

Narain and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-05-2005

Reported in : RLW2006(1)Raj429

Judge : Khem Chand Sharma, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307, 323, 325, 379 and 447; Code of Criminal Procedure (CrPC) - Sections 374 and 394; ;[Probation of Offenders Act, 1958](#) - Sections 4

Appeal No. : S.B. Criminal Appeal No. 244 of 1984

Appellant : Narain and ors.

Respondent : State of Rajasthan

Advocate for Def. : Nirmala Sharma, Public Prosecutor

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

Judgement :

Khem Chand Sharma, J.

1. This appeal under Section 374 Cr.P.C. arises out of the judgment and order dated 25.5.1984, by which the learned trial Court has convicted appellant Jagdish for offence under Section 307, 447, 323 and 325/34 IPC. The remaining appellants,

namely Narain Singh, Kanwar Pal and Gurudayal have been convicted for offence under Sections 307/34, 325/34, 447 and 323 IPC. The maximum term of sentence awarded to each of the appellants is two years.

2. On 1.11.1982, an FIR came to be registered on the basis of Parcha Bayan of one Dhan Singh. It was alleged that on the day of incident at about 3 PM when Lallu Ram was collecting 'Guwar fodder', accused Jagdish and Kanwarpal lifted the fodder and placed it before their goats. Lallu Ram asked them not to do so. In the meantime, injured Moharpal also came at the spot along with his cart. Accused jagdish and Kanwarpal started be labouring Lallu Ram by lathis. It was alleged that Moharpal and two accused namely Narain and Gurudayal also came at the field of Lallu Ram. When Moharpal tried to rescue Lallu Ram, the accused persons started beating Moharpal by lathis. The informant tried to settle the dispute, but he was also threatened and the inflicted a lathi blow on the head of Moharpal with an intention to kill him, as a result thereof, Moharpal fell down and thereafter accused Narain, Kanwarpal and Gurudayal inflicted blows on the person of Moharpal and Lallu Ram. As a result of injuries having been caused to Moharpal and Lallu Ram both became unconscious. In the meantime, Devilal and Dhan Singh arrived at the place of occurrence and then all the accused escaped from the scene.

3. Having registered a case for offence under Sections 325, 307, 323, 379/34 IPC, the police proceeded with the investigation. On completion of investigation, the police filed a charge-sheet against the accused in the Court of Judicial Magistrate, who, in turn committed the case to the Court of Sessions.

4. At the conclusion of trial, the learned trial court found the accused appellants guilty and accordingly convicted and sentenced them in the manner stated hereinabove. Hence, the present appeal against conviction.

5. At the very outset, it may be stated that during pendency of appeal, accused appellant Jagdish has passed away as it evident from the endorsement made on the back of the notice issued to him in compliance of the order of this Court dated 24.4.2003. It appears that Sarpanch of Gram Panchayat Hasanpur Mafi has certified that accused jagdish S/o Nathi Ram, resident of village Kalilpur, P.S. Tijara has died 4-5 years back. Since, appellant Jagdish has died and none of his

legal representatives has filed any application to continue with the appeal, as required by the provisions of Section 394 Cr.P.C, the appeal against deceased Jagdish stands abetted.

6. I have heard argument of learned Counsel for the parties for remaining 3 accused appellants and have gone through the judgment under challenge and the evidence available on record.

7. PW-1 injured Mohar Pal has deposed that when he went to the rescue of Lallu, the accused be laboured him. He then categorically stated that accused Jagdish inflicted a lathi blow on his head, as a result of which he fell down and thereafter all the accused be laboured him. In cross-examination, this witness has stated that accused persons did not beat Sohan and Dhan Singh, he then stated that on their request, the accused spared them. PW-2 Lallu Ram has stated that on his arrival at his field he saw accused Jagdish and Kanwar Lal thrusting his harvested 'Guwar fodder' to their cattle. When he raised a protest and tried to drive away the cattle, they started beating him. According to this witness, both the accused were armed with lathis, he then stated that in the meantime, accused Narain and Gurudayal armed with lathis also came there. In cross- examination, in reply to a question put to him, the witness stated that his brother and remaining two accused came together at the place of incident. PW-2 Dhan Singh has also given somewhat similar statement. According to this witness accused Gurudayal and Narain came later. PW-4 Devi Singh has deposed that accused Jagdish, since deceased inflicted a lathi blow on the head of Moharpal and thereafter all the accused be laboured Moharpal.

8. From the evidence discussed above, it becomes crystal clear that 'Guwar fodder' was lying harvested at the field of complainant party. When two accused persons, namely Jagdish and Kanwarpal started grazing their cattle and PW-2 Lallu Ram asked them not to do so, they started beating Lallu Ram. When PW-1 Moharpal came to the rescue of Lallu Ram, the accused did not spare him. It further become clear that two accused namely, Narain and Gurudayal came later. Evidently thus, the incident took place at the spur of moment and it was accused Jagdish only, who inflicted a lathi blow on the head of PW-1 Moharpal. None of the

prosecution witnesses has stated that remaining three accused inflicted lathi blow on the head of Moharpal. PW-6, Dr. R.K. Malik who examined the injuries of Moharpal has stated that there were five injuries on his person and injury No. 1 was grievous in nature and rest of the injuries were simple. The facts and circumstances of the case and the evidence available on record do not constitute the intention or knowledge of the accused persons for committing the murder or doing of an act towards it. As stated above, undisputedly, the incident took place at the spur of moment on a very petty matter. The accused when started grazing their cattle at the field of the complainant, the members of the complainant party objected to it and on being objected, two accused already present there did 'marpeet' and other two accused came later and they also be laboured the members of complainant side. Thus, it cannot at all be said that there was premeditation or planning of attack or that the accused shared common intention. In the circumstances, therefore, the conviction of the appellants under Section 307/34 IPC cannot be sustained and is liable to be set aside.

9. So far as conviction of appellants under Sections 325/34, 323 and 447, IPC is concerned, suffice it to observed that the learned trial judge has appreciated the evidence in true perspective and has rightly convicted and sentenced the appellants. The conviction of appellants, Narain, Kanwarpal and Gurudayal for offence under Sections 325/34, 323 and 447 IPC, therefore, deserves to be maintained.

10. On the question of sentence, learned Counsel appearing for the appellants has vehemently argued that the appellants are not the habitual offender and that it was their first offence and they have been facing prosecution for last more than 23 years. On this strength learned Counsel submitted that keeping in view the facts and circumstances of the case and the manner in which the incident took place, the appellants may be given the benefit of Probation of Offenders Act.

11. I have considered the above submissions. Taking into consideration the facts and circumstances of the case, including the nature of the offence and the character of the offenders, as also the fact that accused have been facing prosecution for last more than 23 years and that they have no criminal back-

ground, I consider it expedient to extend the benefit of Section 4 of the Probation of Offenders Act to appellants Narain Singh Kanwarpal and Gurudayal.

12. Recently, this appeal is partly allowed. The conviction of the appellants Narain Singh, Kanwarpal and Gurudayal under Section 307/34 IPC and the sentence awarded thereunder are set aside. Their conviction under Section 325/34, 323 and 447 IPC is maintained. Instead sentencing them at once, they are extended the benefit of Section 4 of the Probation of Offenders Act, on their furnishing personal bond of Rs. 5000/- with surety bond in the like amount for keeping peace and be of a good behaviour during the period of one year. The bonds shall be executed within a period of one month.

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