

Chet Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-27-2000

Reported in : 2000(2)WLN622

Judge : N.N. Mathur and; D.N. Joshi, JJ.

Appeal No. : D.B. Criminal Appeal No. 554 of 1981

Appellant : Chet Ram

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. M.L. Garg

Judgement :

N.N. Mathur, J.

1. Eleven accused persons were put to trial for offences under Sections 302, 307, 325, 323, 147, 148, 149 and 201, I.P.C. All the accused persons, except appellant Chetram, have been acquitted of offence under Sections 302, 307 and 325. I.P.C. They have been convicted for offence under Section 323/149. I.P.C. The appellant Chetram has been convicted for the offence under Sections 302, 323 and 147, I.P.C. He has been sentenced to life imprisonment for offence under Section 302, I.P.C. No separate sentence has been passed for minor offences.

2. The prosecution case as disclosed during the trial is as follows:

P.W. 1 Nandram was an employee on the shop of Surjaram, the father of the appellant Chetram. A sum of Rs. 1507 were advanced by Surjaram to P.W. 1 Nandram. On 10.2.1970 at about 3.00 P.M. accused Chetram visited the house of Nandram and asked him to repay the loan. An oral altercation took place between them. Chetram left the place giving threat to Nandram to teach him a lesson. On the same day at about 9.30 or 10.00 P.M. while P.W. 1 Nandram was sleeping in his house all the accused persons, namely, Chetram, Purkharam, Lal Chand, Maniram, Taruram, Madanlal, Mst. Surti, Mst. Kamla, Brijlal. Sukhdeo and Dharmchand armed with deadly weapons arrived. The accused Brijlal was armed with Kasia, Purkharam with Kulhari, Mst. Kalawati with Barchi, Sukhdeo with hockey and the rest of the accused persons with lathis. When Nandram came out of the house all the accused persons assaulted him. Hearing the cries P.W. 4 Lichman, P.W. 2 Mst. Kamla and P.W. 7 Mst. Vimla reached on the spot. They were also assaulted by the accused persons. Hearing their cries the deceased Tolaram, P.W. 8 Phool Chand, P.W. 9 Manaram, P.W. 3 Govind Ram and P.W. 10 Sriram in a raised voice asked them not to worry, they are reaching for their help. The house of Tolaram is at a distance of 85 Pawandas from the house of P.W. 1 Nandram. All the accused persons proceeded towards the house of Tola Ram. The injured eye witnesses, namely, P.W. 4 Lichman Ram, P.W. 2 Mst. Kamla and P.W. 7 Mst. Vimla also followed them. Appellant Chetram struck a lathi blow on the head of Tola Ram. Under the impact of the lathi blow Tola Ram fell down. At that time P.W. 8 Phool Chand, P.W. 9 Manaram, P.W. 10 Sriram, P.W. 3 Govindram etc. also arrived at the house of Tola Ram. The accused persons assaulted them also. Tolaram and other persons were taken to the hospital at Suratgarh. P.W. 4 Lichman Ram lodged a first information report of the incident at Police Station Suratgarh. P.W. 13 Aast Ali Khan registered the first information report Ex. P/1 and proceeded with investigation. Tolaram died in the hospital on 11.2.1979 at 7.45A.M. After usual investigation the police laid charge-sheet against 11 accused persons for offence under Sections 302, 307, 325, 323, 147, 148, 149 and 201 I.P.C.

3. All the accused persons pleaded not guilty and framed trial. The prosecution in support of the case examined 13 witnesses. All the accused persons in their statement under Section 313. Cr. P.C. denied the correctness of the prosecution

evidence appearing against them. They also pleaded the plea of alibi. Analysing the evidence, the learned Judge found the prosecution case proved. Accordingly, the learned Judge convicted and sentenced the accused persons as noticed above.

4. Assailing the conviction it is contended by Mr. M.L. Garg, learned Counsel for the appellant Chetram that the prosecution witnesses have not given the true version of the incident. The learned Counsel invited our attention to the site plan Ex. P/2 and argued that the incident has not taken place in front of the house of Tolaram as alleged by the prosecution. It is submitted that the place of incident has been changed by the prosecution. It is submitted by Mr. Garg that the incident has taken place in between the house of P.W. 1 Nandram and duplicated house of Surjaram. It is suggested that deceased Tolaram and other persons of complainant party attacked on accused persons and caused injuries to them. The learned Counsel has referred to injury report Ex. D/9 of accused Lalchand, Ex. D/8 of Brijlal and Ex. D/10 of Mst. Kamla. It is submitted that injuries on the person of accused persons have not been explained. The counsel has also read the statement of the eye witnesses and submitted that they have exaggerated the version. In the alternate it is submitted that the accused Chetram struck only single blow to the deceased, this shows that he did not intend to commit murder of Tolaram and as such his conviction cannot travel beyond Section 304 Part II, I.P.C. On the other hand the learned Public Prosecutor assisted by Mr. K.L. Thakur, counsel for the complainant has supported the judgment of the learned trial judge.

5. We have considered the rival contentions and scanned the prosecution evidence carefully. P.W. 12 Dr. S.B. Jhanwar has stated that Tolaram was admitted in the hospital on 10.2.1979 at 10.20 P.M. He sustained injuries on the head. He died on 11.2.1979 at 7.40 A.M. He also stated that he conducted the autopsy of dead body of Tola Ram and found the following injuries on his person:

1. Lacerated wound 3' x 1/4' x bone depth posterior part of frontal and mid parietal region.

2. Fracture of both parietal bones extending upto temporal bones on both sides- fracture was in interparietal region. Posteriorly a piece of bone was prominent and fracture was complete.

3. Laceration on outer surface of left parietal lobe and there was intra cerebral haemorrhage in substance of brain.

He has proved the post mortem report Ex. P/11. In his opinion the cause of death was head injury.

On the same day Dr. Jhanwar also examined P.W. 4 Lichman and noticed the following injuries.

1. Diffused swelling 3' x 3' left thigh 3' above left knee.
2. Diffused swelling 4' x 3' right thigh 4' above right knee.
3. Diffused swelling 1' x 1' left side of forehead.
4. Lacerated wound 3'x 1/8' x bone depth right parietal and adjacent part of frontal bone.

He has proved injury report Ex. P/12. He found all the injuries simple in nature caused by blunt object.

P.W. 12 Dr. S.B. Jhanwar also examined P.W. 1 Nandram and found the following injuries:

1. Diffused swelling 3' x 3: dorsem of right hand arid adjacent finger.
2. Diffused swelling 4'x4'on left thigh mid part.
3. C/o pain chest right side and felt difficulty in respiration.

He has proved injury report Ex. P/13. In his opinion the injuries No. 2 and 3 were simple in nature caused by blunt object. On radiological examination injury No. 1 was found to be greivous.

Dr. Jhanwar also examined P.W. 9 Manaram and found the following injury on his person:

Diffused swelling 1/2' x 1' left forearm just above wrist.

He has proved injury report Ex. P/16. In his opinion the injury was simple, caused by blunt object.

Dr. Jhanwar also examined P.W. 3 Govind Ram and found the following injuries on his person:

1. Few superficial abrasions on lower and middle part sternum and adjacent ribs on both sides.

2. Diffused swelling 1' x 1' right thigh just above knee.

He has proved the injury report Ex. P/17. In his opinion the injuries were simple, caused by blunt object.

Dr. Jhanwar also examined P.W. 10 Sriram and found the following injuries on his person:

1. Abrasion 1/2' x 1/2' right hand just below wrist.

2. Small abrasion on upper part of nose.

3. Two small abrasions adjacent to each other on left side of face just below left eye.

4. Abrasion 1/2' x 3/4' right side of iliac bone.

He has proved the injury report Ex. P/18. In his opinion all the injuries are simple in nature, caused by blunt object.

Dr. Jhanwar has further stated that he examined P.W. 5 Mst. Chawli, wife of Nandram and found the following injuries:

1. Abrasion on right left just above ankle.

2. Diffused swelling 1'x1' right knee.

He has proved the injury report Ex. P/19. In his opinion both the injuries are simple in nature caused by blunt object.

He also examined P.W. 2 Mst. Kamla wife of Laxman and found the following injuries:

1. Bruise 4'x1-1/2' left thigh 4' above knee.

2. Few abrasions on left wrist.

He has proved the injury report Ex. P/20. In his opinion the injuries were simple in nature, caused by blunt object.

He also examined P.W. 7 Mst. Vimla and found the following injuries:

1. Diffused swelling 2' x 2' left thigh upper part.

2. C/o pain left lower coastal region.

3. Abrasion on right side of neck and right ankle.

He has proved injury report Ex. P/21. In his opinion the injuries were simple in nature, caused by blunt object.

Dr. Jhanwar also examined P.W. 8 Phool Chand and found the following injuries:

1. Abrasion 1/4' x 1/4' left thumb proximal phylinx.

He has proved injury report Ex. P/15. In his opinion the injury was simple in nature, caused by blunt object.

P.W. 12 Dr. Jhanwar also examined the accused Brijlal on the same day and noticed the following injuries:

1. Lacerated wound 3/4' x 1/8' x 1/8' right posterior parietal region.

2. Two abrasions of 1/2' x 1/2' on right shoulder.

3. Small abrasion on left right just above knee.

4. C/o pain in left ring finger.

He has proved the injury report Ex. D/8. In his opinion all the injuries were simple, caused by blunt object.

He also examined accused Lalchand and found the following injuries:

1. Contusion 3/4' x 3/4' in occipital region left side.

2. Small abrasion on upper part of nose.

3. Small abrasion on dorsem of left hand.

4. Small abrasion on lower part of left arm.

He has proved injury report Ex. D/9. In his opinion the injuries were simple, caused by blunt object. He also opined that all the injuries were on vital parts.

He also examined accused Mst. Kamla and found the following injuries:

1. Lacerated wound 1/4' x 1/4' x 1/4' left elbow.

2. C/o pain in back-no injury was seen.

He has proved the injury report Ex. D/10. In his opinion the injuries were simple, caused by blunt object.

6. Thus from the medical evidence it stands proved that the deceased Tolaram died of homicidal death. From the complainant party 9 persons sustained injuries. In total they have sustained 20 injuries, out of which 19 injuries are simple, caused by blunt object. One grievous injury has been caused on the finger of P.W. 1 Nandram, caused by blunt object. Three accused persons have sustained 10 injuries, all simple in nature, caused by blunt object. The accused Brijlal has sustained one injury on the vital part of the body.

7. A survey of the prosecution evidence shows that the incident took place in two parts at different locations. The first incident took place outside the house of P.W. 1 Nandram. The witnesses of this incident are P.W. 1 Nandram, P.W. 5 Mst. Chawli wife of Nandram. P.W. 4 Lichma, P.W. 2 Mst. Kamla wife of Lichma and P.W. 7 Vimla. The second incident alleged to have taken place in front of the house of deceased Tolaram. In addition to the witnesses of the first incident the other eye witnesses are P.W. 8 Phool Chand, P.W. 9 Manaram, P.W. 3 Govind Ram and P.W. 10 Sriram.

8. Regarding the first incident P.W. 1 Nandram has stated that he served on the shop of accused Chetram for about 16 months. He had advanced a loan of Rs. 150/- to him. On the date of incident at about 3 P.M. the accused Chetram came to his house and made demand of the loan amount. He assured him that the amount of loan shall be paid within four days. He abused him and while leaving threatened him to teach lesson. In the night at about 9 or 10 while he was sleeping in his house all the accused persons came to his house. Accused Chetram was armed with lathi, Brijlal with Kasia, Purkharam with Kulhari, Lalchand with Barchi, Kalawati with Barchi, Sukhdev and all others with lathis. Appellant Chetram asked him to come out the house. Chetram inflicted injury on his leg, Purkharam on the palm of right hand and on left ribs, and Dharma on the left thigh. Hearing the cries P.W. 4 Lichma and his wife Vimla arrived on the spot. The accused persons assaulted them also. Hearing their cries Manaram, Govindram, Sriram, Dhularam and Tolaram inquired about the assailants. They also said in a raised voice that they are reaching. Thereafter the accused persons proceeded towards the house of Tolaram. They also followed them. Tolaram questioned Chetram as to why he was quarrelling. Chetram struck a lathi blow on the head of Tolaram. He fell down and became unconscious. The other witnesses were also assaulted. In the cross-examination he stated that the accused persons thrashed them for about 15-20 minutes. He also stated that the accused persons dragged and brought him out of the house, on account of which he sustained injuries. It is significant to notice that the injury report Ex. P. 13 shows that P.W. 1 Nandram sustained one injury on the dorsum of right hand adjacent to the finger. There was a diffused swelling on the left thigh. He was also complaining pain chest on the right side.

9. P.W. 5 Mst. Chawli is the wife of P.W. 1 Nandram. She has given statement almost in the line of her husband P.W. 1 Nandram. She stated that Brijlal inflicted injury on her leg by Kasia. Chetram inflicted injury on the left leg. She also stated that all the accused persons participated in assaulting them. She has also shown the presence of P.W. 4 Lichma and P.W. 7 Vimla. Injury report Ex. P/20 shows that Mst. Chawli sustained a bruise on the left thigh 4' above knee and few abrasions on the left wrist. There is no injury on her leg.

10. P.W. 4 Lichma is the elder brother of P.W. 1 Nandram, he has stated that hearing cries from the house of Nandram they rushed to his house. He has given name of 11 accused persons and stated that they all assaulted them. He also stated that Chetram gave a lathi blow on his head and Purkha gave a Kulhari blow on his head. He pleaded ignorance if the Kulhari blow was given from the front on back side. He has also stated in respect of the incident which took place outside the residence of Tolaram. He stated that appellant Chetram inflicted a lathi blow on the head of Tolaram. He has further stated that the accused persons inflicted injuries to the other witnesses. After assaulting them the, accused persons ran away towards street on the southern side. Injury report Ex. P/12 shows that there was a diffused swelling on the left thigh and right thigh. There was a diffused swelling on the left side of the forehead. There was a lacerated wound on the right parietal and adjacent part of the frontal bone. All the injuries have been found to be simple, caused by blunt object.

11. P.W. 2 Mst. Kamla is the wife of P.W. 4 Lichma. On hearing the cries from the house of Nandram both the husband and wife reached on the spot. She has given statement almost in the line of the earlier eye witnesses referred to above. She has stated that Chetram inflicted injury on her thigh. Purkha inflicted injury on her left hand by Kulhari. Lalaram inflicted injury to Vimla on the right elbow. She also stated that the appellant Chetram gave a lathi blow on the head of Tolaram. She further stated that Purkha gave a Kulhari blow on the head of her husband P.W. 4 Lichma. The injury report Ex. P/20 shows that she sustained only one bruise on the left thigh and few abrasions on the left wrist. She has also stated that the quarrel took place for about an hour. Subsequently she stated that the quarrel in front of the house of Tolaram took place about 5-10 minutes.

12. P.W. 7 Vimla is the niece of, P.W. 4 Lichma. She has stated that while she was at the residence of her maternal uncle Lichma the cries from the house of another maternal uncle Nandram. She went to the spot alongwith Lichma and Mst. Kamla. She has given name of all the 11 accused persons and stated that they all assaulted them. She has stated that Maniram gave lathi blow on her thigh. Mst. Surti gave a lathi blow on her leg. She also stated that they followed the accused persons and went to the house of Tolaram. She has stated that earlier Chetram gave a lathi blow on the head of her uncle Tolaram. Injury report Ex. P/21 shows that there was diffused swelling on her left thigh and an abrasion on the right side of the leg and right ankle. She was also complaining pain on the left lower coastal region.

13. P.W. 3 Govind Ram has stated that he was sitting at his residence alongwith Manaram and Phoolaram. On hearing the cries of Tolaram they rushed to his house. On inquiry Tolaram disclosed that Lichma and Nandram are being assaulted. At that time 11 accused persons came towards house of Tolaram. He has given the names of all the accused persons. He has also given details as to arms carried by each of the accused persons. Chetram saying that they will give him a lesson, inflicted a lathi blow on the head of Tolaram. He fell down and became unconscious. He also stated that Laluram gave a lathi blow on his chest and Madanlal inflicted lathi blow on his thigh. Injury report Ex. P/17 shows that there were few superficial abrasions on the lower and middle part adjacent to the ribs on both the sides. There was also a diffused swelling on the right thigh just above knee.

14. P.W. 8 Phoolchand is the witness of the second incident. He has stated that hearing the cries of Tolaram he alongwith Govindram and Manaram rushed to the house of Tolaram. He has given names of all the accused persons present outside the house of Tolaram. He has also stated that the appellant gave a lathi blow on the head of Tolaram. He, fell down and became unconscious. He has also stated that Mst. Kalawati gave a Barchi blow which caused injury on the thumb of left hand. Injury report Ex. P/15 shows that abrasion was found on the left thumb proximal phylinx.

15. P.W. 9 Mana Ram has stated almost in the line of P.W. 8 Phool Chand. He has stated that the appellant Chetram gave a lathi blow on the head of Tolaram. He has also stated that the accused Madanlal caused injury on his right wrist. Injury report Ex. P/16 shows that he has sustained an injury on the left forearm just above the wrist.

16. P.W. 10 Sriram has stated almost in the line of the earlier witnesses, namely, Govind Ram, Phoolchand and Manaram. He has stated that Lalchand struck a lathi blow on his right hand on account of which an injury was sustained on the thumb. Purkharam inflicted injury from the handle of Kulhari on his stomach. Sukhdeo inflicted injury on the left eyes. Dharma also inflicted injury on left eye. Injury report Ex. P/18 shows that there is an abrasion on the right hand just below the wrist and small abrasion on the upper part of the nose. There are also two abrasions on the left side of the face just below left eye. There is also an abrasion on the right side of the iliac bone.

17. The analysis of the evidence of 9 witnesses referred to above clearly shows that they have narrated the incident in an exaggerated manner. They have also tried to fit in their statement with the medical evidence. Atleast three of the accused persons, namely, Purkharam, Mst. Kamla and Brijlal were armed with sharp edged weapons. But out of 20 injuries on the different prosecution witnesses there is not a single injury caused by sharp edged weapon. It is difficult to comprehend that if all the accused persons had gone armed with deadly weapons they would have caused only superficial injuries as is evident from different injury reports referred to above. P.W. 1 Nandram, his wife P.W. 4 Chawli, P.W. 5 Lichma, his wife P.W. 2 Mst. Kamla and P.W. 7 Vimla have stated that after the first incident on hearing from Tolaram that he is coming to defend them all the accused persons proceeded towards the house of Tolaram and they followed them. The conduct of these witnesses is contrary to the ordinary human conduct as they could not have dared to follow the retreating accused party to witness the second incident. It is also significant to notice that the incident has taken place in the night but each of the witnesses have narrated the part played by the individual accused persons. Three accused persons, namely, Lalchand, Mst. Kamla and Brijlal have also sustained injuries. One of the injury is on the vital part of the

accused Brijlal. There is nothing to show how the three accused persons received injuries. Thus in our opinion all the witnesses are partly reliable witnesses. They have exaggerated the incident. It also appears that the appellant Chetram did not go to the house of P.W. 1 Nandram with an intention to commit his murder. In the first incident a simple injury has been caused to P.W. 1 Nandram and P.W. 5 Mst. Chawli. If accused Chetram had gone to the house of Nandram with an intention to commit murder, there was no difficulty in achieving the object or atleast causing some serious injuries. The site plan Ex. P/2 shows that the accused persons were returning from Point 10 which is a way to return to their house. Thus this part of the story that the accused persons went to the house of Tolaram on a challenge given by him. that they are reaching at the house of Nandram to defend him is doubtful. The second incident has taken place when the accused persons were returning from the house of P.W. 1 Nandram. Chetram had no intention to commit murder of Tolaram. It appears that there was a sudden quarrel at the house of Tolaram when the accused persons were returning from the house of P.W. 1 Nandram. In these circumstances the intention to cause a particular injury to Tolaram cannot be spelled out from the act committed by the appellant. If the appellant had the intention to commit murder he had enough opportunity to commit the murder of P.W. 1 Nandram. But as per the saying of P.W. 1 Nandram he only struck a lathi blow on the leg causing simple injury. For all these reasons in our opinion the conviction of the appellant under Section 302, I.P.C. is not sustainable. However, knowledge attributed to appellant Chetram that his act was such which could have caused death of Tolaram and as such his conviction is liable to be converted under Section 304 Part II I.P.C.

18. Turning to the question of sentence, the incident is of the year 1979. We have found that the quarrel took place all of sudden. The accused has remained in jail for substantial period. Thus we are of the opinion that no useful purpose would be served by sending him to jail after 21 years. It would meet ends of justice if the period of sentence is reduced to the one already undergone. However, we feel that the widow of deceased Tolaram is compensated to some extent. In compliance of our order dated 17.4.2000 the S.H.O., Police Station, Suratgarh has submitted a report with respect to the social and financial status of the accused Chetram and family of the deceased. It is reported that there is a house of

deceased Tolaram within the bounds of Municipal Board, Suratgarh having 5-6 rooms. The two sons of the deceased are engaged in leather business at Ludhiana. The five girls are married. It is thus reported that the financial condition of the widow is not bad. With respect to accused Chetram it is reported that he has a residential house in Suratgarh town in which he is residing alongwith his brother. The patta of the house is in the name of Purkharam. He has got 10 shops. There is also 25 bighas of land in the name of the accused. At this stage it is contended by Mr. Garg that the land is submerged in water. He has also submitted a report of the Patwari of the Circle in that regard.

19. Considering all the facts and circumstances of the case and keeping in view the provisions of Sub-sections (3) 81 (4) of Section 357, Cr. P.C. we consider it just and proper to direct the appellant to deposit a sum of Rs. 35,000/- by way of compensation payable to the widow of Tolaram.

20. Consequently, the appeal is partly allowed and it is ordered as follows:

I. The conviction of the appellant Chetram for offence under Section 302, I.P.C. is set aside and is converted into Section 304 Part II, I.P.C. He is sentenced to the period already undergone. The offence under Sections 323/149 and 147, I.P.C. is maintained. The appellant has already undergone the sentence awarded.

II. The appellant Chetram shall deposit a sum of Rs. 35,000/-. The appellant is present in court today. He is prepared to give a Demand Draft in the name of Smt. Vidhya Devi widow of Tolaram today. The draft is handed over to Shri K.L. Thakur, learned Counsel for the complainant. He undertakes to transmit the same to Smt. Vidhya Devi immediately.

III. The bail bonds executed by Chetram stands discharged.

21. The report of the S.H.O. Police Station, Suratgarh be kept on record.