

Lala Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-26-1986

Reported in : 1986WLN(UC)651

Judge : Shyam Sunder Byas and; Sobhag Mal Jain, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 381 of 1976

Appellant : Lala

Respondent : State of Rajasthan

Judgement :

Sobhag Mal Jain, J.

1. This appeal is directed against the judgment dated the 29th March, 1976 of the Sessions Judge, Udaipur convicting and sentencing the appellant for the offence under Section 302 IPC to imprisonment for life and a fine of Rs. 200/-, in default of payment of fine to two months' further rigorous imprisonment and under Section 323 IPC to one year's rigorous imprisonment. The substantive sentences are to run concurrently.

2. The accused appellant and five others, namely, Dhanna, Lala, Maduwa, Kamji, Waga and Motia were tried for the offence under Section 147, 302 and 302/149 IPC. The incident took place on the night intervening 26th and 27th March, 1975 in

village Sakla which resulted in injuries to both the sides. On the side of the prosecution Wala, Hakra and Mst. Mangli received injuries. Out of them Wala died on March 27, 1975 at 8 a.m. On the side of the accused Lala and Dhanna sustained injuries. The prosecution case in brief was that on the night of incident the accused went to the house of Hakra and asked him to accompany them for playing Holi Hakra and others accompanied them and they proceeded to other houses and reached the Talhati of Hanumanji's temple situated at the hillock in the village. There a dispute arose, whether the Holi should be burnt near the temple of the hillock or near the talhati. The prosecution case is that this dispute resulted in a fight between the parties. It is alleged that the accused inflicted blows to Wala, Hakra and Mst. Mangli. The First Information Report of the occurrence was lodged by Hakra on March 27, 1975 at police station, Pahada, on which a case under Sections 147, 148 and 323 IPC was registered. On the death of Wala the offence under Section 302 IPC was also added. Shri Kadim Hussain, who was the Station House Officer of the Police Station, Pahada, proceeded to the spot, prepared the inquest report, inspected the site and recovered the blood stained earth and other material evidence from the place of incident. He sent the deceased and the injured to the Government Dispensary Kherwara where Dr. Surendra Kumar Mathur conducted the post-mortem examination of Wala and examined the injuries of Hakra and Smt. Mangli. The Investigating Officer arrested the accused and recovered lathis on the information and at the instance of the accused. After investigation he filed a charge-sheet against the appellant and five brothers, namely, Dhanna, Maduwa, Kamji, Waga and Motia in the court of the Munsif and Judicial Magistrate, Doongarpur. The accused were then committed to the court of Sessions for trial for the offences under Sections 302/149, 323, 323/149 and 147 IPC. The plea of the accused was recorded, to which they pleaded not guilty and claimed to be tried. In support of its case the prosecution examined as many as eight witnesses, including PW 3 Hakra, PW 4 Mangla, PW 5 Smt. Magli, PW 6 Smt. Bassu and PW 7 Dhanna eye witnesses of the occurrence PW 1 Dr. Surendra Kumar proved the post mortem report of Wala and the injuries received by Hakra and Smt. Mangli. He also proved the injuries of the accused Lala and Dhanna. The injuries received by the deceased and the injured are as under:

Wala-deceased:

Left eye black, oedematous, swelling alround and upto left ear and above it. The pupil dialated, conjective of left eye congested and oede-mateous. Blood discharge coming from nostrils. Neck turned to left side, loose. Abrasions:

(1) 6 x 4 cm. on extensor surface of left-arm in upper half;

(2) 4 x 2 cm. on lateral side of left thigh in middle;

Bruise:

(1) 12 x 3 cm. transversely over the lower part of the back in the middle;

(2) 10 x 2 cm. on right upper part of back obliquely;

(3) 12 x 2 cm. on left side of back in upper part obliquely;

(4) 6 x 4 cm. transversely over the neck posteriorly in middle;

(5) Black left eye with haematoma of 10 x 8 cm. extending from eye left ear and above it.

PW 8 Hakra:

(1) Bruise with haematoma 4 x 1 cms. with haematoma with the size of 5 x 5 c.m. on the anterior surface of left forearm in lower part;

(2) Lacerated wound 1-1/4 x 1/2 x 1/3 cms. on right parietal region of the scalp;

(3) Abrasion with haematoma 3/4 x 1/2 cm. and 2 x 2 cm. on right upper part of the back over spine of scapula.

PW 5 Mst. Mangli:

(1) Bruise 3 x 1 cm. on anterior surface of left shoulder joint:

(2) Abrasion 3 x 1 cm. 1-1/2 x 1/2 cm. on left side of the back below scapula;

(3) Bruise 4 x 2 cm. on left side of the anterior chest wall over breast.

Accused Lala:

- (1) Lacerated wound 1 x 1/2 x 1/4 cms. on left parietal region of the scalp;
- (2) Bruise 3 x 1 cms. on top of the left shoulder.

Accused Dhanna:

- (1) Lacerated wound haematoma 1-3/4 x 1/2 x 1/3 cms, on left parietal region on the scalp;
- (2) Bruise swelling 4 x 1-1/2 cms. 5 x 5 cms. on extensor surface of left hand.

3. In their statements recorded under Section 313 Cr.PC the accused denied the prosecution allegations. Deva DW 1 was examined in defence, but he stated that a dispute arose on the question as to where the Holi should be brunt. According to him it was Hakra who first gave a Lathi blow on the head of Lala. When Dhanna protested, Hakra inflicted a lathi blow on him also. Walji also participated in the fight. People started running from the place, Walji fell down and he received injuries. They all then left the place.

4. By the judgment dated the 29th March, 1976 the Sessions Judge, Udaipur convicted and sentenced the appellant for the offences under Sections 302 and 323 IPC as aforesaid. He also convicted and sentenced the co-accused Dhanna, Maduwa. Kamji, Wala and Motia for the offence under Section 323 and sentenced each of them to one year's rigorous imprisonment. The learned Sessions Judge came to the conclusion that Wala died on account of head injury received by him, the other injuries being simple in nature. He also held that Hakra and Mst. Mangli also received injuries in the fight which were simple in nature and were caused by blunt weapon. The learned Sessions Judge held that it was not a case of beating in pursuance of a common object. It was a case of free fight on petty quarrel regarding the place where the Holi should be burnt, According to the learned Sessions Judge the accused could be held responsible for the offence committed by him and they could not be held vicariously liable for the acts of others. Accordingly, the learned Sessions Judge held that the offences under Sections 147, 302/149 and 323/149 were not made out against any of the accused. All the

accused, including Lala were guilty for the offence under Section 323 IPC. He further held that Lala was responsible for head injury on Walji and therefore, an offence under Section 302 IPC was clearly made out against him. Aggrieved by the order of conviction and sentence Lala has filed the present appeal through jail.

5. We have heard Shri N.N. Mathur, learned Counsel for the accused appellant and Shri Sushil Kumar Mathur Public Prosecutor for the State. Shri Mathur, learned Counsel for the accused appellant has contended that the appellant has been convicted for causing the head injury on the deceased. The evidence of the witnesses however does not established that the appellant was responsible for the injury on the body of Wala which proved fatal. He has invited our attention to the injuries found by Doctor on the body of Wala. Dr. Surendra Kumar Mathur found the following external injuries on the head of Wala--

Left eye black, oedematous, swelling alround and upto left ear and above it. The pupil dilated, conjective of left eye congested and oedematous. Blood discharge coming from nostrils. Neck turned to left side, loose.

Abrasions:

- (1) 6x4 cm. on extensor surface of left forearm in upper half;
- (2) 4 x2 cm. lateral side of left thigh in middle.

Bruise:

- (1) 12 x 2 cm. on transversely over the lower part of the back in the middle;
- (2) 10 x 2 cm. on left side of back in upper part obliquely;
- (3) 12 x 2 cm. on left side back in upper part obliquely;
- (4) 6 x 4 cm. transversely over the neck posteriorly in middle;
- (5) Black left eye with haematoma of 10 x 8 cm. extending from eye to left ear and above it.

6. No separate external injury on the head was found by the doctor. The internal injury on the temporal region obviously corresponds to injury No. 5 on the eye which according to the doctor extended from eye to the left ear and above it. Apparently, therefore, the injury on the eye which extended to the temporal region was the one which proved fatal. An examination of the evidence of the various witnesses reveal that the prosecution case is not consistent as to who was responsible for causing this injury. Hakra PW 3 stated that Lala caused a lathi blow on the back of Wala. He did not state that the head injury on Wala was caused by Lala. PW 4 has stated that he could not say as to which accused caused the various injuries on the person of the deceased. PW 5 Mst. Mangli had deposed that all the six accused injuries to the deceased. She does not specifically assign the injury on the head or eye of the deceased to the accused. PW 6 Bassu has deposed that Lala inflicted the lathi blow on the head of her father and that Maduwa caused the injury on his left eye. PW 7 Dhanna has stated that the injury on the left eye of the deceased was caused by Waga and the injury on the head was caused by Lala. Thus it is clear that the evidence of the prosecution witnesses as to who caused the injury on the eye of the deceased which proved fatal is not consistent. In any case it has not been specifically attributed to the accused appellant Lala. As already seen, no other injury on the head, except the one on the eye which extended to the temporal region, was also found by the doctor on the body of the deceased. As such the accused appellant Lala cannot be held liable for causing the fatal blow. His case is not distinguishable from others. The other co-accused have been convicted for the offence under Section 323 IPC. The case of the appellant not being different from that of the others, his conviction deserves to be altered to one under Section 323 IPC.

7. Accordingly, the appeal is partly allowed. The conviction of the appellant for the offence under Section 302 IPC and the consequent sentence of life imprisonment awarded to him for the said offence are set aside. His conviction and sentence for the offence under Section 323 IPC to one year's rigorous imprisonment is maintained. He has already undergone the sentence.

