

Ranjit and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-11-2005

Reported in : RLW2006(1)Raj29; 2005(4)WLC754

Judge : Shiv Kumar Sharma and; Jitendra Ray Goyal, JJ.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149, 300, 302, 304, 307, 323, 324, 325 and 447; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 384 of 2002

Appellant : Ranjit and ors.

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : S.R. Bajwa, Adv. and; V.R. Bajwa, Sr. Adv.

Judgement :

Shiv Kumar Sharma J.

1. In this appeal, preferred by eleven appellants judgment dated March 20, 2002 of the learned Additional Sessions Judge Kekri (Ajmer) is under challenge whereby the appellants have been convicted and sentenced as under:

Ranjit:

Under Section 302 IPC:

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

Under Section 147 & 148 IPC:
To suffer simple imprisonment for one year and fine of Rs. 100/- in default to further suffer fifteen days simple imprisonment.

Under Section 447 IPC:
To suffer simple imprisonment for one month and fine of Rs. 50/- in default to further suffer seven days simple imprisonment.

Under Section 325/149 IPC:
To suffer rigorous imprisonment for two years and fine of Rs. 200/-, in default to further suffer one month simple imprisonment.

Under Section 324/149 IPC:
To suffer simple imprisonment for one year and fine of Rs. 100/- in default to further suffer fifteen days simple imprisonment.
Under Section 323/149 IPC:
To suffer simple imprisonment for three months and fine of Rs. 100/-, in default to further suffer fifteen days simple imprisonment.

(1) Raju @ Rajmal, (2) Ramnath @ Sunda, (3) Mukesh, (4) Gheesa, (5) Smt. Phooli, (6) Smt. Deu @ Devli, (7) Suraj Karan (8) Jagdish, (9) Kaluand (10) Norat:

Under Section 302/149 IPC:

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

Under Section 447 IPC:
Each to suffer simple imprisonment for one month and fine of Rs. 50/- in default to further suffer seven days simple imprisonment.

Under Section 325/149 IPC:
Each to suffer rigorous imprisonment for two years and fine of Rs. 200/-, in default to further suffer one month simple imprisonment.

Under Section 324/149 IPC:
Each to suffer simple imprisonment for one year and fine of Rs. 100/- in default to further suffer fifteen days simple imprisonment.
Under Section 323/149 IPC:
Each to suffer simple imprisonment for three months and fine of Rs. 100/-, in default to further suffer fifteen days simple imprisonment.

Substantive sentences were directed to run concurrently.

2. As per the prosecution story on July 17,1997 Jaipal Singh, SHOPS Bhinai (PW. 29) recorded parcha bayan of Chandu (PW. 1) wherein he stated that on that day around 9.00 AM he along with his brother Magna (since deceased) and another brother Moola (PW. 3) had gone to their field for the purpose of sowing pulses. His wife Rukma (PW. 5) and Ratni (PW. 4) wife of Magna were also there. When they were about to commence sowing, the appellants accompanied by four more persons attacked them with axes, sticks and spades. Ranjit gave axe blow on the head of Magna, whereas other assailants assaulted the remaining members of the family. Babu Lal (PW. 2), Gopal (PW. 7) and Bajrang (PW. 8) had also arrived at the spot and witnessed the assault. The injured persons were thereafter taken to Government Hospital Bhinai where statement of Chandu (Ex.P.I) was recorded, on the basis of which a case under Sections 147, 148, 149, 307, 323 and 447 IPC was registered and investigation commenced. During the course of investigation the injured Magna succumbed to his injuries and offence under Section 302 IPC was further added. After usual investigation charge sheet was filed and in due course the case came up for trial before the Learned Additional Sessions Judge Kekri District Ajmer. Charges under Sections 147, 148, 302, 302/149, 323/149, 324/149, 325/149 and 447 IPC were framed against the appellants who denied charges and claimed trial. The prosecution in support of its case examined as many as 30 witnesses. In the statement under Section 313 Cr.P.C, the appellants claimed innocence. No witness in defence was however examined. Learned Additional Sessions Judge vide impugned judgment convicted and sentenced the appellant as indicated herein above.

3. Before adverting to the contentions canvassed at the bar, it will be useful to consider the medical evidence adduced at the trial. Dr. Sharad Mathur (PW. 26), who performed autopsy on the dead body of Magna, incorporated in the postmortem report (Ex.P.43) following ante mortem injuries:

1. Incised Wound 5 cm x 1 cm x bone deep on occipital region of scalp.

2. Abrasion 2 cm x 0.5 cm below back of right elbow.

The cause of death was coma as a result of head injury caused by sharp edged weapon.

4. The injuries sustained by other members of the complainant party viz. Rukma (PW. 5), Chandu (PW. 1), Moola (PW. 3) and Ratni (PW. 4) were also examined. The details of which are as under:

Rukma vide injury report (Ex.P.38):

1. Abrasion 1 cm x 0.5 cm on left side of forehead
2. Incised wound 5 cm x 1cm x bone deep on right thumb distal phelenx
3. Incised wound 3cm x 0.5 cm x skin deep on middle finger right hand.
4. Incised wound 1.5 cm x 0.5 x skin deep on right ring finger distal phelenx.
5. Contusion of diffuse swelling 3cm x 3 cm on lower hand right forearm.
6. Contusion (two in number) 10cm x 5 cm on upper part of left arm.

Chandu vide injury report (Ex.P.39):

1. Lacerated wound 3 cmx 1 cm x skin deep on right parietal region of scalp.
2. Contusion with diffuse swelling 5 cm x 5cm on left forearm lower third.
3. Abrasion 2 cm x 0.5 cm on middle of back of chest.
4. Abrasion 2 cm x 1 cm on lower part of middle of back of abdomen.
5. Contusion 2 cm x 0.5 cm on middle of left leg anteriorly.

Moola vide injury report (Ex.P.40):

1. Lacerated wound 4cm x 1cm on right parietal region of scalp.
2. Incised wound 1.5 cm x 0.5 cm x skin deep on right thumb distal phelenx.
3. diffuse swelling tender 5 cm x 5cm on dorsum of right hand.

4. Contusion 4 cm x 0.5 cm on right side of chest lower part.
5. Abrasion 6cm x 5 cm on left thigh posterior
6. Contusion 2 cm x .5 cm on upper part of lt. leg posterior.

Smt. Ratni vide injury report (Ex.P.42):

1. Lacerated wound 1.5 x 0.5 cm x skin deep on middle of left arm laterally.

C/o pain right arm right side of chest.

5. Learned Senior counsel for the appellants canvassed that the witnesses are close relatives of the deceased and they are highly interested witnesses. There are contradictions in the statements of witnesses. Babu Lal (PW. 2) is a chance witness. Further Babu Lal ha'd attributed the head injury of deceased to Ranjit and Suraj Karan whereas there was only one injury on the head of deceased. The independent witnesses Gopal (PW. 7) and Bajrang (PW. 8) have not supported the prosecution case and were declared hostile. Ocular evidence is not corroborated with the site plan. It is further urged that the prosecution has failed to prove that the land on which the assault is reported to have taken place was in peaceful possession of the complainant party. Even from the evidence of Sheo Ram Patwari (PW. 28) it could not be established that the place of assault was in the possession of the complainant party. Per contra learned public prosecutor supported the impugned judgment and urged not to interfere with the finding arrived at by the learned trial judge. We have pondered over the submissions and scanned the record.

6. The structure of the prosecution case is founded on the testimony of eye witnesses Chandu (PW. 1) Babu Lal (PW. 2), Moola (PW. 3), Smt. Ratni (PW. 4), Smt. Rukma (PW. 5) and Hanuman (PW. 6). Having closely looked their testimony we noticed that Chandu, Moola, Ratni and Rukma, who are near relatives of the deceased, have freely indulged in making improvements upon their earlier version. Gopal (PW. 7) and Bajrang (PW. 8) are the only independent witnesses examined by the prosecution but both of them turned hostile. Medical evidence appearing in the form of Ex.P.38 to Ex.P.43 falsifies the description of assault given by eye

witnesses. Chandu (PW. 1) in his cross examination admitted that field of appellant Raju situated near his field. Babu Lal (PW. 2) also deposed that when Chandu, Magna, Moola, Rukma and Ratni were about to commence sowing, the appellants asked them to wait till the land was measured by Patwari. Similar deposition was made by Moola (PW, 3) and Ratni (PW. 4). As per site plan (Ex.P.9), agricultural lands bearing Khasra Nos. 1714, 1715 and 1717 were owned and possessed by appellant Raju and these lands situated just adjacent to the land bearing khasra No. 1716 where the incident occurred. A perusal of the statement of Dr. Sharad Mathur (PW. 26), who examined Magna just after he was admitted to Hospital. Magna vide injury report (Ex.P.41) had sustained one incised wound on the head. In his cross examination Dr. Sharad Mathur stated that had Magna been given proper treatment, his life could have been saved.

7. Factual situation of the case may deduced thus:

(i) Single injury sustained by the deceased on the head has been attributed to appellant Ranjit. Nature of injury, according to medical evidence was such that the deceased could have been saved if proper treatment would available.

(ii) Agricultural land bearing khasra No. 1716 where the incident had been taken place is adjacent to the lands bearing Nos. 1714, 1715 and 1714 owned and possessed by appellant Raju.

(iii) When the deceased and members of his family were about to commence sowing, they were asked by the appellants to wait till the land was measured by the Patwari.

(iv) The occurrence took place without pre meditation in a sudden fight, in the heat of passion without taking undue advantage.

(v) There was no enmity between the complainant party and the accused party.

(vi) The appellants neither formed unlawful assembly nor they shared common object to commit offence.

8. It is too well settled that in a case of sudden quarrel when there is no enmity and if injuries are caused at the spur of moment and no undue advantage of the situation is taken, the offence would fall within Exception 4 to Section 300 IPC. In the instant case it appears that verbal altercation ensued between the two adjacent land holders. On one side was Magna and accused appellant Ranjit on the other. In the course of that verbal altercation Ranjeet gave one blow with axe on the head of Magna, no second blow was given to the victim. It could not be established that the appellants had come together in furtherance of a common intention to kill the deceased in order to pay off old scores. The evidence did not rule out the possibility of an accidental blow given in the heat of passion. In such a situation clause thirdly of Section 300 IPC is not attracted. But at the same time when Ranjit struck the deceased with the axe, he must have known that the blow dealt on a vulnerable part of human body was likely to result in his death. In these circumstances it would be quite legitimate to hold that Ranjit struck the deceased with the axe with the intention to cause an injury likely to cause death. Therefore the offence would fall under Section 304 Part IPC.

9. So far as allegations against other appellants are concerned we are of the view that the prosecution has established charges under Sections 324 and 447 IPC against appellants Gheesa Lal, Smt. Phooli and Smt. Deu @ Devli and under Sections 323 and 447 IPC against appellants Suraj Karan and Kalu, Charges levelled against appellants Raju @ Rajmal, Ramnath @ Sunda, Mukesh, Jagdish and Norat however could not be established beyond reasonable doubt.

10. As a result of the above discussion, we dispose of the instant appeal in the following terms:

(i) Appeal of appellants Raju @ Rajmal, (2) Ramnath @ Sunda, (3) Mukesh, (4) Jagdish and (5) Norat is allowed and they stand acquitted of the charges under Sections 147, 148, 302/149, 325/149, 324/149 and 323/149 IPC. They are on bail, they need not surrender and their bail bonds stand discharged.

(ii) Appeal of appellants (1) Gheesa Lal, (2) Smt. Phooli, (3) Smt. Deu @ Devli, (4) Suraj Karan and (5) Kalu is partly allowed and they acquitted of the charges under Sections 147, 148, 302/149 and 325/149 IPC. We, however, convict the appellants

Gheesa Lal, Smt. Phooli and Smt. Deu @ Devli under Sections 447 & 324 IPC and appellants. Suraj Karan and Kalu under Sections 447 & 323 IPC and sentence each of them to the period already undergone by them in confinement. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(iii) Appeal of appellant Ranjit stands partly allowed and instead of 302 IPC we convict him under Section 304 Part I IPC and sentence him to suffer seven years' rigorous imprisonment. He shall also pay fine of Rs. 10,000/- which shall be paid to Smt. Ratni, widow of deceased Magna. In default of payment of fine the appellant Ranjit shall have to further suffer rigorous imprisonment of two years.

Appellant Ranjit also stands convicted under Section 325 IPC and sentenced to suffer five years rigorous imprisonment and fine or Rs. 1000/- in default to further suffer six months simple imprisonment. We also convict the appellant Ranjit under Section 447 IPC and sentence him to suffer six months simple imprisonment.

All sentences shall run concurrently. The period for which appellant Ranjit remained in custody during trial shall also be counted.

(iv) The impugned judgment of the learned trial judge stands modified as indicated above.