

Gumana Ram Vs. the State

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Court : Rajasthan

Decided On : Jul-05-1978

Reported in : 1978WLN(UC)285

Judge : R.L. Gupta, J.

Appeal No. : S.B. Criminal Appeal No. 631/75

Appellant : Gumana Ram

Respondent : The State

Judgement :

R.L. Gupta, J.

1. Birbal Ram, Gumana Ram along with Pooran were tried by the learned Additional Sessions Judge, Bikaner for causing the murder of one Mana Ram Pooran was charged for the offence under Section 109 and 302 I.P.C. but he was acquitted of the charges. Birbal Ram was convicted for the offence under Section 304, Part II, I.P.C. and Gumana Ram for the offence under Section 304-Part II read with Section 34, I.P.C.. Both were sentenced to rigorous imprisonment for four years vide Judgment dated 27.9.1975. Aggrieved by their conviction and sentence, this appeal had been preferred by them.

2. It is alleged by the prosecution that when Likhma Ram PW1 was grazing his 'rewar' (herd of sheep) the deceased Mana Ram was also grazing his rewar, nearby. Manaram is the younger brother of Rewatram. The appellant Gumanaram came there and told Manaram that his brother (Rewatram) has changed his 30 sheep so he had to leave the job of grazing the 'rewar' of Rewatram. Manaram, in turn asked him not to make false allegations against his brother. However, there was a wordy exchange and Mana Ram gave two slaps to Gumanaram. Gumanaram left the place leaving behind his 'rewar'. It is further alleged that at about 2-3 p.m. while Likhmaram and Manaram were taking rest after their meals, the appellants Birbalram and Gumanaram came there with 'sticks' in their hands and challenged Manaram to be prepared. Birbalram inflicted some of those blows including the blow which is said to be the cause of the injury which ruptured the spleen and subsequently resulted in the death of Mana Ram. Likhmaram however, thereafter caught hold of Birbalram then Gumanaram inflicted certain blows on Mana Ram. The condition of Mana Ram became serious and the appellants took him to be dead. Gumanaram then got Birbalram rescued from the hands of Likhmaram and then both the appellants went away. Soon after Raja Ram, the father of deceased, Rewat Ram, the brother of the deceased and one relation Manaram PW 6 also reached at the spot and found Mana Ram deceased in a serious condition. It is further alleged that Manaram also named Bupal as the person who inflicted injuries to the deceased. The victim was taken on a cot brought from the 'dhani' of Kheraj, taken to village Kanali. They wanted to take him to the hospital at Loonkarasar but because of non-availability of any vehicle he could not be taken to the hospital and at about 5 a.m. Mana Ram succumbed to his injuries. Likhma Ram thereafter started for lodging the report to the police. On the way he suffered from fever due to cold and stayed with one Govindram at village Manna. There he got some medicines and tea. Anyhow he subsequently started for the police station in the night and reached at police station Mahajan at about 1 a.m. on 18-2-74. The occurrence is said to be of 16-2-74 at about 2-3 p.m. The first Information Report was lodged by him on 18-2-74. As to the motive for the incident, it is alleged that Gumanaram was previously a shepherd for the 'rewar' of Manaram's brother Rewat Ram and Gumanaram had taken 30 sheep from Rewat Ram for which it was agreed between Rewatram and Gumanaram that Rewatram would not charge

any interest against the price of 30 sheep and Gumanaram would not charge any charges for grazing the 'rewar' of Rewatram. However, Gumanaram left the 'rewar' of Rewatram and it was alleged by Gumanaram that the sheep belonging to him were changed by Rewatram for the sheep of inferior breed. That was the reason that he made the complaint to Manaram of the day of occurrence. The police started investigation and after necessary investigation challaned the appellants. After trial they were convicted and sentenced as pointed out above.

3. The autopsy of the deceased Mana Ram was performed by Dr. Chandra Mohan Bagarhatta P.W. 2 who prepared the post mortem report Ex P. 12. It cannot be disputed that Manaram died due to rupture of the spleen. The point for consideration is as to whether the appellants were the authors of the injuries on the person of the deceased Manaram. It may be said that there is one sole eyewitness Likhmaram P.W.1. His evidence has been discussed by the learned Additional Sessions Judge in detail. The learned Counsel for the appellants have assailed his testimony that he is unreliable and from his testimony it can be inferred that he was not on the spot when the alleged occurrence is said to have taken place. His submission is that there is delay in the lodging of the F.I.R. by 36 hours. This delay has two effects. Firstly, it shows that Likhmaram was not an eye witness; had he been an eye witness he should have taken early steps to lodge the report. Secondly, delay in lodging the F.I.R. makes the prosecution case suspicious and the benefit accrues to the appellants. Besides this there are various contradictions in the statement of Likhmaram which he made before the court and which were recorded under Section 161 Cr.P.C. Had Likhmaram been on the scene of occurrence, in the circumstances it is natural that he should have received certain injuries on his person. He is also an interested witness. Thus the contention of the learned Counsel for the appellants is that Likhmaram should not be relied upon. As regards the statements of Rajaram P.W. 5 and Manaram P.W. 6 his submission is that if Birbalram went to the house of Rajaram to inform him that the appellants could commit some mischief with his son and thereafter went from there it was but natural that they should have immediately followed the appellants particularly when they were on camel back. It may however, be said that from the prosecution evidence it has come that these witnesses reached the spot within 10-20 minutes of the offence.

4. The learned Public Prosecutor assisted by Shri H.M. Lodha has submitted that in the circumstances of the case there is no inordinate delay in lodging the F.I R. The place where the incident took place is about 6 8 miles from village Kanalal and Kanalail is about 24 miles from the police station, Mahajan. It was the first concern of Likhmaram and others to attend the victim whose condition was serious and when Manaram breathed his last at about 5 a.m. then after sometime one could think of going to lodge the report. Likhmaram went for the purpose but unfortunately he fell if on the way and had to stay at village Manera with Govind Ram and even though he was not well and was suffering from fever he started even in the night when he felt some what better for the police nation and lodged the report at a m on 18-2-1974. In the circumstances the delay has been explained by the prosecution. As regards the reliability of the prosecution witnesses, his contention is that Likhmaram who is the eye witness was cross examined at length but nothing substantial was brought out from his cross examination which could in any way help the accused-appellants.

5. So far the delay in lodging the F.I.R. is concerned, it may be said that whether the delay in lodging the first information report throws a cloud of suspicion on the prosecution case or not, would depend upon a variety of factors; even a long delay can be condoned if the witnesses have no motive for implicating the accused. On the other hand prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution. A common sense view has to be taken in ascertaining whether the first information report was lodged after an undue delay so as to afford enough scope for manipulating evidence. This principle has been well pointed out by the Supreme Court in Jogram and Ors. v. The State of U.P. : 1974 CriLJ479 . No doubt the F.I.R. in a criminal case is an extremely vital and valuable piece of evidence. In this case the prosecution has satisfactorily explained the delay and therefore, it cannot be said that the prosecution case be doubted on that account.

6. So far the reliability of the statement of Likhmaram is concerned, it is true that he is an interested witness but as has been also agreed to by the learned Counsel for the appellants the testimony of an interested witness cannot be thrown out on that account alone. The court has to be cautious in scrutinizing the evidence of

such interested witnesses. Likhma Ram has stated that he went to the 'jungle' for grazing his 'rewar' and Manaram was also grazing his 'rewar' by his side. The presence of Likhma Ram in the circumstance) cannot be said to be unnatural. He caught hold of Birbal Ram when the latter had inflicted certain blows to Mana Ram deceased in order to Mop Birbalram for causing further blows and not for the purpose of causing any blow to Birbalram or Gumanaram. There was no enmity between Likhmaram and the appellants and, therefore if Likhmaram did not receive any injury, it cannot be said that it throws doubt as to his presence at the time of occurrence. Certain contradictions in the statement of Likhmaram which were pointed out before me were also pointed out before the learned Additional Sessions Judge and he has discussed them in detail in his judge merit and I need not repeat them here again. It may be said that the so-called contradictions are not very material. From going through the statement of Likhmaram it can be said that he is a reliable witness and the presence of him on the spot cannot be doubted. His testimony is corroborated by the F.I.R. lodged by him which is also in detail. He has been further corroborated by Govindram so far his stay at village Manera is concerned. He has also been corroborated in some part by Rajuram P.W. 5 and Mana Ram P.W. 6. Thus the learned Sessions Judge was right in taking the statement of this witness as reliable and I see no reason to differ with his findings on this point. From the perusal of the prosecution evidence it is abundantly clear that it were the appellants who belabored the deceased and Birbalram caused the injury which resulted in the rupture of the spleen of Matiaram which resulted in his death.

7. The next point that was submitted by the learned Counsel for the appellants is that the offence made out is for 323 I.P.C. & not 304 Part II I.P.C. He placed reliance on Banta Singh v. State 1955 RLW. 157 That was case of rupture of the spleen. The accused gave only minor beating but the deceased died of rupture of the spleen; but in that case the spleen was abnormally enlarged. In the present case the spleen was normal and healthy and therefore, the offence does not fall under Section 323 I.P.C. However, there is no reason to doubt that the act was not done with the intention of causing death or of causing such bodily injury as the accused knew likely to cause the death nor was the act done with the intention of causing such bodily injury which was sufficient in the ordinary course of nature

sufficient to cause death, nor did the accused knew that his act was so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death. The nature of the injuries except the rupture of spleen shows that they were all simple and except injuries No. 1 and 2 which were wounds all the injuries were bruises. According to the doctor probably the rupture of the spleen injury No. 10 was sufficient to cause death of the deceased as detailed in the judgment of the Additional Sessions Judge According to the doctor the spleen remains in the capsules. Though the capsules of the spleen were lacerated but there was no mark of violence on biceps and muscles above the capsules. Externally all the injuries on the person of the deceased were simple. In the circumstances the offence of culpable homicide was not committed but I think that there can be no doubt that the accused committed an offence by voluntarily causing grievous hurt Birbal Ram struck the deceased on the abdomen with a the and inflicted a hurt which ruptured the spleen which not only endangered his life but actually caused the death of the deceased Thus the appellant Birbalram is guilty of the offence under Section 325 I.P.C. for voluntarily causing grievous hurt & the appellant Gumanaram is guilty of the offence under Section 325/34 I.P.C.

8. In the result the appeal is partly allowed. The conviction of the appellant Birbalram under Section 304 Part II I.P.C. and of appellant Gumanaram under Section 304 Part I read with 34 I.P.C. are set aside and instead they are convicted under Section 325 I.P.C. and 325/34 I.P.C. respectively Their sentence is proportionately reduced from four years to three years. Birbalram is said to be on bail. He should surrender to his bail bonds to serve out the remaining part of the sentence. It is however, made clear that the appellants would be entitled to the benefit of the provisions of Section 428 Cr PC and the period of their detention during investigation, enquiry or trial would be set off against the terms of his imprisonment. The trial court would take steps for the arrest of the appellant Birbalram for sending him to jail for serving out the remaining sentence.