

Rupeng and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-02-1998

Reported in : 1999CriLJ724; 1999WLC(Raj)UC189

Judge : G.L. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 302, 304, 304II, 323 and 451; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 592/81

Appellant : Rupeng and ors.

Respondent : State of Rajasthan

Advocate for Def. : R.S. Rathore, P.P.

Advocate for Pet/Ap. : R.K. Soni, Adv.

Judgement :

G.L. Gupta, J.

1. This appeal is directed against the judgment dated 3-11-81 passed by the learned Sessions Judge, Banswara, whereby he convicted the appellants Rupeng under Sections 451/ 323 and 304, Part II, IPC, Soma under Sections 451 and 323, IPC and Motiya under Section 451, IPC and sentenced them as follows:-

Under Section 304, Pt. II, IPC 4 years RI and a fine of Rs. 2,000, in default 6 months RI

Under Section 451, IPC 6 months RI and a fine of Rs. 250, in default 1 month RI

Under Section 323, IPC fine of Rs. 250, in default one month RI

2. The case relates to an occurrence which took place on 19-1-1981 in village Ganpatpura. The prosecution case is that the three accused appellants and two others (since acquitted) had gone into the house of Chimna s/o Mogji, dragged him and took him out of the house and gave beatings and thereby caused his death. The FIR Ex. P/3 was lodged by Mogji on 20-1-81. Dr. P. L. Bhardwaj (PW.13) had performed autopsy on the body of Chimna s/o Mogji. He opined that the cause of death of Chimna was head injury. After the completion of the investigation, the police submitted a challan against the appellants and two others.

3. Charges under Sections 302, 148, 451, 302/149 and 323/149 were framed against the accused, who pleaded not guilty. The prosecution examined PW. 1 Manu, PW. 2 Puniya, PW. 3 Murlimanohar, PW. 4 Bhomji, PW. 5 Vesta, PW. 6 Dhulji, PW. 7 Laxman, PW. 8 Shanker, PW. 9 Kamji, PW. 10 Dhuliya, PW. 11 Punja, PW. 12 Bharat Singh and PW. 13 Dr. P. L. Bharadwaj. Accused in their statements under Section 313, Cr. P.C. denied accusation. Accused Rupeng stated that he was in his house when Chimna s/o Mogji and Chimna s/o Gokal were quarrelling and he had gone to intervene, and at that time, Puniya gave a lathi blow on his head and he has been falsely implicated in the case. The accused examined DW. 1 Gokaliya, DW. 2 Atu and DW. 3 Mawji in defence. The learned Sessions Judge held that Chimna s/o Mogji had met homicidal death. He further held that accused Rupeng had caused head injuries to Chimna and Sona had also caused injury to him. He also held that Rupeng, Soma and Motiya had gone inside the house of the deceased. He, therefore, convicted them, while acquitting the remaining two accused.

4. Mr. Soni pointed out that two persons had died in the occurrence of 19-1-81 who were Chimna s/o Mogji and Chimna s/o Gokal. According to him, both Chimnas (deceased) had quarrelled and sustained injuries. His further submission

was that the accused had a right of private defence to cause injury to the members of the deceased party who were assailants.

5. Learned Public Prosecutor, on the other hand, supported the judgment of the trial Court.

6. I have carefully gone through the evidence produced in the case. PW. 1 Manu, PW. 2 Puniya, PW.4 Mogji, PW.10 Dhuliya and PW. 11 Punja, are the eyewitnesses to the occurrence. The prosecution case is that they had also suffered injuries in the occurrence. PW. 7 Laxmi, PW. 8 Shanker and PW. 9 Kamji, who are near relatives of the deceased, depose to have seen part of the occurrence. It is the admitted case of the parties that an occurrence had taken place in the night of 19-1-81 and in that occurrence both the parties had sustained injuries and Chimna s/o Mogji, died at the spot, Chimna s/o Gokal, died eight days after the occurrence.

7. First it is to be seen whether Rupeng had caused injury to the head of deceased Chimna s/o Mogji. P.W. 1 Manu, who is grandson of the deceased, deposes that Rupeng had caused lathi injury on the forehead of Chimna deceased. PW. 8 Shanker s/o Chimna deceased, also states that Rupeng had caused a lathi blow on the head of his father. PW. 7 Laxmi, PW. 8 Shanker and PW. 9 Kamji deposed that Rupeng had dragged Chimna from their house. The medical evidence goes to show that there were injuries on the face and head of the deceased. Thus, the medical evidence fully corroborates the testimony of the eyewitnesses.

8. It is true that the witnesses are close relation of the deceased but that is no ground to discard their testimony. The occurrence had taken place in the night and near the house of the deceased. Manu, Laxmi, Shanker and Kamji are the natural witnesses to have seen the occurrence. The relative witnesses are not necessarily interested witnesses and their testimony cannot be seen with suspicion. When in the instant case the occurrence is not denied and the medical evidence corroborates the direct evidence, the prosecution case cannot be seen with suspicion. The trial Court has thus rightly believed the prosecution story that the three accused had entered the house of Chimna s/o Mogji and had taken him out dragging and thereafter gave beatings to him.

9. Now it is to be seen whether the accused had a right of private defence to cause injuries to Chimna s/o Mogji. the facts which have appeared in evidence are that the accused had first entered in the house of Chimna deceased, took him outside and thereafter gave beatings to him. This clearly shows that the accused party was aggressor. It may be that in that occurrence, Chimna s/o Gokal had also sustained injuries but that would not give a right of private defence to the accused to cause the death of Chimna s/o Mogji as the accused were the aggressors. It is also relevant to state that it has not been brought on record as to what type of injuries were sustained by Chimna s/o Gokalji, who died 8 days after the occurrence. It is not on record that Chimna s/o Gokal had died because of the injuries sustained in the occurrence. Though accused Rupeng states that he had also suffered injuries in the occurrence but his injury report is not forthcoming. It is thus not proved that the accused had suffered injuries in the occurrence. Even the FIR of the case of Chimna s/o Gokal has not been brought on record. In the aforesaid circumstances, the accused cannot succeed on the plea of right of private defence.

10. It has of course come in evidence that there was a well in the house of accused Rupeng on which two motors were fitted; one belonging to the accused and the other to Chimna s/o Mogji, but it has not been suggested to the witnesses nor there is evidence to this effect that the occurrence had taken place in the house of accused Rupeng when the deceased went to switch on the motor. It may be that there was some dispute between the parties with regard to the use of the well water but when it is not proved on record that the occurrence had taken place in the house of Rupeng accused, it cannot be said that the right of private defence had accrued to the accused.

11. On a careful consideration of the entire material on record, I am of the view that the trial Court has rightly found guilty all the three appellants for house trespass. The trial Court has also not erred in convicting Rupeng for the head injury of Chimna s/o Mogji. It is also established that Soma had caused injuries to deceased and Magha and Manu. The conviction of the appellants is thus well merited.

12. On the quantum of sentence, Mr. Soni contended that Rupeng has already remained in jail for about 10 months and this should be considered sufficient sentence. He submitted that the other appellants may be released on probation.

13. The occurrence had taken place in 1981 i.e. about 18 years have elapsed. Taking all the facts and circumstances into consideration, I think that the ends of justice would be met if Roopeng's sentence of imprisonment on all the counts is reduced to the period of imprisonment already undergone by him. Looking to the nature of the offence committed by the other accused it is considered proper to release them on probation.

14. Consequently, the appeal is partly allowed. While maintaining the conviction of the appellant sentence of imprisonment of Roopeng Under Section 304-II and 451, IPC is reduced to the period of imprisonment already undergone by him. The sentence of fine under all the three counts shall stand. The conviction of Soma Under Section 451 and 323 and that Motiya Under Section 451, IPC are maintained, but the sentence is set aside. They are directed to be released on probation for one year on condition that each of them furnishes a personal bond in the sum of Rs. 5000/- with one surety of the like amount to the satisfaction of the trial Court undertaking to be of good behaviour and keep peace and to appear to undergo sentence, if called upon to do so within the said period of one year. The appellants are given four weeks time to furnish bail bonds before the trial Court. It is further directed that the appellant Roopeng shall pay Rs. 10,000/- as compensation to the L.Rs. of Chimna s/o Moghji. The amount be deposited within four weeks, failing which the trial Court shall take steps for the recovery of the amount. On depositing the amount, the same shall be paid to the L.Rs. of Chimna s/o Moghji.