

Balu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-02-2005

Reported in : 2005CriLJ4715; 2004(3)WLC35

Judge : Satya Prakash Pathak, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 304, 313 and 374(2);
;Probation of Offenders Act - Sections 4; ;[Indian Penal Code \(IPC\), 1860](#) -
Sections 34, 142, 149, 448, 449, 302, 304, 324 and 325

Appeal No. : Criminal Appeal No. 685 of 2003

Appellant : Balu

Respondent : State of Rajasthan

Advocate for Def. : O.P. Rathi, Public Prosecutor

Judgement :

Satya Prakash Pathak, J.

1. This criminal appeal under Section 374(2), Cr. P.C. is filed against the judgment and order dated 18-6-2003 passed by Addl. Sessions Judge No. 2, Chittorgarh in Sessions Case No. 31 /2002, State v. Balu, whereby the accused-appellant has been convicted under Section 304, Pt. II, IPC and sentenced to 7 years' rigorous imprisonment and a fine of Rs. 500/-, in default thereof to further suffer one

month's simple imprisonment.

2. Briefly stated, the facts giving rise to the present case are that on 30-3-2002 complainant-Ladu (P.W. 2) present at Parsoli Hospital gave oral information to the SHO, Police Station Parsoli to the effect that in the evening at 7 p.m. when he came at his house, he found Badri, Gokal, Balu, Kana, Bhagwana, Bhona alias Mukesh and Smt. Dali sitting in front of his house under a tree abusing his family members, who on his brother Kalu's asking not to do so, connived with each other and in order to kill him entered in the house unauthorizedly and started beating him by fists and kicks. On his intervention, Kana threw a stone on him also. Balu twisted the neck of his brother and on his crying when uncle Janu came running, Bhagwana threw a stone on his face. As the condition of Kalu became precarious, Bheru brought him to the Parsoli Hospital on motor cycle but before reaching the hospital he died. He further stated that there is an old enmity between his brother and the accused persons regarding some land and that is why the accused after conniving entered in the house unauthorizedly, gave beating to Kalu and by twisting his neck murdered him.

3. On this report, a case under Sections 142, 449, 302, 149, IPC was registered and first information report was chalked out. The police inspected the site and prepared site-plan and site-inspection Memos. Panchayathnama of dead body was prepared and the post-mortem of the dead body was got done. The dead body after post-mortem was handed over to the heirs for cremation. Complainant Ladu and Janu alias Jankilal were medically examined and the statements of witnesses were recorded. The accused persons were arrested and after necessary investigation finding offence proved against accused Balu, Badri, Gokal, Kanlal, Bhagwanlal, Bhuna alias Mukesh and Smt. Dali, challan under Sections 147, 448, 302/149, IPC was submitted before the Judicial Magistrate, Begun and on committal the case came up for trial to the Court of Addl. Sessions Judge No. 2, Chittorgarh.

4. The learned trial Court framed charges against accused-appellant under Sections. 147, 448 and 302 or 302/149, IPC. Accused denied the charges framed against them and claimed trial.

5. The prosecution in support of its case examined as many as 12 witnesses and rendered several documents in evidence. The accused in their statements under Section 313, Cr. P.C. denied the prosecution version and claimed themselves to be innocent. They stated that they have been falsely implicated in the case. In defence, they examined D.W. 1 Salvi and D.W. 2 Kana Bairwa and in documentary evidence exhibited six documents.

6. The learned trial Court after hearing both sides, convicted and sentenced the accused-appellant as stated hereinabove.

7. Aggrieved by the aforesaid judgment and order dated 18-6-2003 passed by Addl. Sessions Judge No. 2, Chittorgarh in Sessions Case No. 31/2002, State v. Balu, the present appeal has been filed.

8. I have heard learned Counsel for the accused-appellant as well as learned Public Prosecutor and carefully examined the material available on record.

9. Learned counsel for accused-appellant contended that in this case there is no reliable evidence on record to prove the charges beyond reasonable doubt as no evidence has come on record to bring home the guilt against the accused-appellant. According to him the judgment of conviction and order of sentence suffers from material infirmities and the learned trial Court has committed error in convicting and sentencing the accused-appellant. It was further contended that the prosecution witnesses P.W. 2, P.W. 6, P.W. 7 and P.W. 11 belong to the very same family and they are interested witnesses whose testimony is not free from infirmities, therefore, no reliance can be placed on their evidence which has not been corroborated by any independent witness. He also contended that non-explanation of the injuries on the person of the accused- . persons is fatal to the prosecution case rather the complainant party has not come with clean hands. In the last, he submitted that the present case is of sudden quarrel and even assuming the prosecution evidence to be true, the offence does not travel beyond Section 325, IPC, Learned counsel prayed that in the interest of justice the sentence awarded to the accused-appellant may be reduced to the period already undergone. In support, he has relied on the decisions of this Court passed in Samunder Singh v. State, (2002) 2 Cri LR (Raj) 1125 and Kanhaiya Lal v. State of

Rajasthan, 1996 Cri LR (Raj) 67.

10. On the other hand, learned Public Prosecutor has supported the judgment and order passed by the learned trial Judge.

11. I have considered the rival submissions made before me.

12. In this case the main contentions raised before me are: firstly, that the prosecution was not able to prove its case against the accused-appellant, and secondly that even if the case is considered to be proved then too the present case is one in which conviction was required to be recorded under Section 325, IPC. The learned Counsel in fact not pressed the first contention and submitted that in view of the evidence led and the injuries sustained, the conviction was required to be recorded under Section 325 of the IPC.

13. It appears, it shall be necessary to examine, in brief, the evidence led by the prosecution in this case.

14. P.W. 1 Hema, P.W. 3 Bhawanlal Bairwa and P.W. 5 Bheru have been examined by the prosecution in relation to Panchayatnama Ex. P. 1 of the dead body of deceased-Kalu, memo on the Fard under which the dead body was handed over to the father of the deceased Ex. P/2, and in relation to site plan Ex. P/4. P.W. 6 Nathu has been declared hostile and has not supported the prosecution case. P.W. 2 Ladu is the star witness of the prosecution who has stated that on the day of incident when he came from his well with a parcel of Jeera (Jeere ki Ganth) in the evening at about 7 p.m. and while entering the house he found the accused persons sitting outside the house abusing his family members. His brother Kalu, who was inside the house, came out and forbade the accused and said not to abuse them. Accused thereafter entered in the gate of the house and started beating his brother by legs and fists. Accused Balu twisted the neck of Kalu, who subsequently died while taking to the hospital. He has also stated that Bhagwana, one of the accused, also inflicted a stone injury on the person of Kalu. He also stated that he was also beaten by the accused persons. His oral information was recorded in the hospital by the police persons who had come to the hospital. He has also stated that he was medically examined and Kalu

was declared dead in the hospital. He has also stated that there was no reason for quarrel. In the cross-examination, he has stated that Balu had twisted the neck of his brother Kalu and when he came at the spot, Balu had twisted the neck of Kalu and before that nobody did 'Marpeet' with them. He has also admitted that accused and the complainants are cousins in relation and there is no dispute of any sort between them.

15. The another eye-witness of the incident is P.W. 6 Naru. He has stated that he does not know as to who had twisted the neck of deceased-Kalu. He simply states that accused persons on the day of incident gave beating to Kalu. In the cross-examination, he has stated that accused and the complainant are cousins and he is also in their relation. In the cross-examination he has also stated that he came out of the house after hearing the cry. He has further admitted this fact that this is correct to say that when he reached at the spot, the accused persons were running from that place and who were present there, he does not know.

16. P.W. 7 Janu is the uncle of the deceased. He has stated that when the accused persons were abusing the family members of the complainant party he was sitting on a Chabootra outside the house with his brother Bheru and the deceased-Kalu who was inside the gate of his house was given beatings by all the accused persons. In their cross-examination this witness has stated that he was caught hold by accused Badri, Gokal, Balu, Kana and Dali and as such he could not go at the spot where the incident had taken place. He has admitted that he does not know as to who had inflicted injury to the deceased.

17. P.W. 8 in his cross-examination has also stated that he does not know as to who had twisted the neck of Kalu. He has also admitted that accused and the complainant are cousins.

18. P.W. 10 Dr. Riyaz Mohd. has conducted post-mortem on the dead body of the deceased and found the following injuries :

1. Abrasion 2 cm x 2 cm on both toes.
2. Bruise over left hypochondrium 7 cm x 7 cm.

3. Bruise over right hypochondrium 3 cm x 3 cm.
4. Two bruise over left side of neck oval shaped, 2 cm each obliquely downwards.
5. Laceration of right lobe of liver 8 cm x 2 cm x 3 cm -- grievous injury.
6. Laceration of spleen 5 cm x 1 cm x 2 cm -- grievous injury.

This witness has proved Ex. P/8 the Postmortem Report. The cause of death according to this witness was laceration of liver and spleen which led to severe blood loss and dislocation of atlanto axial joint leading to respiratory arrest and death. He has also examined Ladu, Gokal s/o Rukma, Balu s/o Ugma, Badri and Kana and has proved the Injury Reports Ex. P/5, Ex. D/2, Ex. D/3 & Ex. D/4. Injury Report Ex. P/5 is in relation to Ladu, who sustained bruise of 4 cm x 2 cm size on left shoulder region and abrasion 2 cm x 0.5 cm with swelling in 3 cm x 3 cm area. Ex. D/2 shows abrasion injury to Gokal in 2 cm x 2 cm size caused by blunt weapon on the hip joint while Ex. D/3 in respect of Badri shows abrasion injury of 4 cm x 4 cm size on the left side of neck and Ex. D/4 the report in respect of Kana shows abrasion injury on him of 2 cm x 1 cm size caused by blunt weapon on his left forearm. In the cross-examination, the witness stated that on account of rupture of 9th and 10th ribs liver and spleen may puncture. The witness has further stated that a fall from 20 ft. height may also result in fracture of ribs.

19. P.W. 12 Abdul Rehman is Sub-Inspector of Police, who has conducted investigation in the matter. This witness has stated that a telephonic message was received in the police station to the effect that a quarrel took place in the colony of scheduled castes and the injured who was taken to Parsoli Hospital died there. He has further stated that he reached the hospital and there P.W. 2 Ladu gave oral information and on that basis the first information report was chalked out and investigation was done by him. He has stated that the accused persons were arrested, necessary memos were prepared and the post-mortem of the dead body was got done.

20. The evidence discussed above indicates that except P.W. 2 no eye-witness has specifically stated about specific role of the accused persons. P.W. 2 Ladu

has stated that Balu had twisted the neck of the deceased. This has also come in evidence that the incident occurred suddenly as the accused persons were abusing. It has also come on record that there was no enmity between the parties. If that is so, then it can be said that there is nothing on record to show that the intention of the appellants was to cause death of deceased-Kalu or to cause such bodily injury which was likely to cause his death.

21. The evidence of P.W. 10 Dr. Riyaz Mohd. also suggests the possibility that on account of fall from a height the ribs could be fractured and that may be the result of rupture of spleen and liver. The accused persons also sustained simple injuries as has been proved by this witness.

22. It shall be relevant to mention here that the learned trial Court has acquitted all the accused persons of the charge under Section 302 or Section 302 read with Section 149 of IPC. The accused-appellant has been convicted under Section 304, Part II, IPC and sentenced as stated above while the rest of the accused namely Badri, Gokal, Kana, Bhagwana, Bhona and Smt. Dali who have been convicted under Section 448, IPC, have been given benefit under Section 4 of the Probation of Offenders Act and ordered to maintain peace for a period of one year. Thus, in the present case when no challenge has been made in relation to acquittal of the rest of the accused persons under Section 302 or Section 302 read with Section 149, IPC, it is to be seen as to whether conviction under Section 304, Part II passed against accused-appellant is liable to be maintained or not.

23. As discussed above, it appears that no specific role has been assigned in this case to accused Balu by the eye-witnesses except P.W. 2 Ladu in relation to twisting of neck and there appears nothing on record to show that accused had any intention to cause death of deceased-Kalu or to cause such bodily injury which was likely to cause his death. In such circumstances, in my view, the judgment of conviction recorded under Section 304, Part II, IPC against accused-appellant deserves to be set aside. My this view is supported by the decision of this Court given in *Samunder Singh v. State* (2002) 2 Cri LR (Raj) 1125 which was a case wherein it was found that the accused-appellant had no intention to kill the deceased and the incident had taken place after an altercation between accused

and the deceased. In that case the conviction of the accused was altered from Section 302 & 304/34 to one under Section 325, IPC.

24. In the other case of Kanhaiyalal v. State of Rajasthan, 1996 Cri LR (Raj) 67 cited by learned Counsel, the Hon'ble Division Bench of this Court finding that the evidence brought on record did not show that the accused wanted to kill or give blows which were likely to cause death, held the accused guilty under Section 325/34 instead under Sections. 302 or 324, 325/34, IPC and reduced their sentence to the period already undergone.

25. In view of above discussion, the appeal of the appellant deserves to be allowed and while setting aside his conviction recorded under Section 304, Part II, IPC he is required to be convicted under Section 325, IPC.

26. The accused-appellant during the course of trial and pendency of appeal has remained in custody for about a period of 2 years 7 months. In my humble view, the ends of justice would meet if the accused-appellant while convicting under Section 325, IPC is sentenced to the period of imprisonment already suffered and a fine of Rs. 5,000/- is imposed on him.

27. In the result, I allow this appeal in part and while setting aside the conviction and sentence of accused-appellant under Section 304, Part II, IPC, convict him under Section 325, IPC and sentenced him to the period of imprisonment already suffered with a fine of Rs. 5,000/-. The amount of fine on realization shall be paid to the legal heirs of deceased-Kalu.

28. Accused is in jail. On depositing the amount of fine in the trial Court, release order may be issued forthwith. The accused be released thereafter, if not required in any other case.