

Ram Chandra and ors. Vs. State of Rajasthan

Ram Chandra and ors. Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/765193

Court : Rajasthan

Decided On : Jan-12-1987

Reported in : 1987(1)WLN148

Judge : Surendra Nath Bhargava and; Inder Sen Israni, JJ.

Appeal No. : D.B. Criminal Appeal No. 57 of 1986

Appellant : Ram Chandra and ors.

Respondent : State of Rajasthan

Judgement :

1. This is an appeal against the conviction and sentences passed by Additional Sessions Judge, Sikar convicting the accused appellants Ramchandra and Phoolaram alias Phoolchand under Section 302 I.P.C. for life imprisonment and a fine of Rs. 500/-in default of payment of fine, three months simple imprisonment and accused Ramchandra and Deepa under Section 325 I.P.C. one year RI and a fine of Rs. 200/-, in default of payment of fine, one month's simple imprisonment.

2. Accused persons and the complainant party are neighbours. According to the prosecution, Narain (PW 8) made a report at Police Station, Khandela on 4-2-1984 at 1 p.m. to the effect that at about 9 a.m. on that day, Sunda Ram was unloading his cart carrying stones in front of his house and suddenly, three accused appellants and five other co-accused persons etc. came out from their house and started beating Sundaram. Mst. Dakhli was at the Khali where the she buffalo was

drinking water. She was given beating by Ramchandra and Phool Chand, as a result of which, she fell down and died. Chandri (PW 11) and Sajna (PW 10) also came there and they were also given beating. Meanwhile, Narain and Ramchandra and Jawahara came there and thereafter the accused persons left the place. Sunda Ram (PW 9) was admitted in hospital. Deceased Dakhli was examined by Dr. Satya Narain Sharma (PW 3) who did not find any external injury and therefore, a Medical Board consisting of Dr. V.K. Khanna (PW 2), Dr. B.L. Khandelwal (PW 4) and Dr. K.L. Gupta, was constituted and the post mortem was also conducted.

3. After usual investigation, the police challaned the case before the Magistrate, who committed the 8 accused to Sessions. Learned Additional Sessions Judge, Sikar after recording evidence, acquitted five accused persons but found the three accused appellants guilty of the offence charged against them and convicted and sentenced them as aforesaid. Hence, this appeal.

4. Learned Counsel for the appellants has submitted that there is no case against the appellants under Section 302 1PC as they had no intention or motive to murder Mst. Dakhli. She died on account of laceration of spleen resulting in haemorrhage, shock and death. Even the post mortem report has stated that laceration of spleen was sufficient to cause death in ordinary course of nature. There is no external injury corresponding to the fracture of 9th and 10th left ribs. He has further submitted that the intention of the accused persons even according to the prosecution was only to give beating to Sundaram. Mst. Dakhli was not at the scene but she was at the Kheli where she-buffalo was drinking water and since in the doctor's evidence it has come that the spleen of deceased was enlarged and that ribs could be fractured by a fall on the ground, no case is made out under Section 302 I.P.C. He has also submitted that it is a case of over implication. The complainant party has implicated all the adult members of the accused family and the learned Additional Sessions Judge has also found five of them not guilty and has acquitted them. There is no corroboration of ocular evidence by the medical report. On the other hand, there are several contradictions. PW 6 Ram Chandra is a chance witness. He ordinarily resides at Fatehpur and therefore, his evidence should not be relied upon. He has further submitted that PW. 8 Narain is a close

relation of injured Sundaram and there are several contradictions and omissions in his evidence and therefore, his evidence also is not reliable.

5. On the other hand, learned Public Prosecutor and Mr. N.R. Choudhary, learned Counsel for the complainant have supported the judgment of the trial court and have submitted that the prosecution has amply proved that the death of Mst. Dakhli was caused on account of beating given by the accused persons Ram Chandra and Phoola when they inflicted Lathi blows to her and gave THURSA. They have further submitted that there is no evidence that spleen of the deceased Mst. Dakhli was enlarged and PW 2 Dr. V.K. Khanna has very categorically stated that by fall alone, 9th and 10th ribs could possibly be not fractured.

6. We have given our thoughtful consideration to the various submissions made at the bar and have also gone through the judgment of the trial court as well as the record of the case.

7. PW-1 to PW-4 are doctors who have attended the injured or done the post mortem. Pw-5 Jawahara has been declared hostile and his evidence has not been believed by the trial court. PW-6 Ramchandra and PW-8 Narain have been examined as independent eye witnesses. PW-6 Ramchandra has deposed in court that he and Narain were coming from the field and going from the field to Fatehpur where he resides and they saw Sundaram with the cart loaded with stones, and before, he could unload the cart all the eight accused persons charged, protested and asked Sundaram not to unload the cart and obstruct the way. Ramchandra accused gave a lathi blow on the hand of Sundaram. Another blow was given by Ramchandra on his head Thereafter, accused Phoola gave lathi blow on the leg of Sundaram. Mst. Dakhli came there and asked the accused persons not to give beating to Sundaram. Thereupon, Ramchandra and Phoolaram gave lathi blows to her as a result of which she fell down. PW-10 and PW-11 Mst. Sajna and Mst. Chandri also came there and they were also given beating. In the cross examination, he deposed that Sundaram was bleeding from his head and leg. He further deposed that Phoola and Ramchandra gave 5-10 lathi blows on Mst. Dakhli and they were witnessing the incident from a distance of about 40 paces. He has also admitted that there are only 8 adult members in the

family of the accused, whereas there are 36 persons in the family of the complainant party. PW. 8 Narain has deposed in court that the accused persons gave beating to Sundaram. Ramchandra Inflicted the first blow on the left hand of Sunda Ram and he gave another blow on his head and thereafter Phoola gave blow on his leg. Mst. Dakhli came there running from the side of Kheli and asked the accused not to give beating to Sundaram. Thereupon, the accused Sunda Ram and Ramchandra gave lathi blows on her left breast whereupon she fell down. Mst. Chandri and Sajna also came there and they were also given beating. He has filed the report in the police (Ex. P. 18). In cross examination, this witness has tried to bring several contradictions from his statement in the court and that given in the FIR, specially he was confronted when in FIR (Ex. P. 18) he had stated that Ramchandra and Phoolaram towards Mst. Lakhli who was near the kheli where she-buffalos was drinking water and gave her beating. Thereupon, she fell down there and ultimately died. PW-2 Sundaram, the injured, deposed that the eight accused persons attacked him. Ramchandra gave a lathi blow on his left hand whereupon he fell down and thereafter Ramchandra gave a lathi blow on his head and Phoola gave a lathi blow on his left leg and accused Deepa gave a 'blow of iron rod on his left leg. At that time, Mst. Dakhli was near the Kheli. She came running and asked the accused persons not to give him beating whereupon Ramchandra and Phoola inflicted lathi blows on her and she fell down. When Mst. Chandri and Sajna came there, they were also given beating. He was examined by the police and his injury report (Ex.P. 9) mentions only four injuries examined by Dr. V.K. Khanna PW-2. The injuries are on the left arm and one on the right leg and another on the left leg, all by blunt object and X-ray was advised for the injury on the left arm which was found to be a fracture (vide Ex. P. 4). Sundaram was admitted in the hospital on 4-2-1984 but he was discharged after 3 days i.e., on 7th. February, 1984 Thereafter he was again admitted in the hospital on 9-2-1984 and on further examination, a supplementary injury report Ex.P. 11 was chalked out by Dr. V.K. Khanna PW-2 who found a lacerated wound on his head. It has been mentioned in the report that the injured person did not tell about his injury on the skull. This may be added to original report. In cross-examination, he has deposed that witnesses Narain, Ram Chandra and Jawahara came after beating had been inflicted on him and that Mst. Dakhli, Chandri and Sajna were given

beating. He has deposed that about 15 injuries were inflicted by iron rod on his legs as a result, he was bleeding. PW-10 and 11 Mst. Sajna find Mst. Chandri are two injured ladies who have also deposed to the same effect. Mst. Sajna was medically examined after eight days of the incident i.e. on 12-2-1984 vide Ex.P. 15.

8. PW 3 Satya Narain Sharma examined Mst. Dakhli deceased and did not find any external injury on her person and, therefore, a medical board was constituted. Both PW. 2 and PW 4 namely Dr. V.K. Khanna and Dr. B.L. Khandelwal who were members of that Medical Board, found only one external injury on the person of deceased Dakhli, described as under:

Lacerated wound 1' x 1/4' x 1/4' on outer side of right eye brow.

9. On opening the body at the time of post mortem, they found fracture of 9th and 19th ribs in left side. They also found spleen larger than normal size and cause of death, in their opinion, was a result of laceration of spleen resulting in haemorrhage, shock and death. Post mortem report is Ex. P. 13. They further found that the laceration of spleen was sufficient to cause death in ordinary course of nature. In cross-examination, PW 4 Dr. B.L. Khandelwal stated that in case spleen is enlarged and the person falls on the left side on hard surface, the enlarged spleen may be ruptured and may cause instantaneous death. Fall on the ground may cause fracture of the ribs.

10. PW 2 Dr. V.K. Khanna in cross-examination stated that the size of the spleen mentioned in Ex. P. 13 was larger than normal. It has not been mentioned that it is markedly enlarged or there is huge splenomegaly. He has further opined that fall alone could have left external mark of injury on skin at the side of fracture of ribs and, therefore, it is unlikely to occur by a fall on flat surface. By fall alone, 9th and 10th ribs could possibly be not fractured. He further opined that if the ribs are fractured by lathi blow, external injury on skin should be there. By a fall, enlarged spleen can be ruptured. This rupture of spleen may cause death. He further opined that if the injured is wearing clothes and falls down on the ground, he she may not have any external injury on the skin. The third doctor of the Medical Board, Dr. K.L. Gupta, Senior Surgeon who conducted the post mortem

examination, has not been examined by the prosecution. In face of this evidence, it is not possible to come to a definite conclusion that Mst. Dakhli died on account of lathi blows inflicted on her. The prosecution should have been careful enough to examine Dr. K.L. Gupta who conducted the post mortem to bring on record evidence about the condition of spleen particularly in that light of cross-examination of PW 2 Dr. V.K. Khanna. Learned Public Prosecutor has brought to our notice that Dr. K.L. Gupta was out of country and, therefore, though the prosecution wanted to examine him but he could not be produced in court.

11. Be that as it may, the fact remains that there is no evidence on record as to what extent the spleen was enlarged and in view of the possibility that rupture of the spleen could have taken place on account of a fall on the ground and particularly in view of the evidence that after receiving lathi blows, she had actually fallen down, in our opinion, the accused appellants are entitled to benefit of doubt with regard to the charge for causing death of Mst. Dakhli.

12. With regard to injuries of Sunda Ram, we find that there is overwhelming evidence that Ram Chandra and Phoola Ram gave blows to Sunda Ram which caused injury on his left and left hand and there was a fracture also in the left hand. Deepa also gave some blows by iron rod to Sunda Ram.

13. Therefore, in our opinion, the trial court was justified in convicting the accused appellants Deepa son of Shankar and Phoola Ram & Phool Chand s/o Badri under Section 325 I.P.C. for inflicting injuries on Mst. Chandri and Sundaram respectively. Accused Ram Chandra has already undergone sentence of one year. As regards Deepa, it may be mentioned that in his statement recorded under Section 313 Cr. P.C. which was recorded on 30th July, 1985, his age is shown as 22 years, that means at the time of occurrence, he was below 21 years.

14. Learned Counsel for the appellants has submitted that accused Deepa should be given benefit of doubt under Section 360 Cr. P.C. It is true that Deepa was below 21 years of age at the time of incident and he has been found guilty for inflicting grievous injury on the person of Mst. Chandri and has also remained in jail for a few months. Therefore, we think it proper to reduce the sentences of Deepa to sentence already undergone and impose a fine of Rs. 500/- which may

be awarded to Mst. Chandri as compensation. We give one month's time to deposit the above amount of Rs. 500/- in the trial court, failing which accused Deepa will undergo rigorous imprisonment for six months. The above amount will be paid to Mst. Chandri.

15. In the result, we allow this appeal in part, set aside the conviction of the accused Ramchandra and Phoola under Section 302 I.P.C. but maintain the conviction of Ramchandra and Deepa under Section 325 I.P.C. and sentence them as aforesaid. Accused Phoola and Ramchandra may be released forthwith, if they are not required in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com