

Buddhi and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-22-2006

Reported in : RLW2006(3)Raj1950; 2006(3)WLC217

Judge : Shiv Kumar Sharma and; R.S. Chauhan, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 147, 148, 149, 300, 302, 304, 307, 323, 324, 325, 326, 336 and 341; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 282 of 2000

Appellant : Buddhi and ors.

Respondent : State of Rajasthan

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : Biri Singh Sinsinwar,; R.K. Mathur,; M.I. Khan,;

Judgement :

Shiv Kumar Sharma, J.

1. Since all these matters arise out of the same occurrence we proceed to decide them by a common order.

2. The appellants, fifteen in number, were put to trial before learned Additional Sessions Judge No. 2 Alwar in Sessions case No. 15/1996. Learned trial Judge vide judgment dated May 15, 2000 convicted and sentenced them as under:

Buddhi, Abdul Rahim and Hamid:

Under Section 302/34 IPC:

Each to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer simple imprisonment for six months.

Shakoor and Gafoor:

Under Section 304 Part 1/34 IPC:

Each to suffer rigorous imprisonment for ten years and fine of Rs. 2000/-, in default, to further suffer simple imprisonment for six months.

Himmat:

Under Section 326 IPC:

To suffer rigorous imprisonment for three years and fine of Rs. 1000/-, in default to further suffer simple imprisonment for six months.

Buddhi, Roozdar, Hurmat, Hamid, Hajar Khan, Sapat, Hnif, Majid, Rashid and Ashraf:

Under Section 326/149 IPC:

Each to suffer rigorous imprisonment for ten years and fine of Rs. 1000/-, in default to further suffer simple imprisonment for six months.

Buddhi, Roozdar, Hurmat, Himmat, Hamid, Hajar Khan, Sapat, Hnif, Majid, Rashid and Ashraf:

Under Section 148 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 1000/-, in default to further suffer simple imprisonment for three months.

Under Section 325/149 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 500/- in default to further suffer simple imprisonment for three months.

Under Section 324/149 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 500/- in default to further suffer simple imprisonment for three months.

Under Section 323/149 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 500/- in default to further suffer simple imprisonment for three months.

The substantive sentences were ordered to run concurrently.

3. Conviction and sentence of the appellants have been questioned in appeals No. 282/2000, 250/2000 and 283/2000, whereas complainant Deenu preferred revision petition No. 451/2000 seeking enhancement of punishment.

The appellant Buddhi preferred revision petition No. 418/2000 assailing the judgment dated May 15, 2000 rendered in Sessions Case No. 6/1997 whereby the members of complainant party have been acquitted.

4. It is the prosecution case that complainant Deenu (PW. 1) on August 8, 1991 submitted a written report (Ex. P. 1) at the Police Station Ramgarh to the effect that on the said day around 7-8 AM while he, his father Paltu and brothers Sahab Khan, Noor Mohammad, Sher Mohammad and AM Mohammad were going to plough the field they were belaboured by Buddhi, Rashid, Hamid, Hanif, Hajar, Himmat, Hurmat, Majid, Ashraf, Sapat and Ruzdar. Buddhi was armed with Lathi, Hamid, Rashid and Hanif had Pharsa, Himmat had spear and others has lathis. They started beating them by lathi, Pharsi and spear. Himmat hit on the upper lip and head of Deenu with stone while Hamid hit stone on his left hand. Buddhi gave

lathi-blow on the eye of Paltu. Hurmat inflicted lathi-blow on Sher Mohammad, Sapat inflicted lathi-blow on the head of Ali Mohammad. After about five minutes his uncle Saltu was surrounded near the house of Nasib Khan by Abdul Rahim, Himmat, Buddhi, Hamid, Hanif, Abdul Rahim, Buddhi and Hamid inflicted blows with pharsis and lathi on the head and behind the ear of Saltu. Believing Saltu dead the accused fled away. The incident was witnessed by Idrish, Ruzdar, and Muhim etc. Dead body of Saltu and other injured were removed to the hospital. On that report a case under Sections 147, 148, 149, 341, 323, 324, 302 and 336 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No. 2, Alwar. Charges under Sections 147, 148, 302, 302/149, 326/149, 325/149, 324/149, 323 and 341 IPC were framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 21 witnesses. In the explanation under Section 313 Cr.P.C., the appellants claimed innocence. The defence of appellants was that the incident occurred in their field and they received injuries. They have also lodged the cross case against the complainant party. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

5. We have given our anxious consideration to the rival submissions and with the assistance of learned Counsel we have gone through the evidence on record.

6. Death of Saltu and Kantuli was homicidal in nature. As per post mortem report (Ex. P.29) Saltu received following ante mortem injuries:

1. Incised wound 10 x 4 x deep culy Front parietal right skull.
2. Lacerated wound 6 x 3 right parietal occipital region
3. Incised wound 10 x 3 x deep upper bone left ear

According to Dr. Pramod Kumar Jaiman (PW. 14) the cause of death was haemorrhage and shock due to ante mortem injuries.

Deceased Kantuli as per post mortem report (Ex. P.50) received following ante mortem injuries:

1. Swelling all over left frontal parietal region
2. Lacerated wound 1 cm x 1/2 cm x Bone deep occipital region

According to Dr. Harish Manocha (PW. 21) the cause of death of was haemorrhage and shock due to antimortem injuries.

7. In the same incident accused persons also sustained injuries. Accused Buddhi vide injury report (Ex. D. 7A) received following injuries:

1. Incised 6 x 3 x deep upto bone left parietal
2. Lacerated 5 x 2 x 3 left parietal
3. Lacerated 6 x 2 x 2 near mid lien to left
4. Swelling 1/3 right forearm.
5. Bruise

Accused Hurmat vide injury report (Ex. D. 8A) received following injuries:

1. Tender over left thumb
2. Lacerated 4 x 2 x 2 towards the left skull
3. Lacerated behind the injury No. 1.

Accused Nawab vide injury report (Ex. D. 9A) received following injuries:

1. Incised 6 x 2.5 x 2 left parietal
2. Lacerated 2.5 x 2 x 2 right parietal
3. Tender 1/3 right leg

Accused Sapat vide injury report (Ex. D. 10A) received following injuries:

1. Abrasion 2 x 2 at left wrist
2. Abrasion 6 x 2 middle 1/3 of left forearm
3. Lacerated 1 x 1 x 1 right shoulder
4. Incised 2 x 1/2 x 1 right shoulder

Accused Jarina vide injury report (Ex. D. 11A) received following injuries:

1. Swelling lower 1/3 part of forearm.
2. Lacerated 1 x 1 x 2 mid parietal.
3. Swelling 4 x 2 right shoulder
4. Bruise 6 x 4 left thigh

Accused Akbari vide injury report (Ex. D. 12A) received one swelling 6 x 4 cm on upper end of right shoulder.

Accused Hamid vide injury report (Ex. D. 13A) received following injuries:

1. Abrasion 3 x 2cm left forearm
2. Tender 4 x 3 right parietal

Accused Himmat vide injury report (Ex. D. 14A) received following injuries:

1. Lacerated around the terminal phalynx of thumb left
2. Lacerated 2 x 1/2 x 1/2 index finger
3. Lacerated 3 x 1/2 x 1/2 little finger
4. Abrasion 2 x 1
5. Lacerated 4.5 x 2 x 2 right parietal

Accused Ruzdar vide injury report (Ex. D.15A) received following injuries:

1. Lacerated 1 x 1 x 1 right knee joint

2. Tender 4 x 3 left knee

Accused Hazar Khan vide injury report (Ex. D. 16A) received following injuries:

1. Swelling 4 x 2 mid line parietal

2. Tender lower incisor teeth.

8. Supporting the facts incorporated in the FIR Deenu (PW. 1) in his deposition stated that on the fateful day around 7-8 AM he, Paltu, Sheru, Sahab Khan, Noor Mohammad and Ali Mohammad were going to plough the field they were surrounded near Dagra by Buddhi, Rashid, Hamid, Hajar, Himmat, Majid, Ashraf, Sapat and Ruzdar. Hamid had Pharsi, Himmat had spear and others had lathis. They started beating them. Hamid gave stone-blow on his left hand, Himmat gave stone blow on his head and lip. Buddhi inflicted lathi blow on the eye of Paltu. Sapat inflicted lathi blow on head and others also gave beating. Ruzdar, Idrish, Samsuddin and Kantuli came to save them. Shakoore and Gafoor inflicted lathi blows on the head of Kantuli, as a result of which she fell down. After five minutes of the incident while his uncle Saltu was going to village from the well, he was also belaboured by Buddhi, Hanif Hamid, Himmat and Abdul Rahim. Abdul Rahim inflicted pharsi-blow on the head of Saltu. Hamid inflicted pharsi-blow behind the left ear and Buddhi inflicted lathi blow on his head. Believing Saltu dead the accused fled away. Testimony of Deenu gets corroboration from other eye witnesses examined by the prosecution.

9. It is contended by the learned Counsel for the appellants that the incident did occur in the field of accused party and the factum of accused party having sustained serious injuries including those on vital parts of the body was well established but the injuries on the person of the accused have not been explained by the prosecution witnesses, therefore the prosecution story should have been discarded. In our opinion such a submission cannot be accepted. In *State of U.P. v. Mukunde Singh* : (1994)2SCC191 , it was indicated that merely on the ground that the prosecution witnesses have not explained the injuries on the accused, the

evidence of the prosecution witnesses ought not to be rejected outrightly; if the court finds it probable that the accused might have acted in exercise of right of self defence, the court ought to proceed to consider whether they have exceeded the same. In *Takhaji Hiraji v. Thakore Kubersing Chamansing* : 2001 CriLJ2602 , the Apex Court held that the court ought to make an effort at searching out the truth on the material available on record with a view to find out how much of the prosecution case was proved beyond reasonable doubt and was worthy of being accepted as truthful and the approach of rejecting the prosecution case in its entirety for non explanation of the injuries sustained by the accused is erroneous. The Apex Court observed thus:

(Para 17)

It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non explanation of the injuries on the person of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injuries on the person of the accused were of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non explanation of injuries assumes greater significance when the evidence consists of interest or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution.

10. On careful reading of the evidence adduced at the trial factual situation that emerges may be summarised thus:

(i) In the written report (Ex. P. 1) informant Deenu did not even whisper about the incident occurred with deceased Kantuli.

(ii) Cross case about the same incident was registered against the complainant party on the basis of written report submitted by Buddhi on August 1, 1991 at 12.15 PM at Police Station Ramgarh for the offences under Sections 147, 148, 149, 324, 323 and 307 IPC.

(iii) Accused persons Buddhi, Hurmat, Nawab, Sapat, Jarina, Akbari, Hamid, Himmat, Ruzdar and Hazar Khan sustained injuries in the same incident.

(iv) Prior to death of Kantulj injuries sustained by her were examined vide injury report (Ex. P. 19), which reads as under:

1. Swelling all over left frontal parietal region, blunt, X-ray of skull was advised.

2. Lacerated wound 1 cm x 1/2 cm x bone deep occipital region, simple.

(v) Dr. Haris Manocha (PW. 21) Autopsy Surgeon however deposed that the cause of death of Kantuli was fracture of bones of frontal parietal region.

(vi) Ruzdar (PW. 2) deposed that accused Gafoor and Shakoor both inflicted lathi blows on the head of Kantuli, but did not say that who caused lacerated wound on occipital region which was found simple and who inflicted grievous injury over left frontal parietal region.

(vii) The place of incident was the field that belonged to the accused party.

11. Having carefully analysed the material on record we find that origin and genesis of the occurrence have been withheld. The prosecution could not establish that the accused were aggressors. From the evidence it appears that both the parties fought together freely for the trial of their strength, thus each individual was responsible for his own act. In such a situation provisions of Section 148 or 149 IPC can not be said to have been attracted as was held in *Vishvas Aba Kurane v. State of Maharashtra* : 1978 CriLJ484 .

12. In order to adjudge as to who was responsible for the fatal injury sustained by deceased Kantuli, when we look at the testimony of Autopsy Surgeon we find that her death was as a result of haemorrhage and shock due to ante mortem injuries. As already noticed as per the injury report Ex. P. 19, injury No. 2 was found simple in nature and for the injury No. 1 X-ray was advised. At the time of autopsy it was injury No. 1 which was found fatal. It could not be established that who caused the fatal injury since the allegations against appellants Gafoor and, Shakoor was that each of them gave one lathi blow on the head of Kantuli. In a similar situation, the

Apex Court in *Amrik Singh v. State of Punjab* 1993 Cr.L.J. 2357 indicated that where the injury which proved to be fatal was not attributed to any one of the accused, the accused 'who inflicted one injury on the head of the deceased was not responsible for other fatal injury. In that case accused Kewal Singh struck a gandas blow from its sharp side on the head of Amarjeet Singh (deceased). Autopsy Surgeon found a lacerated wound on the scalp and incised on the front area of the head. He opined that the injuries were sufficient in the ordinary course of nature to cause death. The High Court held that Kewal Singh could not held responsible for the other injury which was inflicted with blunt weapon and which proved to be fatal, therefore Kewal Singh was convicted under Section 326 IPC. Having regard to the situation in which free Fight is said to have taken place he was sentenced to suffer rigorous imprisonment for seven years. The Apex Court confirmed the view of High Court but reduced the sentence from seven years to three years rigorous imprisonment.

13. Coming to the incident occurred with deceased Saltu we find that he sustained injuries in the course of sudden Fight ensued in the field of accused party. The complainant party was also aimed with deadly weapons and as many as eight accused persons received lacerated and incised wounds on the vital parts. In *Dharman v. State of Punjab* : 1957 CriLJ420 , the Supreme Court held that when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner and that the case against the accused falls within Exception 4 of the Section 300 of the Indian Penal Code and the accused who caused the injury was guilty under Part I of Section 304 and not under Section 302 of the Indian Penal Code.

14. That takes us to the revision petitions filed by appellant Buddhi and informant Deenu. We have pondered over the rival submissions. Since both the parties were armed with sharp edged weapons and clashed in the course of a free fight the judgment of acquittal rendered in Sessions Case No. 6/1997 does not requires any interference. We also do not see any ground to enhance the sentence passed vide judgment dated May 15, 2000 in Sessions Case No. 15/1996.

15. For these reasons we dispose of instant matters in the following terms:

(i) Since the appellant Buddhi has died on October 1, 2005, the appeal preferred by him stands abated.

(ii) We partly allow the appeal of appellants Hamid and Abdul Rahim and instead of Section 302/34 IPC we convict them under Section 304 Part I IPC and sentence each of them to suffer rigorous imprisonment for ten years and fine of Rs. 1000/-, in default to further suffer six months rigorous imprisonment. Hamid and Abdul Rahim however stand acquitted of the charges under Sections 148, 326/149, 325/149, 324/149 and 323/149 IPC.

(iii) We partly allow the appeal of appellants Gafoor and Shakoor and instead of Section 304 Part I read with 34 IPC we convict them under Section 325 IPC and sentence each of them to suffer rigorous imprisonment for one year and fine of Rs. 500/-, in default to further suffer three months rigorous imprisonment. Appellants Gafoor and Shakoor are on bail, they shall forthwith be taken into custody and their bail bonds stand cancelled.

(iv) We allow the appeal of appellants Roozdar, Hurnat, Himmat, Hazir, Sapat, Hanif, Mazid, Rasid and Ashraf and acquit them of the charges under Sections 326, 148, 326/149, 325/149, 324/149 and 323/149 IPC. All the appellants are on bail they need not surrender and their bail bonds stand discharged.

(v) We dismiss Cr. Revision Petition No. 451/2000 preferred by Deenu and Cr. Revision Petition No. 418/2000 preferred by Buddhi.

(vi) The impugned judgment of learned Trial Judge stands modified as indicated above.