

Leela and ors. Vs. State

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Court : Rajasthan

Decided On : Apr-01-1971

Reported in : 1971WLN(UC)45

Judge : Kansingh, J.

Appeal No. : S.B. Criminal Appeal No. 545 of 1970

Appellant : Leela and ors.

Respondent : State

Judgement :

Kansingh, J.

1. By his judgment dated 13.8.70 the learned Sessions Judge, Alwar convicted each of the five appellants for offences under Section 307 read with Section 149, 147 and 148 Indian Penal Code. For the first each of them was awarded four years rigorous imprisonment and a fine of Rs. 100/-, in default one month's rigorous imprisonment, Three of the appellants namely, Kamal Khan, Chaosingh and Rahim Khan were convicted under Section 147 Indian Penal Code and awarded six months rigorous imprisonment each. The remaining two namely, Leela and Ghutmal were convicted under Section 148 Indian Penal Code and sentenced to one year's rigorous imprisonment each. The sentences were ordered to run concurrently.

2. Mangtu Ram (P.W. 1) was the sarpanch of Bhainsdavat and the appellants also resided in that village. Appellant Ghutmal was fined by Mangtu Ram for hot removing rubbish dropped by him on the Panchayat land. A recurring penalty was also imposed at the rate of Re. 1/- per day. Kamal Khan was his son. There were 'criminal cases between Ghutmal and Kamal Khan, on the one hand, and Mangtu Ram, on the other, from before the date of the present incident. On 25.1.69, Mangtu Ram (P.W. 1) was going to a nearby village Bhajedi in the company of his brother Panchu Ram for attending a 'Fatiah' at the house of one Chhitar Meo. There was a dinner there in connection with the 'Fatiah'. When the two brothers came near an 'Inam' and belonging to sweeper's the five appellants who were hiding themselves attacked Mangtu Ram uttering 'kill Sarpanch'. Leela was armed with a sword and Ghutmal had a 'Farsi' while the remaining had lathis. Leela gave a sword blow on Mangtu Ram's leg and Ghutmal hit Mangtu Ram on his head with his 'Farsi', the remaining three gave lathi blows on various parts of the person of Mangtu Ram including his head. Panchu Ram raised an alarm. This attracted P.W. 4 Ganga Singh. P.W. 5 Fauja Singh and one Motilal to the scene of the incident. They challenged the assailants who then fled away. Panchu Ram then went to village Bhajedi and brought a bullock cart. Mangtu Ram was then taken in the bullock cart to Govindgarh. The first information of the incident was lodged at police station Govindgarh. The first information report was scribed to the police station by P.W. 3 Shivilal. Mangtu Ram was first brought to the first aid post, but the doctor was not there. He was then taken to Alwar where he was admitted and treated. Mangtu Ram's injuries were examined by P.W. 6 Dr. M.L. Bhargava. The doctor found the following injuries.

(1) Incised wound 2 1/2 Cm x 1/2 Cm x muscle deep on the left side of the scalp, vertically 11 Cms above the left ear near middle line.

(2) Lacerated wound 3 Cm x 1/2 Cm. X skin deep on the mid of the scalp 1 Cm anterior to injury No. 1 obliquely near middle line.

(3) Lacerated wound 4 Cm x 1/2 Cm x skin deep vertically on the anterior part of the scalp on the left part 2 1/2 Cm anterior to injury No. 2 in the direction near middle line.

(4) Lacerated wound 1 Cm x skin deep on the left side of the scalp 9 Cm above the left ear.

(5) Incised wound 6 Cm x 4 Cm x bone deep on the antero lateral and lower one third part of the left leg. The underlying bones were found fractured.

(6) Swelling 6 Cm on the dorsum of the right hand ulna side.

(7) Lacerated wound 3 Cm x skin deep on the anterior and middle part of the right leg.

(8) Abrasion 1 1/2 Cm in diameter on the mid of the right leg 2 Cm medial to injury No. 7.

According to Dr. Bhargava, injuries Nos. 1 and 5 were caused by sharp weapons and the remaining injuries were by blunt weapons. Injuries Nos. 5 and 6 were found to be grievous and the remaining injuries were simple. After the necessary investigations the police put up a challan against all the five appellants in the court of the Munsif Magistrate, Lachmangarh, who committed them for trial in the court of Sessions on charges under Sections 307 and 326 read with 149 and 148 Indian Penal Code.

3. The prosecution case rested on the direct evidence of P.W. 1 Mangtu Ram, P.W. 2 Panchu Ram, P.W. 4 Ganga Singh and P.W. Fauja Singh.

4. The accused pleaded alibi. The accused examined 9 witnesses. They were about the alibi of the accused. Two of them D.W. 5 Lallu Ram and D.W. 6 Chahat stated that they were returning after attending the dinner at village Bhajedi. According to Lalluram, appellant Ghutmal was at village Bhajedi when they started for their own village. They came across Mangtu Ram who was lying injured and was bleeding on the road side. On being accosted Mangtu Ram told them that two or three persons who had covered faces had beaten him. According to these witnesses Panchu Ram had brought, a cart and then took Mangtu Ram to the police.

5. The trial court came to the conclusion that Mangtu Ram was beaten by the appellants in the manner alleged. He accepted the evidence of P.W. 1 Mangtu Ram, P.W. 2 Panchu Ram and P.W. 4 Ganga Singh. He observed that there was no reason to doubt the presence of Panchu Ram and Ganga Singh at the time of the occurrence.

6. In assailing the conviction of the accused appellants their learned Counsel has forcefully argued that the learned trial Judge has not appreciated the evidence properly. He pointed out that Panchu Ram was not interrogated by the police till 1.2.69. In challenging the testimony of Panchu Ram it was further urged that it was strange that vide his statement Ex. D/2 in the committing court he did not make a mention of the incident to any one of the village Bhajedi where he had gone to fetch the bullock cart. It was submitted in this connection that there was no reason for not accepting the testimony of D.W. 5 Lalluram and D.W. 6 Chahat in this behalf. According to these witness Panchu Ram was not at all at present with the injured Mangtu Ram. As regards the evidence of P.W. 4 Ganga Singh it was submitted that Faujasingh (4) PW who was admittedly with Ganga Singh has not supported him at all. Then it was submitted that one person Motilal was also admittedly present along with Ganga Singh and Fauja Singh, but for no reason the prosecution have withheld him. learned Counsel suggests that an adverse inference should be drawn against the prosecution for not producing Motilal. Here, it was pointed out that Motilal was with the police at the time of inspection of the site and also at the time of recovery of weapons. There was thus no reason for not producing Motilal. As regards Mangtu Ram's evidence it was submitted that there was previous enmity between Mangtu Ram & Ghutmal & his son Kamal Khan, but there was no reason why the other three appellants would have gone with these persons to beat Mangtu Ram. Then it was submitted that in his previous statement before the police Ex. D/1, Mangtu Ram had not specified that Ghutmal hit him on the head or that Leela gave a sword blow on his leg. Further, it was urged that the evidence of Mangtu Ram was at variance with the medical evidence. According to the doctor, the injury on the head could be with a weapon with a light base and the injury on the leg with a weapon other than a sword. Dr, Bhargava has, no doubt, stated that injury on the left leg of the injured could not have been caused by a sword, but by a weapon having a heavy base. In other words, according to him,

injury No. 5 could not be caused by light weapons like blade, knife and sword As regards injury No. 1, he stated that it could be caused by a weapon having a lunar shape, but it was more probable that this injury was caused by a sword. Lastly, it was argued that the accused could not have been convicted under Section 307 Indian Penal Code, as none of the injuries had endangered the life of the injured. Here it was submitted that in any case the sentence awarded to the accused was severe. learned Counsel invited attention to Saraj Kumar v. King Emperor A.I.R. 1922 Patna 348, Ganpat Singh v. State 1966 R.L.W. 163, Narain v. State of Punjab : 1959 CriLJ537 and Ramlal v. State I.L.R. 1962 (12) Raj. 144 in support of his several contentions.

7. I have been taken through all the statements and relevant portions of the record. Having considered the several contentions pro and con I am satisfied that the learned trial Judge has correctly appreciated the evidence in the case. It is true, Panchu Ram was cot examined till 1.2.69, but it has to be remembered that his name was mentioned in the first information report lodged promptly on that very day. It is not disputed that it was Panchu Ram who brought the bullock cart for his brother. It is true, in his statement Ex. D/2, he had admitted that he did not make a mention of the incident in village Bhajedi, but that is by itself no ground to discard his testimony. The incident had taken place near a thoroughfare & village Bhajedi was visible from there and on account of the dinner people might be passing through this thoroughfare for going to Bhajedi or returning to their own villages. There was no other disturbing factor in the testimony of P.W. 2 Panchu Ram.

8. The two cases cited by learned Counsel for the appellants namely Saraj Kumar v. King Emperor A.I.R. 1922 Patna 348 and Ganpat Singh v. State 1966 R.L.W. 163 are not helpful. In the Patna case A.I.R. 1922 Patna 348, the name of the witness was not mentioned in the first information report and he was also examined late. In the Rajasthan case 1966 R.L.W. 163 the witness was examined more than six months after the occurrence. The so Called statement of the principle cannot be lifted away from the cited cases and put in the present case irrespective of the facts and circumstances of these cases.

9. P.W. 4 Ganga Singh is an independent witness, not interested in either party. Fauja Singh (P.W. 5), of course, does not support him at the trial, but it has to be remembered that Fauja Singh was declared hostile and was cross-examined with reference to his previous statement before the police. This witness has obviously gone back on his police statement and I do not think that the statement of P.W. Ganga Singh is fit to be discarded merely because Fauja Singh now does not support him.

10. P.W. 11 Mangtu Ram had inimical relations with Ghutmal and Kamal Khan. The enmity may cut either way While it may furnish motive for the crime it may be a reason for false implication of culprits, if they could not have been known at the time of the incident. His evidence, therefore, needs close examination. Mangtu Ram had given his earliest version in the first information report Ex, P/1. Though the first information report was scribed by Madanlal, it was dictated by no other than injured Mangtu Ram. The first information report fully corroborates his subsequent version at the trial. He had stated therein that he was going with his brother Panchu Ram to, Bhajedi. The five accused were hiding in a 'Sarson' field. He had stated at Leela had a sword and Ghutmal had a 'Farsi' and the others had lathis. The names of the persons who came there at the time were also mentioned. Motilal, Fauja Singh and Ganga Singh are mentioned as the witnesses He has given the time of the incident as 3.00 p.m. in the first information report. The first information report was lodged at police station Govindgarh at 5:45 p.m. The distance between the place of the incident and Govindgarh is said to be about 3 miles. Bearing in mind the bullock cart was fetched and then the injured was taken in that cart to Govindgarh shows that the first information report was lodged without any loss of time. D.W. 5 Lallu Ram and D.W. 6 Chahat have both stated that they found Mangtu Ram lying injured on the road side and on being asked Mangtu Ram stated that he has being attacked by two or three persons who had their faces covered. It is remarkable that although Mangtu Ram was cross-examined at great length, not a single question was put to him that he had been attacked by person who had their faces covered. Even this was not put to him that D.W. 5 Lallu Ram and D.W. 6 Chahat had met him at the place of the incident and had a talk with him The doctor has sited that the injury on the leg could not have been caused by a sword which he has characterised as a weapon with a light

base. To say the least, the doctor had made himself almost ridiculous. It is common knowledge that a sword can be used to cut even big animals to pieces. It is surprising to hear that the injury found on the leg could not be caused according to this doctor, by a sword which is a light weapon. The same thing can be said about what he has stated about the injury on the head. The learned trial Judge was, therefore, right in preferring the direct evidence of Mangtu Ram to that of the doctor. It is true, the prosecution should have examined Motilal who was mentioned as an eye witness in the first information report. This fact about the non-production of Motilal has to be taken note of in assessing the evidence, but on that ground alone the evidence of other eye witnesses has not to be thrown away.

11. The evidence about alibi of the accused is the usual padding and has been rightly discarded by the trial court. As observed by the learned trial Judge such evidence can be easily produced and cannot be taken to be sufficient, to throw doubt on the prosecution case.

12. Lastly, I may deal with the question as to what offence is made out. It is remarkable that the grievous injuries are on the non-vital parts of the body like leg and on the hand. Some injuries are on the hand. Some injuries are on the head also, but they are minor injuries. It is true that it is not necessary that the person whose murder is attempted may be necessarily hurt by his offender. The fact that an act results in minor injuries or even no injuries at all is not relevant for the purpose of deciding whether it amounted to an attempt to murder or not. If there is no evidence, direct or circumstantial, against the accused to show his intention and if his intention is to be inferred only from the injuries, then he should ordinarily be deemed to have intended to cause only that kind of injury, which has been actually caused by him. The important thing to be noticed is that it is intention or knowledge of the accused and the circumstances in which he commits the offence which are material in a case under Section 307 Indian Penal Code and if there is other evidence direct or circumstantial to indicate his intention or knowledge, then the fact that the injury caused is simple or grievous or that no injury is caused does not matter, vide *Ramlal v. State* I.L.R. 1962 (12) Raj. 144. The doctor has not stated in so many words that any of the injuries had endangered the life of Mangtu Ram. It is not a case of an offender aiming to do a certain thing, but the result

turns out to be short of the aim or object in mind. For example, a person trying to shoot at another fires a gun and yet the person remains unscathed or receives only a minor injury on a non-vital part of his body. There the injury by itself may not be decisive for judging the intention of the offender. According to the circumstances, irrespective of the injury that the victim had received, the offender could yet be held guilty of attempting the murder. In the present case, the offenders were at close quarters and Mangtu Ram was an easy prey for them. The accused who were armed with deadly weapons viz. sword and 'Farsi' Ghutmal and Leela had not repeated their blows. In the circumstances it is not safer to hold that they had the common object to kill Mangtu Ram or have the intention of causing such injuries as were sufficient in the ordinary course to cause the death. However, as all the accused were sitting in hiding and two of them carried deadly weapons like sword and 'Farsi', all of them can be credited with the common object of using deadly weapons which might result in grievous injuries to Mangtu Ram, as the assault in fact so resulted in the causing of grievous injuries to Mangtu Ram. In the circumstances the accused could be held guilty only for an offence under Section 326 read with Section 149 Indian Penal Code instead of Section 307 read with Section 149 Indian Penal Code. For this reason the sentence awarded to the accused calls for some reduction. A sentence of two years rigorous imprisonment should meet the ends of justice. The sentence for the offences under Sections 147 and 148 Indian Penal Code would stand, so will the sentences of fine stand in respect of both the counts.

13. In the result, therefore, I allow the appeal in part. The conviction of all the five appellants is altered from Section 307 read with Section 149 Indian Penal Code to that under Section 326 read with Section 149 Indian Penal Code and the substantive sentences on these counts are reduced to two years rigorous imprisonment. The judgment of the trial court shall stand in other respects. Accused Leela is on bail and the District Magistrate of Alwar shall have him arrested for undergoing the unexpired portion of the sentence as modified by this Court.