

Krishan and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-27-1989

Reported in : 1989(2)WLN306

Judge : K. Bhatnagar and; A.K. Mathur, JJ.

Appeal No. : D.B. Cr. Appeal No. 1101 of 1986

Appellant : Krishan and ors.

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Kharalia

Judgement :

A.K. Mathur, J.

1. This is an appeal directed against the judgment of the learned Additional District & Sessions Judge, Hanumangarh dated 4th March, 1986, by which the learned Judge has convicted the accused Krishan, Mithusingh and Dungarram under Section 302 read with Section 341 IPC and sentence to them life imprisonment with a fine of Rs 2000/-, in default of payment of fine to further undergo one year's RI.

2. Brief facts which are necessary for the disposal of this appeal are that on 9th October, 1982, Vali Mohd. son of complainant Mst. Rahmatbibi went to fetch bidi

bundle from the shop of Asharam Meghwal. On the way Vali Mohd. was way laid all the three accused persons. It is alleged that Mithusingh was armed with Gandasa, Dungar Ram was armed with Lathi and Krishan was armed with a Gandasa Shokat the younger brother of Vali Mohd. was also playing around the temple near the scene of the occurrence. When he saw that his brother was being belaboured by the accused persons, he immediately lushed to the house and informed his mother Mst. Rahmatbibi about the beating of these accused person There after Mst Rahmatbibi along with her two daughters and son Shokat immediately rushed on the scene of the occurrence. It is alleged that at that time they saw Vali Mohd. was being belaboured by the accused persons. Complainant Rahmatbibi and her son Shokat raised alarm that as a result of which the accused persons withdraw from that place. Hansraj and Maniram ran away from that place. It is alleged that at the time of the beating Hansraj and Maniram were present on the scene. First Information Report of this incident was filed by Rahmatbibi; on 9th of March, 1982 at 8 a.m. at Police Station, Hanumangarh Junction. On the basis of this report a case under Section 307 read with Section 34, IPC was registered. That injured Vali Mohd. was taken to the hospital. Thereafter on 10th of October, 1982, when Mst. Rahmatbibi was taking the injured to Jaipur for treatment, the injured died near Sikar and, therefore, offence under Section 302, IPC was registered against the accused. The dead body of the accused was sent for post mortem. Police during the course of investigation prepared a site plan and arrested the accused. A Lathi was recovered at the instance of the accused Dungarram and likewise Gandasa from Mithusingh and Dungarram After close of the investigation Police filed a challan against Mithusingh and Dungarram under Section 302 read with Section 34, IPC in the court of Munsif and Judicial Magistrate Hanumangarh. A complaint was also filed against accused Krishan and cognizance was taken against him. As such all the three accused person were charged under Section 302 and in the alternative under Section 302/34 IPC prosecution examined six witnesses. The learned Sessions Judge after close of the trial found accused guilty as aforesaid. Hence the present appeal.

3. Mr. Kharalia learned Counsel for the accused-appellant has submitted that there is no direct evidence to connect the accused with the crime. Learned Counsel submitted that the sole testimony is that of PW 4 Shokat and his testimony cannot

be accepted for the simple reason that in the site plan the Investigating Officer has not pointed out that from what place Shokat had seen the incident. Learned Counsel further submitted that according to the prosecution when Hansraj and Maniram are said to be the eyewitnesses of the scene of the occurrence, the prosecution has not examined at all. The learned Counsel also invited our attention the statement of PW 2 Rehmatbibi who is also said to be the eye-witness but she reached at the scene of the occurrence on an information received by Shokat of the so called beating. Learned Counsel submitted that the distance of the place of occurrence and the incident is about one Bigha Therefore, by the time Shokat could inform mother about the incident and she could reach that place of the occurrence it is difficult that she could witness the whole incident. In these circumstances, the learned Counsel submitted that there is no evidence to connect the accused with the crime. As against this, the Public Prosecutor for the State has supported the judgment.

4. In order to appreciate the connection raised by the learned Counsel it is necessary to examine the testimony of PW 4 Shokat and PW 2 Rehmatbibi, mother of the deceased PW 4 Shokat has deposed that on the fateful day at about 6 p m. he was playing a Kabbadi' near the temple. His brother went to fete'h some bidies. There he found that the accused Mithusingh and Krishan and Dungarram were belabouring him. Mithusingh was armed with a Gandasi, Krishan was armed with Gandasi and Dungarram was armed with a Lathi. He further deposed that when he saw his brother being belaboured, then he run away to his house to informed his mother and sister. Thereupon his mother along with two sisters rushed on the scene. Vali Mohd. was lying on the field and the accused were beating him. When all of them reached there on the scene of the occurrence and raised hue and cry thereupon all the accused persons left. He has further deposed that his brother at that time was unconscious, has deposed that Maniram and Hansraj were present Then all of them carried his brother to house. Thereafter his mother went to the village to bring same transport. But she could not find any. How ever at 4 a.m. they brought Jogender's cart and took the injured to Hanumangarh. In cross-examination he has admitted that he saw accused Dungarram giving one lathi blow on the victim. He immediately ran from that place. He has further deposed that at that he did not saw the other accused belabouring him.

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we have also admitted that the distance from the place where he was playing and his house is situated about one Bigha, PW 2 Rahmatbibi has deposed that on a fateful day Shokat her son came running to the house and informed her that Vali Mohd. is being belaboured by Krishan Mithusing and Dungar Ram. She immediately rushed on the scene, along with her daughters and she saw accused beating his son, she was deposed that Mithusingh was armed with Gandasi, and Krishan was armed with Gandasi and Dungarram was armed with Lathi She has alleged that her son was lying on the ground and all the three persons were belabouring him. When a cry was raised then all the accused persons left. She has also deposed that at the time when the beating was going on Hansraj and Maniram were present on the scene. She has supported the version of her son Shokat. Now the question is whether both PW 4 Shokat and PW2 Rahmatbibi are eye-witnesses of the incident or not.

5. We have bestowed our best of consideration to the testimony of both the witnesses. It appears that the incident took place at 6 p.m. and the distance of the house of Mst. Rahmatbibi from the place of occurrence was one bigha. According to the testimony of Shokat the first blow was given by the accused Dungarram as a result of which the victim fell down. There after he ran away from that place and informed her months PW 2 Rahman Bibi about the whole incident, Rahmatbibi reached after receiving information from his son about as called beating, from these facts, it appears that it is not possible to believe that the accused persons will remain standing and keep on beating till Rahmatbibi arrive on the scene. This is no because of the fact that the deceased has only received four injuries and one of them is incised wound. According to the statement of Shokat when Mithusingh and Krishan were armed with Gandansi and there was no incised wound on the body of the deceased, the fatal injuries are on the head of the deceased, for causing these four injuries it is not possible to believe that these persons will wait till Rahmatbibi to arrive to witness the whole incident. Looking to the nature of the injuries and the distance of one Bigha from the place of the occurrence we are of the opinion that Rahmatbibi could not witness beating of her son Vali Mohd by

the accused persons. Secondly, according to the statement of PW 2 Rahmatbibi and PW 2 Shokat, Hansraj and Maniram were said to be the eye witnesses of the incident. But both were not examined by the prosecution. Therefore, in these circumstances it is not safe to rely on the testimony of PW 2 Rahmatbibi.

6. Now this leaves us the sole testimony of PW 4 Shokat. He is the real brother of deceased aged 12 years. It is submitted that Mr. Kharalia learned Counsel for the appellant that the Investigating Officer has not pointed out place from where PW 4 Shokat could witness this whole beating. This omission on the part of the Investigating Officer in preparation of the site plan will not render the testimony of PW 4 Shokat as unreliable. So far as testimony of PW 4 Shokat is concerned, reading of the same shows that he has reason to be there as he was playing with his other friends at that time. It is not an unusual conduct. Therefore, that testimony of PW 4 Shokat is truthful. But the testimony of PW 4 Shokat also does not advance the case of the prosecution to any greater length for the reason that he was only witnessed the beating given by Dungarram with lathi on the victim. As such the accused persons cannot be convicted under Section 302 read with Section 34 IPC as he has specifically stated in his cross-examination that he did not see Mithusing and Krishan beating deceased Vali Mohd. Therefore, the case at bar could not travel beyond Section 325 IPC only since Dungar has also been charged under Section 302 simpliciter and in alternative all the three accused persons have been charged under Section 302 read with Section 34 IPC. Since there is no evidence to show that Krishan and Mithusingh took any participation in beating, therefore, both are acquitted of all the charges. Accused Dungarram can only be held liable for causing injury by Lathi to deceased.

7. Thus, in the result, the accused Mithusingh, and Krishan and Dungarram are acquitted of the offence under Section 302 and read with Section 34 IPC. However, accused Dungarram's conviction is altered to that under Section 325, IPC.

8. Learned Counsel for the appellant Mr. Kharalia submitted that accused Dungarram has already served more than six years, therefore it will not be proper to send him back to jail. The submission of the learned Counsel appears to be just. We convict accused Dungarram under Section 325 IPC and sentence him to the

substantial sentence already undergone by him without any fine.

9. In the result we allow the appeal in part as indicated above.

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