

Aidan and ors. Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/758813

Court : Rajasthan

Decided On : Mar-23-1993

Reported in : 1993CriLJ2413

Judge : B.R. Arora and; N.K. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149, 302, 323 and 325; Code of Criminal Procedure (CrPC) , 1974 - Sections 313 and 374

Appeal No. : D.B. Cri. Appeal Nos. 272 of 1984 and 204 of 1985

Appellant : Aidan and ors.

Respondent : State of Rajasthan

Advocate for Def. : S.K. Mathur, Adv. and; Chandra Lekh, P.P.

Advocate for Pet/Ap. : M.M. Singhvi, Adv.

Judgement :

N.K. Jain, J.

1. These two appeals under Section 374, Cr. P. C. are directed against the judgment of the learned Sessions Judge, Bikaner passed on 8-8-1984 whereby he has convicted the accused appellants Parma Ram and Gomada alias Uma Ram under Section 302, or in the alternative Section 302 read with Section 34, IPC and

sentenced each of them to imprisonment for life. The learned Sessions Judge has convicted the appellant Aidan and Mangida alias Mangilal under Section 325 or in the alternative under Section 325 read with Section 34, IPC and sentenced each of them to three years R.I. with a fine of Rs. 2500/- and in default of payment of fine to undergo further 11/2 years R. I. Since, both these appeals are directed against a common order, they are being disposed of by this judgment.

2. Briefly stated the facts of the prosecution case are that while mother of accused appellant Aidan bringing her Rewad towards the field of Ram Kumar Singh at about 5.30/6 a.m. on 11-10-1982, it is alleged that she was asked by Ram Kumar Singh to take out the Rewad from his field whereupon accused appellants Parmanand armed with Gandasi, Gomda armed with Kulhari and rest of accused appellants armed with lathies came there and gave a 'Lalkar' to Ram Kumar Singh. It is further alleged that all the accused appellants started assaulting Ram Kumar Singh. On hearing hue and cry, 'Mare Re' 'Mare Re' Smt. Damyanti wife of Ram Kumar Singh rushed to the place of incident from her 'Dhani' and saw that all the five accused appellants are beating her husband, It is also alleged that Nanu Singh and Kishan Singh, brother of Ram Kumar Singh reached the place of incident but Nanu Singh beaten by Aidan, Mangilal and Jagla by lathies thereupon Smt. Damyanti and her brother-in-law (Jeth) Nanu Singh raised hue and cry due to which accused persons fled away. Ram Kumar died on the spot, and his brother Nanu Singh also became unconscious. Smt. Damyanti wife of the deceased came to Bhanipura I and from there she reached Bikaner by Bus and therefrom she took her brother Ranjit Singh but at the bus stand she came to know that Thanedar of Pugal Police Station is at S. O. Office, Bikaner. She was taken there and Thanedar of Pugal Police Station recorded her statement vide Ex. P.

15. Her statement was sent to P. S. Pugal with P. W. 11 Vijay Prakash at 9 p.m. on 11-10-1982, thereupon an FIR Ex. P. 23 was registered. The Police prepared Ex.P. 1 description memo of corpus (Furd Surat Hal Nas) Ex. P. 2 inquest report. Ex. P.3 site inspection memo, Ex. P.24 description of site inspection memo. At the instance of Parma Ram and on his information vide Ex P. 28 'Gandasi' was recovered vide Ex. P.

4. On the information vide Ex. P.26 of lathi was recovered at the instance of accused-appellant Mangilal vide Ex. P.

5. At the instance of accused Uma Ram one 'Kulhari' was recovered vide Ex. P.

6. A lathi was recovered at the instance of accused-appellant Aidan vide Ex. P.

7. The police seized blood stained soil and controlled soil vide Ex. P.

5. The accused appellants Aidan, Parma Ram, Uma Ram, Jagla and Mangilal were arrested on 14-10-82 vide Ex.P.17 and Ex. P. 20 and dead body of the deceased Ram Kumar Singh was sent for post-mortem. The post-mortem report is marked as Ex P.

17. Mr. Nanu Singh was medically examined vide Ex. P. 13, X-Ray plates of Nanu Singh are marked as Ex. P.

15. The blood stained clothes and other Articles were sent for chemical examination to the F.S.L. Jaipur. The police after due investigation filed challen in the court of Judicial Magistrate No. 1, Bikaner and the case was thereafter committed to the court of learned Sessions Judge, Bikaner for trial and Jagla being a minor was committed to Juvenile Court. Charges were framed against the accused persons. The accused appellants denied the charges and claimed trial. In their statements under Section 313 Cr.P.C. the accused appellants Aidan, Umaram and Parmaram stated that j Nanu Singh, Kishan Singh, Damyanti and Ranjit Singh are relatives. The accused appellants further stated that they have been falsely implicated. The accused Mangilal has raised a plea of alibi and stated that he is innocent as on the point of time and day he was at his village Surpura. The prosecution in support of its case produced 13 witnesses viz. P.W. 1 Nanu Singh, P.W. 2 Kishan Singh, P.W. 3 Ranjit Singh P. W. 4 Dr. Shyam Sundar. P.W. 5 Dr. Om Prakash, P.W. 6 Dr. R. K. Gehlot, P.W. 7 Damyanit, P.W. 8 Bhanwarlal P.W. 9 Sohanlal, P.W. 10 Anter Singh P.W. 11 Vijay Prakash, P.W. 12 Bhoop Ram and P.W. 13 Gyan Prakash. In defence two witnesses viz. D. W. 1 Kana Ram and DW 2 Laximnarayan were examined. The learned Session Judge after considering material on repord after conclusion of the trial convicted and

sentenced the accused-appellants as aforesaid. Dissatisfied with the conviction and sentences passed on them, the accused, appellants have preferred this appeal. The State has also filed an appeal against the judgment bearing D. B. Cr. Appeal No. 204/85 for convicting all the accused appellants under Section 302 and 302/ 34 IPC with the aid of S. 149 IPC. Both the appeals have come up before us.

3. Mr. Singhvi, learned Counsel for the accused appellants has submitted that the learned trial court has erred in placing reliance on the statement of eye-witnesses as there is infirmity in their statement. He has also submitted that there was no previous enmity. He has further submitted that Kishan Singh and Damyanti were not present at the scene of occurrence and the learned trial court has rightly not placed reliance on their statement, but even then without examining any independent witness it has erred in convicting the accused appellants on the basis of statement of Nenu Singh. He has further submitted that the investigation was not prompt and the FIR was a post investigation. He has relied on *Ashok v. State*, 1991 (1) RLW 522, *Ramji Surjya v. State of Maharashtra*, AIR 1983 SC 810 : (1983 Cri LJ 1105), *Hakumat Rai v. State*, (Cr LR (Raj) 718 (sic), *Ganesh Bhavan Patel v. State of Maharashtra*, AIR 1979 SC 135: (1979 Cri LJ 51).

4. The learned Public Prosecutor has submitted that the learned trial court has rightly relied on the statement of injured Nenu Singh, but erred in not relying on the statements of Damyanti and Kishan Singh Both these witnesses were very much present at the place of occurrence. She has also submitted that the learned trial court has erred in acquitting the accused under Section 147 and 148 IPC as all the accused appellants came with common object. She has lastly submitted that the accused appellants Aidan and Mangilal also deserves to be convicted under Section 302 /149 IPC. She has relied on *Ranbir v. State of Punjab*, AIR 1973 SC 1409: (1973 Cri LJ 1120 and *Khedu Mohton v. State of Bihar*, AIR 1971 SC 66 : (1971 Cri LJ 20).

5. We have heard learned Counsel for the parties and perused the record as well as the case law cited at Bar.

6. So far as the first contention of Mr. Singhvi that the learned trial court has erred in placing reliance on the statement of eye-witness P. W. 1 Nenu Singh is

concerned, it would be proper to read the relevant statement of this witness.

7. P. W. 1 Nenu Singh has stated that they are three brothers having their fields side by side and resides there in separate Dharies. He has stated that the field of accused and his brother Ram Kumar Singh are also adjoining. He has also stated that when he cried that 'Rewad has entered into the field, Ram Kumar Singh collected the 'Rewad' and told the mother of accused that you send 'Rewad every day to his field. The mother of Aidan ran towards her field and while Ram Kumar Singh was taking the 'Rewad' to the field of Aidan five persons came from the side of Dhani of accused Aidan. Out of them, Oma had a Kulhari, Parma Ram had a 'Gandasi' and rest of the three persons were armed with lathies. The accused persons gave a 'Lalkar' to Ram Kumar Singh and asked that where he is taking 'Rewad' and further told that: ^;g jsoM rks ;gh pjsxk vkSj dgk fd Bgjks vktrqedksa etk p[kkrs gS** All the five accused assaulted the deceased Ram Kumar Singh by inflicting injuries on his head, due to which he fell down and cried 'Mare Re' 'Mare Re'. PW 1 has further stated that he was standing in front of his 'Dhani' which was at a distance of 200 Pavandas from the place of incident. According to him, he was the person who reached first at the place of occurrence and was followed by Kishan Singh, the wife of Ram Kumar Singh and his own wife. Nenu Singh has also stated that when he asked the accused why are you assaulting them he was told that ^rqEgsa Hkh etk p[kkrs gS**

He has further stated that the persons who were having Kulharies and lathies kept on beating Ram Kumar Singh and three of them who were having lathies with them started beating him. Four injuries were inflicted on his head and he fell down. Thereafter, also according to him, injuries were inflicted on his leg and thigh and he became unconscious. He has also stated that when Kishan Singh and wife of Ram Kumar Singh raised hue and cry the accused left them on the understanding that both of them have expired and ran towards their Dhani. He has further stated that Ram Kumar Singh died on the spot. He has also stated that he was taken to Dhani by Kishan Singh and his wife.

8. It is no doubt true that if there is discrepancy in the statement of solitary witness it is unsafe to pass conviction without any corroboration but if the testimony of sole

witness is trustworthy and satisfies the consciences of the court, the conviction can be passed on the basis of statement of such solitary which is of sterling worth.

9. In the instant case, admittedly, deceased Ram Kumar Singh did meet a homicidal death and he must have been beaten mercilessly which resulted in the death. The injuries sustained by the deceased Ram Kumar Singh are detailed in the post-mortem report which is evident from Ex. P. 17.

10. P. W. 1 Nenu Singh has categorically stated that after hearing the cries when he reached the place of occurrence, the three accused appellants who were armed with lathies started beating him and the remaining two armed with 'Barchhi' and 'Gandasi' kept on assaulting Ram Kumar Singh. In his cross-examination, he has stated that injuries were inflicted by the accused on the forehead of the deceased by 'Barchhi' and 'Gandasi'. He has further stated in the cross-examination, that he was standing at a distance of 200 Pavadas from the spot and when he reached the place of occurrence Ram Kumar Singh was lying on the earth and accused were beating the deceased. This statement finds corroboration from the evidence of P. W. 6 Dr. R. K. Gehlot, who had conducted post mortem examination on the corpse of deceased Ram Kumar Singh. PW 6 Dr. R. K. Gehlot has stated that all the injuries collectively were sufficient to cause death in ordinary course of nature and injury Nos. 13 and 14 were individually sufficient to cause death in ordinary course of nature. He has also stated that injury Nos. 1, 9 to 16, 18 to 22, 24-A, 24-B, 25, and 28 appeared to have been caused by sharp weapon rest other injuries appeared to have been caused by blunt weapon. In his cross-examination, he has stated that there was one injury on the scalp of the deceased which appeared to have been caused by sharp weapon. He has also stated in his cross-examination that injuries Nos. 1 to 9 could be caused while the deceased was in standing position and the rest of the injury could be caused when the deceased was in a lying position. It is needless to say that the Doctor who has examined the deceased and conducted the post-mortem is the only competent witness to speak about the nature of injuries and the cause of death. Unless there is something inherently defective i.e. to say to the contrary to the prosecution, it cannot be said that the alleged eye-witness P.W. 1 Nenu Singh was not present and in our view simply on this score that the deceased was related to the eye

witness the testimony does not deserve to be discarded because the testimony of the said eye-witness is convincing and of sterling worth. The same also stood corroborated by medical evidence. Mere submission that this witness was not present at the place of occurrence is not sufficient particularly when P.W. 1 Nenu Singh has also received eight injuries in the same incident and he has been medically examined by PW 4 Dr. Shyam Sundar vide report Ex. P. 13. The presence of this witness on the scene of occurrence cannot be doubted because he also resides in the nearby Dhani of the deceased and in defence no witness has been produced showing his presence at another place and further no suggestion has been put forward by the side of the accused that the injured PW 1 Nenu Singh had received injuries somewhere else. Under these circumstances, the contention of Mr. Singhvi cannot be accepted and in our opinion, the learned trial court has rightly relied on the statement of P.W. 1 Nenu Singh and the conviction can be maintained on his testimony.

11. It has been next contended that the prosecution has not examined the material witness soon after the recording of FIR and further there is delay in lodging the F.I.R.

12. It is not in dispute that the eye-witness should be examined at the earliest but delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not by itself, amount to a serious infirmity. Therefore, it cannot be said that the delay was caused deliberately with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. Furthermore, it has not been put to the I.O. during his cross-examination. As such, in our opinion, the contention of the counsel for the appellants has no substance and he cannot derive any benefit out of the cases cited by him.

13. As regards the delay in lodging FIR is concerned, the case of the appellants is that the FIR was registered at 9 p.m. on 11-10-82 at the P. S. Pugal which is only at a distance of 40 Kms. from Mouza Rohi Bhanipurs whereas the incident is said to have been taken place at about 5.30 or 6 a.m. on 11-10-1982 and the FIR has reached the Magistrate at 5.20 a.m. on 12-10-1982. It is on record that the informant Mst. Damyanti went to Bikaner and from the Bus Stand she came to

know that the S.H.O. is also there at the S.P. Office where she contacted the S.H.O. who had recorded her statement vide Ex. P. 16 and thereafter the same was sent to P. S. Pugal with PW 11 Vijay Prakash. This witness has categorically stated that he started for Bikaner at 4.30 p.m. and reached at Thana at 7 p.m. He has also stated that the F.I.R. was written in the morning and he reached Bhanipura in the morning with the F.I.R. Therefore, there is a reasonable explanation of delay put forward by the prosecution for reaching the FIR before the Magistrate at 5.20 a.m. on 12-10-82. Apart from that it has not been put to the I.O. to indicate or to suggest some unfair practice by the Investigating Agency for the purpose of introducing a false case. Unless the I.O. is asked specifically about the delay and reasons for delay and not recording statement, the F.I.R. and the evidence of a witness cannot be brushed aside merely on the ground of delay. Therefore, as stated above the delay which is not an inordinate in the facts of the case has been properly explained and it is not fatal to the prosecution.

14. How, we have to proceed to examine the contentions of the learned Public prosecutor advanced in the appeal filed by the State. The contention of the learned Public Prosecutor is that the learned trial court erred in acquitting all the accused of the offence under Section 148 IPC and accused Mangida alias Mangilal and Aidan of the offence under Sections 302/149 IPC and further erred in not relying upon the testimony of Damyanti (PW7) and Kishan Singh (PW 2).

15. On the other hand Mr. Singhvi has contended that PW 7 Mst. Damyanti being a lady should have become unconscious after witnessing the brutal murder of her husband or in the impulse of movement she should have gone to save her husband but she remained normal after this incident. She had gone to lodge the report of the incident and also gave statement before the S.H.O. which goes to show that she was not present at the place of occurrence. Mr. Singhvi has further contended that the prosecution has not been able to establish the presence of PW 2 Kishan Singh also.

16. P. W; 7 Damyanti, wife of the deceased Ram Kumar Singh has stated that at 6 in the morning her husband went to turn out 'Rewad' of Idan from the field, then Aidan, Parma, Omda, Mangida and Jagla came there. Parma had a 'Gandasi',

Aidan had a 'Lathi', Omda had a 'Kulhari' and the remaining accused had 'lathies'. She has also stated that when her husband was turning out 'Rewad' towards the field of Aidan, the accused persons killed him. She has further stated that she reached there after hearing the uproar. According to her Aidan, Mangida and Jagla were beating her brother in law Nenu Singh. She has further stated that Parma and Omda were beating her husband, who was lying on the earth P.W. 7 Mst. Damyanti has also stated that she was threatened by the accused Parma that if she comes near she will be killed. Therefore, due to fear if she did not try to save her husband it cannot be said that she was not present and there appears to be no reason to disbelieve the statement of this eye-witness. The learned Sessions Judge while examining the truthfulness of the statement of this witness, has been influenced by the emotions which in the opinion of the learned trial court should have been expressed by a wife whose husband had been killed in her presence. This approach of the learned trial court in our view is not plausible for the simple reason that every person has his own way of expressing emotions and no universal practice can be adopted while examining the worth of the witness particularly when the learned trial court has itself relied on the statement of PW 1 Nenu Singh who has also given almost similar statement as of PW 7 Damyanti and further no material contradiction has been found in the testimony of both these witnesses. However, there are some minor discrepancies in the statement of PW 7 Mst. Damyanti but they are not of such a nature on the basis of which whole statement of this witness can be discarded. Therefore, we are of the opinion, that the learned trial court has committed error in not relying her statement.

17. So far as the statement of PW 2 Kishan Singh is concerned, he has stated that in the morning of 11th day of 10th month mother of Aidan was grazing 'Rewad' in their field. When Ram Kumar Singh asked her that why she is destroying their field, she ran towards her field. Ram Kumar Singh was turning out the 'Rewad' and when he reached at eastern boundary of the field of all the five accused appellants came there. He has also stated that Parma was armed with 'Gandasi', Omla was armed with 'Kulhari', and the rest of three were armed with 'lathies'. He has further stated that the accused persons called bad names to the deceased and inflicted blows with their respective arms. At that time he was standing about 15-20 Pavandas away from his 'Dhani'. PW 2 Kishan Singh has also stated that the

deceased fell down and raised hue and cry then they ran towards the field. He has also stated that the accused persons viz. Aidan, Mangilal and Jagla gave beating to Nanu Singh. We have given our earnest consideration to the statement of this witness and found that the learned trial court has rightly discarded his statement as this witness could not establish his presence at the place of occurrence. Firstly according to this eyewitness when the deceased was beaten by the accused-appellants he was standing at a distance of 15-20 Pavandas away from his 'Dhani' situated in his own field. This does not find corroboration that this witness had a field situated nearby the field of deceased rather PW 12 Bhoop Singh in his cross-examination has categorically denied that PW 2 Kishan Singh has any field near the place of occurrence. Further the presence of this witness has not been shown in the site plan. Moreover to avoid the presence of independent witness PW 2 Kishan Singh has stated that the nearby agricultural lands were barren. In view of these material discrepancies, in our view no credence can be placed on the statement of the witness PW 2 Kishan Singh.

18. As regards the next contention of learned Public Prosecutor that the learned trial court has erred in not convicting the accused-appellants under Sections 147, 148 and 302/149 IPC.

19. It is well settled that if a member of unlawful assembly does not participate in the fulfilment of the object of the unlawful assembly, he might be acquitted on account of the lack of corroboration as to his participation in the offence committed by the assembly. The basis of constructive guilt under Section 149 is mere membership of the unlawful assembly with the requisite common object of knowledge. If the court on the basis of the material on record is convinced that certain persons formed an unlawful assembly and the offence was committed by any members of that assembly in prosecution of the common object of that assembly, which the member of the unlawful assembly knew to be likely to be committed, that person would be constructively liable for the acts of others whether he himself actively participated in the commission of the crime or not. In the instant case there are five accused persons though one of them is facing trial before the Juvenile Court and the eye-witness PW 1 Nanu Singh and PW 7 Mst. Damyanti have categorically stated that all the five accused were present at the

place of occurrence and recoveries of lathies, Gandasi and Kulhari have been made. According to both these witnesses, all the accused-appellants were assaulting the deceased Ram Kumar Singh who had received twenty eight injuries in all, which is evident from the post-mortem report Ex. P-17. Thereafter, Uma Ram and Parma Ram kept on assaulting the deceased and the remaining three accused gave beating to PW 1 Nanu Singh who had received eight injuries, which is clear from the medical report Ex P-13. Though accused Omda alias Uma Ram and Parma Ram inflicted injuries to Ram Kumar Singh while Mangida alias Mangilal and Aidan inflicted injuries to Nanu Singh but this much is clear that all these four accused appellants and the accused Jagla were having knowledge of the common object of the unlawful assembly and actively participated in furtherance of the common object, entered in the field of Ram Kumar Singh and gave beating to Ram Kumar Singh and Nanu . Singh due to which Ram Kumar Singh succumbed to the injuries while Nanu Singh received multiple injuries. Thus, the learned trial court has erred in not convicting all the accused-appellants for their constructive liability since the prosecution has established beyond reasonable doubt the identity of persons who were the members of the unlawful assembly and came with a common object which was unlawful and further the part attributed to any of the accused persons has also been proved. All the accused are, therefore, liable to be convicted for the offence under Sections 148 and 302/149 IPC. They are also, liable to be convicted for the offences under Sections 325/149 and 323/149 IPC.

20. As discussed above, the appeal filed by the accused-appellant Aidan, Parma Ram, Uma Ram and Mangilal deserves to be dismissed. But, however, the convictions of the accused Parma Ram and Uma Ram under Sections 302/34 IPC is altered to that under Sections 302/149 IPC. The convictions of the accused Aidan and Mangilal under Sections 325/34 and 323/34 IPC are also altered to that under Sections 325/149 and 323/149 IPC. The appeal filed by the State deserves to be allowed. All the accused are liable to be convicted under S. 148 IPC. The acquittal of accused-respondent Mangilal and Aidan of the offence under Section 302/149 IPC is set aside and they are convicted for the offence under Section 302/149 IPC, The accused Parma Ram and Uma Ram are also liable to be convicted under Sections 325/149 and 323/149 ' IPC.

21. In the result, the appeal (272/ 84) filed by the accused Uma Ram and Parma Ram is dismissed but their conviction from 302/34 IPC is altered to Sections 302/149 IPC and each of the accused is sentenced to undergo imprisonment for life and a fine of Rs. 100/-and in default of payment of fine to further undergo one month's Simple Imprisonment. The conviction of the accused-appellants Aidan and Mangilal under Sections 323/34 IPC is altered to that under Sections 323/149, so also conviction of accused Aidan and Mangilal under Sections 325 and 325/34 altered to Sections 325/149 IPC and each of the accused is sentenced to three years' R.I. with a fine of Rs. 2500/ - and in default of payment of fine to further undergo 1 1/2 years's R.I. The appeal (205/85) filed by the State is, however, allowed and all the accused namely, Uma Ram, Parma Ram, Aidan Ram and Mangilal are convicted for the offence under Section 148 IPC and each of them is sentenced to one year's R.I. with a fine of Rs. 50/- and in default of payment of fine to further undergo 15 days S.I. The accused Aidan and Mangilal are further convicted for the offence under Section 302/149 IPC and are sentenced to undergo rigorous imprisonment for life and a fine of Rs. 100/- and in default of payment of fine to further undergo one month's simple imprisonment. Accused Uma Ram and Parma Ram are also convicted for the offence under Sections 325/149 and 323/149 and each of the accused is sentenced to three years' R.I. with a fine of Rs. 2,500/-and in default of payment of fine to further undergo 1 1/2 year's R.I. All the sentences shall run concurrently. Mangilal and Aidan are on bail since 14-8-84, they may be arrested and sent to jail for serving out the sentence awarded to them.