

Vinod, Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : May-05-2005

Reported in : RLW2005(3)Raj1909; 2005(3)WLC280

Judge : V.K. Bali and; Harbans Lal, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 147, 149, 302, 323, 325 and 342;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 113 of 2001

Appellant : Vinod, ;karni and Urmila

Respondent : The State of Rajasthan

Advocate for Def. : B.N. Sandu, Public Prosecutor

Advocate for Pet/Ap. : Alok Sharma and; Sanjay Mahla, Advs.

Judgement :

V.K. Bali, J.

1. By this common order, we propose to dispose of two connected appeals bearing No. 113/2001 and 40/2001 as both the appeals emanate from common impugned order of conviction and sentence dated 11.1.2001 recorded by the learned Sessions Judge, Jhunjhunu. Whereas Appeal No. 113/2001 has been filed

by Vinod, his brother Karniram and Urmila wife of Vinod, Appeal No. 40/2001 has been filed by Ramdev, Kishore and Nagendra, who as informed to us by the learned counsel appearing for the parties, are not related to the appellants of Appeal No. 113/2001. All the six accused named above were tried for causing death of Sardara and causing injuries to his wife Kaushalya at 9 p.m. on 25.5.1998. FIR with regard to the incident came to be lodged by Kaushalya examined as PW-1 on 26.5.1998 at 5.30 a.m. While unfolding the narration of events leading to the death of her husband and injuries to herself, she stated that she was residing at Sotwara in the fields in the house made by them there only. Towards south side of their fields, there were fields of Vinod. Yesterday on 25.5.1998 at about 9 a.m. in the morning Vinod came to her house and told her husband that file with regard to connection of well had to be submitted at Mukandgarh. Vinod and her husband went to Mukandgarh at about noon time and came to her house straightway from there. After sometime, Vinod took her husband towards the village. In the evening at about 6 p.m. Vinod and Kami Ram came to her house and enquired about her husband, upon which she replied that he had gone with Vinod in the afternoon and thereafter, he had not come to home. In the evening at 7.30 p.m. she heard her husband, Sardara, Vinod and Kami Ram fighting loudly towards the boundary of their fields. She went towards them. At that time, Kami Ram, Vinod and Urmila were armed with wooden sticks (Lakadia). Ramdev and Kishore Meena were also with them. They were also armed with sticks of bushes. Nagendra was also with them. All of them were beating and giving fist blows to her husband. She came to rescue her husband, then all of them accused her as 'Rand' and said that she should also be taken along. She came back to her house and all those persons by pushing and giving fist blows took her husband in the house of Vinod. They kept on beating her husband upto 9.30/10.00 p.m. Then she went to the house of Vinod and saw inside the house that Vinod, Kami Ram, Urmila, Ramdev Meena, Kishore Meena and Nagendra were beating her husband with sticks. They had tied feet of her husband with a rope. When she tried to rescue her husband, they all gave beatings to her as well with sticks. She sustained injuries on her hand and feet. She got scared and ran away. From her house, she went to her father-in-law Hiraram and Nanuram and told them the whole incident. She along with her father-in-law had come to lodge

the report. Her husband had died in the house of Vinod after giving him beatings by Vinod, his brother Kami Ram, Urmila, Ramdev, Kishore Meena and Nagendra.

2. The appellants in the trial that they faced were found guilty and convicted. All the appellants were held guilty for offence Under Section 302 with the aid of Section 149 IPC and sentenced to undergo rigorous imprisonment for life as also to pay fine of Rs. 1000/-, and in default of payment of fine, to undergo further simple imprisonment for three months. They were also convicted for offence Under Section 147 IPC and sentenced to undergo rigorous imprisonment for a period of two years. They were also convicted Under Section 342 IPC and sentenced to undergo simple imprisonment for a period of three months. They were also convicted Under Section 323 with the aid of Section 149 IPC and sentenced to undergo imprisonment for a period of six months. They were also convicted Under Section 325/149 IPC and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo simple imprisonment for a period of one month.

3. In its endeavour to secure conviction against the appellants, prosecution examined Dr. Mahaveer Singh as PW-8 who had conducted post mortem on the dead body of Sardara on 26.5.1998 at 2.15 p.m. He proved the post mortem report Ex.P.25. In the post mortem report, he described injuries in parts. In first part, he described the injuries as follows: Scalp:

1. Lacerated wound 5 x 1 x bone deep on mid parieto-frontal area.

2. Bruise 4 x 2 cm on left temporal region with haematoma in scalp on right parietal, frontal, left parietal and left temporal region present.

Skull-

Fractures of left parietal, left temporal and left maxilla bones present.

Vertebra-N.A.O.

Brain-

Subdural haematoma present over right parietal, left temporal lobes of cerebral hemisphere. Spinal cord need not open.

In the second part, he described injuries as follows:

1. Abrasion 10 x 2 cm on left side face, over maxillary prominence extending to forehead, left side with a lacerated wound on its lower part 5 x 5 x bone deep in size.
2. Bruise 4 x 3 cm on right over maxillary prominence efface.
3. Blacking of left eye present.
4. Abrasion 3 x 3 cm on right supraclavicular region.
5. Three abrasions 3 x 1.5 cm each on right side of neck.
6. Area of abrasion 7 x 6 cm on epigastric and left lower chest anteriorly.
7. Bruise 21.4 x 10 cm on left arm anteriorly, laterally and post.
8. Abrasion 4 x 2 cm on left forearm in its lower 1/3 part anter.
9. Three abrasions 2 x 1 cm each on left forearm in its lower part antefio later.
10. Two lacerated wounds 4 cm x 3.5 cm x muscle deep and 2 x 1 cm muscle deep on left arm in its lower 1/3 part posteriorly present.
11. Abrasions 6 x 4 cm on right forearm on its middle anteriorly present.
12. Two abrasions 3 x 2 cm each on right forearm.
13. Bruise 26 x 20 cm on lower part of left thigh, knee part of left leg, laterally, anteriorly and medially present.
14. Lacerated wound 3 x 2.5 cm x bone deep on left, its lower 1/3 part.
15. Two bruises 2.5 x 1.5 cm and 1.5 x 1 cm present on its lower 1/3 part to below.

16. Two abrasions 2 x 2 cm and 3 x 2 cm on left

17. Area of abrasion 6 x 4 cm on right leg on its upper 1/3 part laterally.

18. Two abrasions 2 cm x 1 cm on right leg upper 1/3 part anteriorly.

19. Bruise 26 cm x 22 cm on right knee and adjacent part of thigh upper part of leg laterally, anteriorly and medially present.

4. In the opinion of doctor, cause of death was haemorrhagic shock and head injury which was sufficient in the ordinary course of nature to cause death. In the statement made by him in court, he further clarified that the death of Sardara was due to head injury and excessive bleeding. In cross examination he stated that the injury found in the head of deceased was fatal. He also stated that he had made mention of injuries 1-19 in Ex.P.25 after seeing the dead body and there was no other injury. He also stated that injury No. 6 in the injuries described by him from 1 to 19 was on the head whereas other injuries were not on any vital part of the body. The same very doctor, also medico legally examined Kaushalya on the same day and found the following ten injuries on her person :

1. Bruise with abrasions 4 linear in No. 6 x 3 cm and 5 cm long-right forearm lower 1/2 part antero-medially.

2. Linear abrasion 2.5 cm long right forearm upper 1/4 part medially.

3. Abrasion 3.5 x 1 cm left forearm upper 1/3 part anteriorly.

4. Abrasion 3 x .5 cm on left elbow joint anteriorly.

5. Two abrasions 3 x .5 cm each of left forearm anteriorly in its middle 1/3 part.

6. Lacerated wound with abrasions .5 x .5 cm x skin deep and 3 x 2 cm. Left wrist joint laterally.

7. Abrasion 3.2 x 2 cm on left wrist joint medially.

8. Abrasion 3x3 cm left hand dorsally over I metacarpal area.

9. Abrasion 1.5 x 1.5 cm on right leg anteriorly in its middle 1/2 part.

10. Bruise 5.5 x 4.5 cm on right knee anteriorly.

5. Eye witness account provided by Kaushalya, who was examined as PW-1 was supported by her son Ranveer aged 12 years, who was examined as PW-2, and Smt. Shana married sister of deceased Sardara, who was examined as PW-4. Nanuram who was examined as PW-3 as per deposition made by him had seen Sardara being beaten at the time when he had already died.

6. Kaushalya in her examination-in-chief also stated that she was beaten by Vinod and Kami Ram and in her presence Vinod had given a blow to her husband on his head with a stick. The stick was of 'Kikar'. Karniram was giving injuries to her husband on his hands and feet. Others too were having sticks in their hand and they were beating her husband. In cross-examination, she stated that she had started working in her house from 7 to 9 p.m. and she did not tell anyone that the accused had taken away her husband. Ranveer while making statement, in examination-in-chief also stated that Vinod had given injury to his father on the head with a thick stick whereas other 4-5 persons were giving injuries to him on hands and feet. When his mother Kaushalya tried to rescue his father, she was given 10-12 injuries on her hands and feet. Her mother was given injuries by Vinod and Kami and not by others. Shana (PW-4) also stated in her examination-in-chief that her sister-in-law Kaushalya was given injuries by Vinod and Kami Ram when she tried to rescue her husband. She also stated that Nanuram and Hiraram had come after sometime and were informed of the incident. She further stated that the police had told Kaushalya to bring written report and when she presented the same, the police personnel told her that the same was not correct and that she had to bring the second written report. In so far as Nanuram (PW-3) is concerned, we have already mentioned that he had seen the appellants causing injuries to the deceased when he had died. Version of other prosecution witnesses and in particular Shana (PW-4) is that she along with others named above had come after the occurrence and was told about the incident. There is no need to make a mention and give details of rest of the evidence led by the prosecution as nothing based thereon has been urged before us by the learned counsel appearing for the

parties. Suffice it however to mention that when the appellants were examined Under Section 313 Cr.P.C. they denied the incriminating material put to them and pleaded that they had been falsely implicated in the case.

7. Learned counsel defending the appellants vehemently contends that the entire story leading to death of Sardara and injuries to Kaushalya has been coined simply with a view to involve all the appellants. The version given by Kaushalya is palpably false and unbelievable. It is further urged by them that Ranveer (PW-2), Nanuram (PW-3) and Shana (PW-4) were in any case nowhere present near the scene of occurrence and were introduced at a later stage simply with a view to strengthen the prosecution case. The next and last contention raised on behalf of the appellants Kami Ram, Urmila, Ramdev, Kishore and Nagendra is that they had not caused by injury to Sardara on any vital part of his body. As would be clearly made out from the statement made by Dr. Mahaveer Singh (PW-8) the fatal injury on head of Sardara was caused by the appellant Vinod. He alone thus could be held guilty for offence Under Section 302 IPC and others could not be pinned down for the offence of murder with the aid of Section 149 IPC.

8. We have heard learned counsel appearing for the parties and with their assistance examined records of the case.

9. The first contention raised by the learned counsel for the appellants can be accepted but only halfway through which in any case would not make any difference in the ultimate analysis. Kaushalya while lodging the FIR did not mention that Ranveer, her minor son, Shana married sister of her husband or for that matter, even Nanuram had also followed her when she had gone to know about the welfare of her husband at night in the house of the appellant Vinod. If PW-2, PW-3 and PW-4 had actually seen the occurrence, Kaushalya could not have missed out their presence and in that case, their names ought to have found mention in the FIR. In so far as Nanuram is concerned, he clearly stated that the appellants were beating Sardara even after he had died. That is not the case of other witnesses and in particular Shana (PW-4) who stated that Nanuram along with others had come later and they were only told about the chain of events leading to death of Sardara. Further, it appears that when Sardara was taken to

hospital, he was alive. He was first medico legally examined and it was only after his death that autopsy was conducted on his dead body. Presence of Ranveer, Shana and Nanuram at the scene of occurrence is highly doubtful but that however would not make the least difference in as much as if statement made by Kaushalya (PW-1) who happens to be injured herself, is believed, the same would be enough to sustain conviction against the appellants. Presence of Kaushalya, in our considered, view cannot possibly be doubted. She had received 10 injuries on her while endeavouring to rescue her husband. Duration of injuries sustained by her coincides with the injuries sustained by Sardara. The anxiety of Kaushalya to know whereabouts of her husband when he had not returned even upto 9 at night was obvious and therefore, knowing it that he would be available in the house of Vinod, her going to the house of Vinod is natural. In so far as contention of the learned counsel appearing for the appellants that Kaushalya had coined the story out of her wide imagination is sought to be buttressed from the fact that if Kaushalya had actually seen her husband being belaboured at 7 p.m. and had seen all the appellants taking him towards the house of Vinod, she would not have sat idle for long two hours at her house. It would be absolutely against the normal human conduct not to inform anyone in the village that her husband had been taken away in the manner described by her in the FIR as also while appearing as witness in the court, further contends the learned counsel. We find considerable merit in this contention as well, but the same; in our considered, view would at the most result in non-involvement or at least not sharing a common object of others with the appellants Vinod and his brother Karniram. It is not possible to believe that if Kaushalya had seen her husband having been surrounded by as many as 5-6 persons who were pushing him and giving him fist blows and taking him towards the house of Vinod, she would just come back to her house and be busy with daily chores. She would not bother for her husband for long two hours and would not inform anybody that her husband had been taken away by pushing and giving him fist blows. Surely, the act of the appellants in pushing and manhandling Sardara was not a friendly one. The same was bound to alarm Kaushalya who in the very nature of things could not possibly come back home and relax. It is significant to mention that when she got suspicious and indeed went to the house of Vinod at 9 p.m. she had intervened and tried her best to save her husband and in the

process, she received number of injuries. Her conduct to intervene and try to save her husband is a clear pointer towards the fact that the earlier incident of the evening is all a made up affair. It is significant to mention at this stage that when she lodged the FIR, the police advised her to make second report as the first one lodged by her was not sufficient or correct. It appears to this Court that the incident of evening had simply been mentioned with a view to involve as many people as may be possible. In the facts and circumstances of the case, it is thus not possible to believe that the same incident as suggested by the prosecution had taken place at 7 in the evening. This part of the prosecution case has thus to be rejected.

10. Kaushalya (PW-1), however, with regard to the later incident that had taken place at 9 p.m. cannot be disbelieved at all. The appellant Vinod had gone with Sardara at Mukandgarh in order to make application with regard to connection of well. They had come back from Mukandgarh at the house of Sardara. Appellant Vinod and Karniram had come in the evening and enquired about Sardara. Kaushalya would thus have suspicion on Vinod when her husband did not return upto 9 at night. It is this suspicion alone it appears to us which persuaded her to go to the house of Vinod where she found the appellants belabouring her husband. She intervened and received injuries. If, therefore, it is only the night incident which is to be believed, the question that then would arise for consideration would be as to whether only the appellant Vinod could be held guilty for offence of murder or that all others shared common object.

11. We have given our anxious thoughts to the chain of events as fully detailed above and are of the view that whereas Karniram could well be said to have shared intention of appellant Vinod and could therefore, be held guilty for murder of Sardara, others cannot be held guilty Under Section 302 IPC with the aid of Section 149 IPC. It is significant to mention that if the occurrence stated to have taken place at 7 p.m. is disbelieved and which we have disbelieved, it shall have to be held that Sardara had gone to the house of appellant Vinod either of his own choice or on account of Vinod calling him at his house. It may be recalled that both of them had gone in the morning at Mukandgarh. The story with regard to the enmity between them relating to the common boundary in the fields does not inspire any confidence as in that case, they would not have gone to Mukandgarh

together. When Sardara, it appears, reached the house of Vinod and stayed there for long hours, appellants other than Karniram would not even know that Sardara would come to the house of Vinod on that day. Karniram would surely know it because he along with Vinod was enquiring about the whereabouts of Sardara in the evening as well. It thus appears that something happened in the house of Vinod which infuriated Vinod because of which he started causing injuries on vital parts of the body of Sardara. His brother Karniram along with others joined him but it is significant to mention that it is Vinod who selected vital parts of the body of Sardara where he caused injuries. Both Vinod and Karniram caused injuries to Kaushalya when she tried to rescue her husband. It is further significant to mention that none other than Vinod and Kami caused any injury to Kaushalya (PW-1). In the facts and circumstances as mentioned above, Karniram would share the same intention as his brother Vinod but the same cannot be said with certainty with regard to others. They caused injuries to Sardara on non vital parts of his body and when Kaushalya tried to rescue her husband none of them caused any injury to her. It is too well settled that in given circumstances, in a larger group, there may be different groups of the assailants having different intentions. The present seems to be a case of the kind where there were two groups, one of Vinod and his brother Karniram sharing intention to cause death of Sardara whereas other group consisting of Urmila, Ramdev, Kishore and Nagendra wanting to chastise him. This second group, in our considered view, cannot be held guilty of murder of Sardara with the aid of Section 149 IPC.

12. The up-shot of the discussion made above would result in upholding the conviction and sentence of appellants Vinod and Karniram. Vinod would be held guilty for offence Under Section 302 IPC whereas Karniram would be held guilty for offence Under Section 302/34 IPC. Their sentence for life as ordered by learned Trial Court would be sustained. They, however, cannot be held guilty Under Section 342 IPC and would thus stand acquitted of the said charge framed against them. They also cannot be held guilty for offence Under Section 147 IPC. They would thus be acquitted of the said charge also framed against them. Their conviction Under Section 323 read with Section 149 IPC for causing injuries to Kaushalya is upheld. In so far as Urmila, Ramdev, Kishore and Nagendra are concerned, they would be acquitted of the charge framed against them Under

Section 302 read with Section 149 IPC. They shall also be acquitted of the offences Under Section 342 IPC and 147 IPC. They shall also be acquitted of the charge framed against them Under Section 323/149 IPC for causing injuries to Kaushalya. They shall however be held guilty Under Section 325 read with Section 149 IPC for causing grievous injury to Sardara. All these four appellants, we are informed, have already undergone sentence ranging from 3 to 6 months. Ends of justice would be served if they are sentenced to the period already undergone by them.

13. In the net result, the order of conviction and sentence of both the appellants Vinod Kumar and Karniram in Criminal Appeal No. 113/2001 is upheld and their appeal is dismissed. Appellant Karniram be got arrested and sent to jail to serve out remaining sentence.

14. However, the order of conviction of other appellants Smt. Urmila, Ramdev, Kishore and Nagendra is altered from one under Section 302 read with Section 149 IPC to Under Section 325/149 IPC. Their conviction Under Section 147, 342 and 323/149 IPC is set aside. The sentence imposed upon them under Section 325/149 IPC is reduced to the period already undergone by them and the amount of fine is enhanced to Rs. 5, 000/- each, in default of payment of which, each shall undergo rigorous imprisonment for a period of six months. The fine, if realised, shall be paid to Kaushalya widow of Sardara. Appellants Smt. Urmila, Ramdev, Kishore and Nagendra are on bail. They need not surrender.

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