedt thereof six months' rigorous imprisonment was awarded; and Bashir Beg was acquitted of the charge Under Section 302 read with Section 109 I.P.C. One appeal is by Hari Narain convict for his acquittal and other appeal is by the state seeking the conviction of Hari Narain Under Section 302 instead of Section 304 Part II and for convicting Bashir Beg Under Section 302 read with 109 I.P.C. The

appeal against Basber Beg was dismissed in limine. Both these appeals relating to Hari Narain are disposed of by order.

2. Bhojraj deceased had a shop at the fourth crossing of Khajane-walon-ka-Rasta Jaipur. On 8.4.69 he came from his house which was situated in Rasta Bhindan to open his shop at about 6 00 in the morning. His son Ashok Kumar was with him. Ashok Kumar after taking a soap cake went back to his house for getting ready for going to school. In the meanwhile Mamraj an employee of Parasram brother of the deceased went to the shop of Bhojraj to ask for Rs. 20/- from him on behalf of Parasram. Ashok Kumar by that time had come back to go to school Bhojraj asked him to tell the house of Ramcharan Lal Gupta who owed him Rs. 20/60 paise for ghee. Ashok Kumar asked his father to go with him. Mamraj remained at the shop and Bhojraj went with Ashok Kumar to the house of Ram Charan Lal Gupta. It appears that he recovered the money from him and was going back to his shop. While he was near the shop of Laxman Panwala, which was quite close to his shop, it is alleged that Hari Narain came from behind and attacked Bhojraj with a 'Lakri' (KATPHAR) Hari Narain is said to have inflicted blows by the 'Lakri' on the head of Bhojraj, on the right leg and then on the left leg and various other parts of the body. As a result of this Bhojraj fell down and it attracted the attention of various people of the neighbourhood. Kanhaiya Lal s/o Ramchandra (P.W. 6) and Shantu Lal (P.W. 9). who, were near about the place reached the place of incident. Kanhaiya Lal s/o Tannu Lal, who was cousin of Bhojraj, was also sent for and came to the place of incident. The injured Bhojraj was brought to his shop. Then Kanhaiya Lal (P.W. 2) the cousin of Bhojraj took him to the Kotwali Jaipur where Bhojraj himself lodged the oral report Ex. P/6 at 7.30 am. Jiwan Singh Head constable recorded the report and he wrote out the proceedings taken up by the police. It has been there in the proceedings that after the report was lodged and signed by Bhojraj the injured complained that he was not in a fit state and he became unconscious. The proceedings are signed by Kanhaiya Lal (P.W. 2 and Kanhaiya Lal (P.W. 6). Bhojraj was then sent to the SMS. Hospital and was admitted for treatment. On examination Dr. S.M. Duggar (P.W. 5) reported vide Ex. P/2 that Bhojraj was in unconscious state and his pulse was 32 per minute. He was in gasping state and the pupils were dilated and fixed. On the same night at about 12 30 Bhojraj succumbed to his injuries. After this information was given by

the hospital authorities to the police, investigations were started by Shri Brijmohan CI (P.W. 15) Kowali, Jaipur At the completion of the investigation a charge sheet was put up against the accused Hari Narain and Bashirbeg. After committment the Additional Sessions Judge No. 1, Jaipur city, tried Hari Narain for an offence Under Section 302 I.P.C. After trial he found accused Hari Narain guilty of culpable homicide not amounting to murder. He convicted him Under Section 304 Part II I.P.C. and sentenced him as aforesaid.

3. We heard Shri R.S. Purohit on behalf of Hari Narain and Shri N.M. Singhvi for the State. We have been taken through the evidence by the learned Counsel for the parties.

4. The post mortem examination report (Ex. P/3) which has been proved by Dr. Duggar (P. W. 5) reveals that there were five abrasions, one lacerated wound 1 1/2'X 1/2' bone deep on the left parietal occipital region close to mid line. Dr. Duggar further opined that the cause of death according to him was the head injury, which produced fractures of the frontal bone, haemr-rhage and acute shock. The learned trial Judge relied upon the statement of of Ashok Kumar (Ex. P/11). Ashok Kumar died during trial. His statement (Ex P/11) was recorded in the committing court and was brought on record Under Section 288, Cr P.C. He found his statement to be reliable which was well corroborated by the statements of Dr. Duggar (P. W. 5), Rukmani (P.W. 3; and Kanhaiya Lai (P.W. 2) The learned Judge, however, did not place much reliance on the statement of Mamraj (P.W. 1) in as much as he did not mention the name of the accused Harinarain in his police statement as the one responsible for causing injuries to Bhojraj. He also discarded the evidence of Kanhaiya lal s/o Ramchandra (P.W. 5) and Shantu Lal (P.W. 9) as according to him, they were not in a position to have seen the incident by their own eyes.

5. Mr. Purohit has not been able to point out any infirmity in the statement of Ashok Kumar (Ex. P/11) His only criticism about this evidence is that according to the witness there was only one blow on the head by Hari Narain whereas by the medical evidence it has been borne out that there were two injuries on the head. We are unable to appreciate this suggestion of the learned counsel. Injury No. 6 is

a lacerated wound on the left parietal occipital region close to mid line. Injury No. 7 is only a swelling 4' x 4' on the left parietal region. There is nothing to show on record that injury No. 7 is an independent injury and not the result of injury No. 6. That apart, from the statement of Ashok Kumar it cannot be said that the accused caused only one injury on the head. As regards four injuries the witness had clearly stated that one was on the head, the second was on the right leg; the third was on the left leg and the fourth was inflicted on the right elbow. The witness further stated that the accused gave two more blows to Bhojraj. He had not been able to state as to on what part of the body of Bhojraj these blows were given. In this view of the matter the contention of Mr. Purohit has no substance and it must be rejected.

6. Another criticism that has been levelled against the statement of Ashok Kumar is a discrepancy pointed out in his statement Ex. P/11 to the one given by him in the police. It is as regards the time. The witness had stated that he did not mention 7 or 7.30 a.m. as the time of opening the shop. According to Ex. P/11, it was 6 or 6.15 a.m. It is borne out from record that the report itself was lodged at 7.35 a.m. The shop must have been opened at 6 or 6.15 a.m. the rest of the events must have consumed about an hour. We cannot, therefore, give any importance to the discrepancy pointed out as regards time. We hold that the statement of Ashok Kumar (Ex. P/11) has the impress of truth. The statement of Rukmani (P.W. 3) and Kanyalal (P.W. 2) corroborate statement of Ashok Kumar in material particulars. The injuries found on the dead body by the autopsy surgeon also correspond to the testimony of Ashok Kumar. In our opinion the conclusion arrived at by the learned Judge, while appraising the prosecution evidence is correct and does not call for any interference by this Court.

7. learned Counsel for the State has not been able to satisfy us from the material available on record that there was any motive for the accused to have caused the murder of Bhojraj. It is difficult to hold in the circumstances of the case, that Hari Narain intended to cause murder of Bhojraj. It is true that one blow was given on the head but later the accused gave blows on the legs of Bhojraj. Subsequent conduct of the assailant clearly establishes that he did not intend to kill Bhojraj. If he had the intention to kill he could have given further blows as well on the head of

the deceased after victim had fallen down. We, therefore, agree with the learned trial Judge that the act of the accused did not amount to culpable homicide amounting to murder.

8. We find the conviction of Hari Narain in order and do not feel inclined to interfere either with the conviction or the sentence passed against him.

9. In the result both the appeals are dismissed.

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