

Bhagirath Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-21-1989

Reported in : 1989(2)WLN253

Judge : A.K. Mathur and; R.S. Verma, JJ.

Appeal No. : D.B. Cr. Appeal Nos. 375 and 382 of 1983

Appellant : Bhagirath

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Garg

Judgement :

A.K. Mathur, J.

1. Both these appeal arise out of the same judgment dated 12-9-1983 passed by the learned Sessions Judge, Balotra. The appeal No. 375/1983 was filed in representative capacity and another appeal No. 382/ 1983 was filed by the appellant from jail. Both these appeals are disposed of by this common order.

2. The Brief facts giving rise to these appeals are that a first information report was lodged by one Mala Ram Sarpanch. Gram Panchayat, Doli on 14 12-1982 at 8 30 p.m. at Police Station, Mandi. It was stated there in that on 14-12-1982 at about 4 or 5 p m. when he went to the bus stand for going for his domestic work to village

Dhawa and at the bus stand in front of the stop of Baboo Nai the accused appellant Bhagirath son of Peera Ram resident of Doli gave beating to Lumba on account of enmity. On that place Bhanwariya, Gokaliya, Ghewariya, Narpat Singh another Ghewariya & Anand Singh Head Master were present and tried to intervene but since the accused appellant Bhagirath was armed with a knife they withdrew themselves from that place and thereafter Bhagirath gave 3 knife blows on scapular region, back and neck of Lumba. As a result of these injuries he fell down & became unconscious. His condition was said to be serious, & he was bleeding profusely. Gokal son of Chokha, Chhoga son of Khema, Jairam and some other person took the injured in a motor for treatment to Hospital at Jodhpur. But after some time Lumba died and his dead body was brought back. On the basis of this information a case was registered against the accused and investigation was taken up. During the course of investigation necessary site inspection memos and other relevant documents were prepared by the police. After close of the investigation the police filed a challan against the accused appellant Bhagirath under Section 302 IPC in the Munsif Magistrate court. The learned Magistrate ultimately committed the accused to the Court of Sessions for trial.

3. The prosecution in support of its case examined about 14 witnesses and out of that PW 4 Bhanwaria, PW 8 Gokal, PW 8 Ghewarram Acharya, PW 7 Malaram, PW 13 Ghewarram Bishnoi and PW 14 Narpatsingh were said to be the eye-witnesses of the incident. The learned Sessions Judge after due trial convicted the accused appellant Bhagirath under Section 302 and sentenced him to imprisonment for life with fine of Rs. 500/- and default of payment of fine further undergo 3 months' rigorous imprisonment.

4. We have heard the learned Counsel for the appellant and the learned Public Prosecutor as well as Mohanani, learned Counsel appearing for the complainant.

5. Mr. Garg, learned Counsel for the appellant submitted that out of the aforesaid six eye witnesses only 4 witnesses, namely, PW 4 Bhanwaria, PW 8 Gokal, PW 3 Ghewarram and PW 13 another Ghewaria are said to be the eye-witnesses. Learned Counsel submitted that the testimony of these witnesses is not sufficient to establish the guilt of the accused as some of them are relations and they are

interested because of their relations. Learned Counsel further submitted that in the present case, the deceased has received only these injuries. Out of them, the injury No. 1 was said to be fatal. The whole incident took place on account of sudden quarrel. Therefore, the offence cannot travel beyond Section 304 Part-I, IPC.

6. The learned Public Prosecutor and Mr. Mohanani, learned Counsel appearing for the complainant have submitted that all the eye-witnesses are natural witness and there is no reason to disbelieve them, learned Counsel further submitted that so far as the conviction of the accused appellant under Section 302 IPC is concerned the same is correct as the accused appellant has inflicted 3 successive blows on the person of the deceased and there are no mitigating circumstances. Learned Counsel submitted that the act of the accused was a cruel and unusual one, and, therefore, it does not cover by exception 4 of Section 300 Cr. PC.

7. We have considered the rival submissions of the learned Counsel for the parties. PW 4 Bhanwaria who is the owner of the tea stall has deposed that on the fateful day one Narpat Singh along with deceased Lumba and Coke! were sitting at his tea stall. He further deposed that he was preparing tea for the customers. At some distance Ghewaria son of Imartaram and another Ghewarram s/o Chaturaram along with Head Master were also standing. Bhagirath and Lumba scuffle with each other, Narpat Singh and Gokal separated them. Thereafter Lumba turned back but he lost some balance. Then suddenly Bhagirath took out a knife and gave three blows on the body of the deceased Lumba. As a result of these injuries Lumba fell down and started bleeding, Thereafter Bhagirath ran away from that place on his cycle towards the village. He admitted in be cross-examination that Lumba and Head Master came to his hotel on feet and at that time Bhagirath was already sitting a his hotel No also deposed that Lumba was not armed with any lathi. To the same effect is the statement of PW 8 Gokalram. He deposed that accused Bhagirath caught hold of the neck end forced it down ward. Thereafter, fee gave these successive blows. To the same effect is the statement of (PW 3) Ghewar Ram, (PW 13) Ghewaria and (PW 14) Narpat-singh. Therefore, it is not necessary to refer to their depositions, The list of the testimony of these witnesses is that they have supported the version given out by (PW 4) Bhanwaria.

Therefore, in these circumstances, there is no reason to disbelieve the testimony of these witnesses so far as giving of beating to deceased Lumba by accused appellant Bhagirath is concerned, which ultimately resulted in death of deceased Lumba.

8. Now, the next question which has been seriously canvassed before us is that even if it is accepted that these injuries were caused by accused Bhagirath then too learned Counsel submitted that the offence cannot travel beyond Section 304 Part-I, IPC as the quarrel suddenly took place without any premeditation. As such this contingency is squarely covered by exception 4 to Section 300 IPC. In support of this contention, Mr. Garg, learned Counsel for the appellant has invited our attention to *Mishri Lal & Ram Kishan v. State of Rajasthan* 1988 RCC 211, *Ingiram and Ors. v. State of Rajasthan* 1987 RCC 235, *Murari & Girraj v. State of Rajasthan* (1986) 1 Judl. Surveyor; *Sarfulla v. State of Rajasthan* 1988 Cr. LR (Raj.) 35; *Simiya v. State of Rajasthan* 1987 Cr. LR (Raj.) 602 and *Patia and Ors. v. State of Rajasthan* 1987 Cr. LR (Raj.) 651.

9. We need not to examine all these authorities as it will depend on the facts and circumstances of each case. In the present case we are satisfied that looking to the injuries caused to the deceased the incident was not premeditated as according to the prosecution story, the accused appellant Bhagirath was sitting at the tea stall and Lumba came later on, suddenly first they scuffled and they were separated. Thereafter in the heat of passion the accused appellant Bhagirath took out his knife and gave these blows. Out of these three blows injury No. 1 was said to be dangerous to life and ultimately caused death of the deceased. The injuries received by the deceased are as follows:

(1) At 4' from Rt. shoulder joint & 5' upward from the lower pole of the Rt. scapula & 3' away from vertebral column A stab wound 1-1/4' x 3/8' x 2-1/2' looking sharp cutting edge.'

(2) At 4' from shoulder joint 3-1/4' downward from the occipital Tubercle of occipital bone of skull. A stab wound 1' x 2 3/8' 2-1/2' deep sharp cutting edge.

(3) A stab wound 2' in length x 4-1/2' wide x 2' deep, 4' upward from the Anus edge is sharp.

The incident appears to have taken place just at the hotel when the accused and the victim along with other persons comfortably sitting. Suddenly on account of some altercation a scuffle ensued between the victim and the deceased. At the heat of passion the accused took out his knife and inflicted three blows on the deceased and out of that injury No. 1 proved fatal. In these circumstances, it cannot be said that the accused intended to cause death of the deceased

10. Now, the question is whether these injuries were unusual or cruel in nature.

11. It is true that the first blow which has been inflicted on this deceased was of the dimension 1-1/4 x 3/8' x 2-1/2'. This injury ultimately proved fatal and it cannot be said that accused really caused injury on the vital part of the body. It was 4' from at, shoulder joint & 5' upward from the lower pole of the Rt. scapula & 3' away from vertebral column. Therefore, this injury is not on any vital part of the body. It appears that the accused suddenly took out the knife and rushed to cause the injuries to the deceased. But by accident it appears that the blow fell on the scapular region and which resulted in haemorrhage and ultimately caused death of the deceased. Therefore, neither this injury is said to be unusual or cruel because the injury was inflicted on account of sudden scuffle on the spot. Therefore, in these circumstances, the injury was not unusual or cruel and squarely comes within the purview of exception 4 to Section 300 IPC

12. In these circumstances, we are inclined to convert the conviction of the accused appellant from the one under Section 302, IPC to that under Section 304 Part-1, IPC and sentence the accused appellant to imprisonment for 10 years.

13. The appeal is allowed in part, as indicated above.