

Janmad and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Sep-24-1975

Reported in : 1975WLN(UC)397

Judge : C.M. Lodha and; P.D. Kudal, JJ.

Appeal No. : D.B. Criminal Appeal No. 95 of 1972

Appellant : Janmad and ors.

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

C.M. Lodha, J.

1. The thirteen appellants were tried by the Additional Sessions Judge, Gangapur city for offences under Section 302 read with Section 149 IPC and also under Sections 147, 447 and 148 IPC They have been convicted and sentenced as below:

Convicted --and-- Sentenced to (i) Under Section 302 r/w Section 149 IPC -- imprisonment for life(ii) Under Section 147 IPC -- One year's R.I.(iii) Under Section 447 IPC -- Two months' R.I.

They were, however, acquitted under Section 148 IPC.

2. The case against the accused is that there was a dispute between them and the deceased Parsadi regarding a field situate, in the precincts of Village Patpari Police Station Keladevi and admittedly litigation was pending between the parties in respect of this field. It is alleged that the accused claimed a right of way through the field in question, whereas the deceased Parsadi took possession of the same and cultivated it. According to the prosecution on 19th July 71, Parsadi went to the field accompanied by his wife PW/7 Smt. Jagni to prepare it for cultivation by clearing the bushes etc. At about 10 in the morning all the thirteen accused came armed with sticks and gave a severe beating to Parsadi, as a result of which he died at the spot. His wife PW/7 Jagni tried to save him by covering his body but did not succeed in preventing the accused from killing her husband. The prosecution case further is that after having beaten Parsadi to death, the accused proceeded towards the village and met Parsadi's father Shivilal at a distance of about 3 furlongs from the field of Parsadi and gave a beating to him also as a result of which Shivilal was seriously injured. Hearing his cries, PW/5 Lootan another son of Shivilal who was at a well nearby, ran towards the place from where Shivilal's cries were heard and saw all the accused beating his father. After the accused had left the place, Lootan went near his father and heard the cries of Smt. Jagni. Consequently he left his father there and went towards the place where Parsadi was lying dead. He was informed by Smt. Jagni that the accused had beaten Parsadi to death. Thereafter, Lootan proceeded to the Police Smt. Kaladevi and lodged a written report of the occurrence at about 2 p.m. The Head Constable PW/1 Gopalsingh left for the site of occurrence and found Shivilal in his senses, though badly injured. He recorded the dying declaration of Shivilal in the presence of PW/2 Gajrajsingh and one Bhorla Meena and thereafter went to the place where Parsadi was lying dead. After carrying out the necessary investigation he prosecuted all the thirteen accused in the court of Munsiff Magistrate, Karauli, who committed them for trial to the court of Additional Session Judge, Gangapur City.

3. There are two separate incidents in this case one took place in the field of Parsadi where Parsadi was beaten to death and the other incident took place at a distance of about three furlongs from the field of Parsadi where Shivilal was

beaten, So far as the first incident is concerned, we have the direct testimony of PW/7 Smt Jagni wife of Parsadi. The prosecution relied upon one more eye witness with respect to this incident namely, PW/9 Heeralal whose name is also mentioned in the FIR but Heeralal turned hostile. Heeralal has stated that in all 12 to 13 persons had beaten Parsadi with sticks, (sic) and 'Gandasa. He states that he alone intervened. He also deposes to the presence of Smt. Jagni at the place of occurrence. However, he admitted that he could not name any of the assailants, though he stated in a suppressed tone that the accused may be the persons who gave beating to Parsadi. In the course of cross examination he admitted that he was short sighted. In our opinion, his evidence does not help the prosecution much. We are then left with me statement of PW/7 Smt. Jagni. She has named all the thirteen accused as participants in the crime. However, she has stated that the accused Gote and Gharol had axes, Janmad had Gandasa' and rest of the accused had sticks with hem. She further states that the fell on her husband Parsadi when he was being beaten by the accused so as to save him and she also received injures. She further states that she saw all the accused getting into the field from a distance of five to seven paces and all of them at once started beating Parsadi who had been surrounded on all sides She is not able to state as to which accused bad struck Parsadi at which part of the body She states that she cannot say whether the blow was given with the 'Gandasa' or the axe. But she state that's injuries were inflicted to Parsadi from the sharp side of these weapons. In the course of cross examination she has also stated that her statement before the police to the effect that all the accused were armed with sticks is incorrect.

4. It may be pointed out that this witness has given an omnibus statement with respect to all the accused. Her evidence at the trial 8 not corroborated by the medical evidence in as much as admittedly on injury by sharp weapon was found on the dead body of Parsadi. Her assertion that she fell on her husband to save him and was injured is also not corroborated by medical evidence. We do not consider it safe to place implicit reliance no the testimony of this witness in absence of some reliable corroboration. She is the wife of the deceased Parsadi who had admittedly strained relations with the accused. There is no check available to us to judge the truthfulness of the version given by this witness. We are unable to consider her as a wholly reliable witness particularly when she has

contradicted herself with respect to the weapons said to be carried by the assailants.

5. Coming to the second incident we have the statements of PW/5 Lootan and PW/8 Somoti, as also the dying declaration of Shivilal Ex. P/3 recorded by PW/1 Gopalsingh. The incident took place at about 10 a.m. and Gopalsingh, Head constable, is said to have arrived at the spot at about 5 p.m. PW/6 Dr. S.L. Agarwal who performed the post mortem examination on the dead body of Shivilal has stated that the cause of death of Shivilal was due to injury to brain resulting in shock and death. He has also stated that the injuries found on the dead body of Shivilal could have resulted in unconsciousness. PW/3 Dr. Mukut Behari Bhatnagar who examined the injuries of Shivilal before he died has stated that after receiving injury No. 6 which is a lacerated wound 2' above the occipital protuberance transversely placed 1' x 1/4' x 1/2' bone deep the injured could have come in coma. He has further stated that after receiving the injuries, the injured must have become unconscious. Out of the two motbirs to the dying declaration only PW/2 Gajrajsingh has been examined and has stated that he was coming from Karauli and he was called from the way by PW/1 Gopalsingh. He further states that Shivilal was speaking at a very low tone and the Police Head Constable was taking down his statement. PW/5 Lootan who has lodged the F.I.R. states that his father spoke only once. In the course of cross examination he has further stated that the Police Officer stayed with Parsadi for 10 minutes but with Shivilal he stayed for about five minutes. He does not say a word about dying declaration. He has also stated that by the time the Head Constable had accompanied by him left the Police Station for the place of occurrence it was already dark, However, according to the Head Constable Gopalsingh the dying declaration was recorded at 5.15 p.m. when it must not have been dark, the day being 19th July when the sun sets after 7 pm. In these circumstances, we do not consider it safe to rely on the dying declaration either.

6. As regards PW/8 Smt. Somoti we are constrained to observe that apart from being a highly interested witness, her statement is not free from notable infirmities, for instance, she has stated that Ghatol, Nathu, Ramphool and Mangiya had axes and Gote had 'Farsi'. while the rest 8 had lathies we have already observed earlier

that there is no injury by a sharp weapon either on Shivilal or on Parsadi. Lootan has also stated that Gote, Ghatol and Gangadhar had axes, Janmad, Mangiya and Ramphool had 'Gandasa' and rest of the accused had lathies with them. An analysis of the evidence of these two witnesses as also that of Smt. Jagni goes to show that they have given whatever weapons they like in the hands of the various accused. According to Smt. Jagni, ten of the accused had lathies, while as according to Lootan, seven of them had lathies. In the circumstances of the case, we consider the discrepancy regarding weapons in the hands of the accused as quite material in this case. Smt. Somoti has given a similar type of statement as that of Smt. Jagni, in as much as she has also stated that all the thirteen accused had surrounded her father-in-law Shivilal. There is yet another weakness in the statement of this witness and that is that she was examined by the Police on the third day as after the incident she had gone to another village. We consider it highly un-natural on her part that if she was present at the spot and if she actually witnessed the incident, how could she leave the village the very next day particularly when the investigation was on and two persons no less than her father-in-law and her husband's brother had been killed. Her statement is also very general and omnibus. As to the statement of PW/5 Lootan, it is true that it is he who lodged the FIR. But the important question is whether he actually witnessed the second occurrence which resulted in the death of Shivilal. He states that while he was at the well, he heard the cries of his father and thereupon he went towards the direction from where his father's cries came. He states that all the thirteen accused were beating his father with lathies, axes and 'Gandasa' and that when he began to go near his father he was threatened and so he remained standing and then the accused went away. He also states that his father told him that the accused had finished Parsadi and, therefore, he left for Parsadi's field and on the way he met Smt. Somoti and his uncle Heera. Now this appears very unlikely to us that his father was in a position of informing him that Parsadi had been killed. The witness does not say a word about the dying declaration or that the deceased Shivilal had told him about the attack by the accused on him. In the cross examination the witness has stated that he had seen his father from a distance of about 100 yards and by the time he went to the spot and raised a hue and cry, nobody came from the neighboring fields. In our opinion if this witness had

reached the place of incident at a time when Shivilal was being beaten, he would not have been left unscathed by the accused. At any rate the accused any not have allowed him to watch the incident by standing and the natural reaction of a person in the position of PW/5 Lootan would have been to run for his own life, unless he was able to collect some persons from the neighboring fields. He does not depose to have talked to even to his brother's wife Smt. Somoti who states that she too was there. As opposed to what he has stated in the earlier part of his statement, he has stated later on that he had a talk with his father for about half an hour and that he fell on his father and kept weeping all the time thinking that he had expired as he had spoken only once. He has also admitted in his cross examination that Parsadi had filed a case against these 13 accused for the damage done to his crop, though he does not know what was the result of this case. He has also admitted that the deceased Parsadi and Janmed were not on speaking or visiting terms for the last five years, even though they were cousins. After having carefully scrutinised the evidence of this witness, we have come to the conclusion that it would not be safe to record a finding against all the 13 accused on the basis of his omnibus, general and sweeping statement. At any rate we cannot exclude the possibility of over implication in the case on account of the prevalence of enmity between the parties in a pronounced form. We have no doubt that some of the accused must have participated in beating Parsadi and Shivilal. But it is difficult to say who they were, as the prosecution has 10 its anxiety to implicate all the thirteen accused, not comforward with a clear, convincing and forthright evidence. In these circumstances we are of opinion that the accused are entitled to benefit of doubt.

7. In the result, we allow this appeal, set aside the convictions and sentences ordered against the accused by the learned Additional Sessions Judge Gangapur City and acquit them by giving benefit of doubt. They shall be released forthwith, if not required in connection with any other case.