

Ramjas Vs. State

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Court : Rajasthan

Decided On : Apr-19-2010

Judge : C.M. Totla, J.

Appellant : Ramjas

Respondent : State

Judgement :

C.M. Totla, J.

1. Challenged is appellant's conviction for the offences and sentences awarded for (i) Section 307 IPC - 5 years RI, fine of Rs. 200/0 for nonpayment one month RI (ii) Section 326 IPC - four years RI with fine Rs. 200/- in default one month RI (iii) Section 324 IPC - one year RI with fine Rs. 100/- in default 1 month RI (iv) Section 323 IPC - 3 months RI with fine Rs. 50/- in default 15 days RI. All sentences are ordered to run concurrently.

2. Prosecution case is that at 12:30 of night in intervening between October 5th and 6th, 1988 Jagdish PW/2 arriving at P.S. Taranagar told and informed SHO PW/7 that he, father's elder brother's son Ram Kumar, father's sister's son sultan and sister's husband Pokar Ram all came to plough land of Pokar Ram bringing tractor of Balbeer PW/4 and they having ploughed 5 bigha and when night fell, came in village to house of Nand Ram PW/3. At about 8:30-9 in night Sultan PW/4 went out to urinate and when from a little distance heard was his cry, so, he

(PW/2) and Nand Ram runningly going observed that Sultan and Ramjas were shouting to each other - Ramjas had a 'Barchi' in his hand, inflicted blow of it at neck of Sultan - who fell down and three more blows inflicted at his hands - when more injuries were being inflicted to PW/2, he and Nand Ram tried to intervene Ramjas did inflict injury of barchi to him (PW/2). In report, Jagdish also told that as he and Nand Ram challenged Ramjas, he went to roof of own house and began throwing stones out of which one struck at right leg of Pokar Ram and some at his (PW/2) leg. Sultan wounded at neck is serious who by a private bus brought to and now at hospital Taranagar and had they not intervened Sultan would have been dead.

3. PW/7 recording this information of PW/2 and on its basis registered Crime No. 134/88 Ex.P/26 for the offence of Section 307, 324, 323 IPC and commencing investigation examining place of occurrence on 06.10.88 prepared memo and sketch Ex.P/2 & P/2A, seized and sealed shirt, tehmad and safa, handed over by injured Sultan in hospital and having some blood stains, preparing memo Ex.P/3 packet marked as A. Injured Sultan, Jagdish and Pokar Ram were medically examined by Medical Officer PW/6 between 1-2 AM night and their respective injury reports are Ex.P/4,10 & 11. X-ray requisition, X-ray plates, report and opinion regarding injuries are Ex.P/5 to 9 & 12.

4. Accused appellant arrested on 24.10.88 and per his disclosure to ASI PW/8, head Constable PW/3 recovered barchhi from his house vide memo Ex.P/20 which seized and sealed and packet marked as B. Packets safely delivered at laboratory for examination and after other usual investigations, charge-sheet submitted.

5. Appellant charged for attempting to cause death of Sultan by inflicting grievous and simple injuries of sharp weapon and for inflicting injuries to Jagdish and Pokar Ram, claimed trial.

6. Among the prosecution witnesses examined Sultan PW/1 is the person grievously injured. Jagdish PW/2 first informer, Pokar Ram PW/5 are injured eye witness - Nand Ram PW/3 son of appellant, is eye witness and all these witnesses depose of incident having happened as above described. PW/4 is the tractor

driver. PW/10 a motbir of recovery of barchhi etc is declared hostile. PW/7 SHO, ASI PW/8 and head constable PW/9 are investigating officers whereas Dr. Sahadev PW/6 proves the injuries and injury reports.

7. Appellant when examined under Section 313 Cr.P.C stating witnesses telling lie explains that (i) brother Pokar Ram soon after his marriage and since last ten years domiciled at village Chhani, Tehsil Bhadra (ii) did not come even on death of father and not paid revenue rent of agricultural land (iii) brother Pokar Ram did not share any expenditure and wished to sale land to others so (iv) appellant asked him to sale land to him (v) after arrest of appellant Pokar Ram sold 7 bighas of land and who had (vi) brought Sultan, Jagdish and Balbeer for attacking him (vii) these persons did not plough land (viii) when appellant was out to urinate these persons i.e. witnesses attacked him with barchi and la this. Appellant further states that perhaps when these persons chased him they sustained injuries themselves. Appellant also state that Nand Ram is his eldest son who separated soon after marriage -younger to Nand Ram are seven daughters of which five married but Nand Ram never incurred and shared any expenditure therefore, appellant did not allow him to cultivate land and for that reason he is testifying against him.

8. No defence evidence led.

9. Having a look at the deposition of the Medical Officer Dr. Sahdev cumulatively with oral evidence Pws 1,2,3,5 and also proved that - Sultan PW/1 had injuries in night at 1 AM (i) incised wound 3.25 x 1.25 x 1.25 inch on right neck- tapering distaly sterno mastoid muscle partly and sclanew fascai and other structures cut - clevical vertebra seen. (ii) incised wound 1 x 0.25 x 0.25 inch rit hand inner side first metacarpal (iii) incised wound 1 x 1/3 x 1/4 inch left fore arm. All injuries caused by sharp object and after X-ray examination fracture of rt hand metacarpal proximal found.

10. PW/6 depose that he opined Ex.P/12 that injury No. 1 may have proved fatal. Injury report Ex.P/4 mentions that general condition is not satisfactory - conscious with giddiness and vertigo, B.P. 80/60 and pulse 120.

11. On the person of Jagdish were contusions (a) 1.5 x .5 inch left thigh with clotted blood (b) 1.75 x 0.33 inch left leg anterior with clotted blood (c) 2.0 x 1 inch right thigh. Abrasions (i) 1.5 x 0.125 inch right shoulder (ii) 0.25 x 0.25 inch on left back at 1:45 AM. Above injuries of simple of blunt object and freshly caused - injury report Ex.P/10.

12. Pokar Ram PW/5 had injuries abrasion with contusion (a) 1.5 x 0.5 inch left thigh (b) 1.75 x 0.33 inch left leg. Both simple and blunt object and at 2 AM freshly caused - injury report Ex.P/11.

13. Appellant and Pokar Ram PW/5 are real brothers. It appears that main injured Sultan PW/1 is son of sister of father of PW/2. Eye witness PW/3 is son of appellant.

14. These persons were there to plough the land of Pokar Ram which is deposed by all witnesses and so is also mentioned in First Information Report Ex.P/1. Pokar Ram PW/5 states that he is youngest son and appellant living and cultivating separate since 35 years. PW/5 straightly admits that he never cultivated land of his share and in the land where they went to plough was his 1/3rd share that is 8 3/4 bighas. PW/5 also admits of having sold away one third of his share of 21 bighas after arrest of appellant. Per PW/5 though he never himself cultivated but no apprehension of any dispute was because the land is of his share and that his house is adjacent to house of appellant.

15. Sultan PW/1 depose that PW/5 is married to daughter of his mother's brother (Mama) and this land being joint one was earlier cultivated by father of Pokar Ram who expired two years ago. Per PW/1 Pokar Ram PW/3 had handed over land to him for cultivation and that around there are fields of Pokar Ram, appellant and others.

16. According to first informer PW/2 they were there to cultivate the land and he accompanied on asking of Sultan and no one spoke of any likelihood of dispute and Pokar Ram with them as they not indefinite know of where to plough.

17. Nand Ram PW/3 say that they are nine brother sisters and he living separately since 10-12 years and also admit that father gave him agricultural land but snatched it afterwards. This witness also admits that Pokar Ram resides out and appellant cultivated his land without permission.

18. PW/3 also say that total land is 90 bigha which is to be divided into three and PW/5 out of his share sold 7 bighas, after arrest of appellant in this case.

19. As above and for the relations and share in ancestral agricultural land and its possession, proved are serious differences between the injured and appellant, particularly between Pokar Ram and appellant. Clearly Pokar Ram or any in his behalf was not cultivating since some years and cultivated by appellant who happen to be brother and about 25 years elder to PW/5. In this background, is to be seen the entire incident.

20. For the above reasons and cumulatively with the fact that injured did stay at the house of son of appellant and that too when Pokar Ram came there to plough the land after long years lead to reasonable inference that appellant did not intend to attempt to cause death and perhaps he desired Pokar Ram or at his behest no one to do the cultivation and they to go way. As is apparent for many years appellant was in possession and Pokar Ram left the land some what unattended. Pokar Ram per himself is teacher at other place Degasiri and unambiguously state that no one ready to take for share agriculture because of fear of appellant and he himself alone cannot do, so he gave land for share cultivation to Sultan and even providing ploughing by tractor was not his (PW/5's) responsibility.

21. Tractor driver Balbeer unambiguously say of having come for ploughing at a rate of Rs. 35 per bigha with a clear stipulation of he not to plough if objected by any. It also appears that they arrived for ploughing only in afternoon at about 3-4 O'clock and then went to house of Nand Ram late evening because tractor was not having light.

22. Nand Ram PW/3 injured first informer PW/2, main injured PW/1, PW/5 all say that after having food PW/1 went out to urinate and to have bidi cigarette. According to PW/1, when he proceeded 15-20 steps, Ramjas came across and told that (he)

shall not allow ploughing to him (PW/1) because land is of brother and then as PW/1 spoke of having given land by Pokar Ram - Ramjas gave a blow of barchi. PW/1 depose that given first blow, he fell down then blows inflicted at both hands and then on his cries came Jagdish, Nand Ram etc who interveningly saved him and they also given and sustained injuries by barchhi. PW/2 Jagdish & PW/5 Pokar Ram also deposing so say that on hearing loud voices they hurriedly went and observed that Ramjas and Sultan arguing and Ramjas inflicted injury of barchhi - as they tried to intervene, appellant Ramjas also injured PW/2 & 5. PW/2, 3,5 & PW/1 do say that then appellant going on his roof pelted stones and some stones struck to PW/2 and 5.

23. Pelting of stones is also mentioned in FIR and as is observed above, appellant perhaps wanted these persons, who staying with son, to go away, therefore, throwing of stones by him cannot be something not believable.

24. For the reasons above, learned trial Judge has rightly concluded that appellant did inflict injuries to Sultan, Jagdish and Pokar Ram.

25. As is observed above, it clearly surfaces that appellant had no intention to do any act which could have been fatal. Brother Pokar Ram PW/1 and others coming there after several years were ploughing land without informing or talking to real brother (appellant) who residing there and cultivating for years and then again staying with the son at just adjacent house, was not liked by the appellant. Appellant desired that these persons to go away and not cultivate. In such circumstances, though injury caused is at neck, in the opinion of the Court, offence of only of voluntarily causing of grievous injury is made out and not that of within ambit of Section 307 IPC.

26. Per Medical Officer and X-ray, fracture was of first metacarpal proximal, and injury of sharp weapon of about 8 cm length and cutting muscles was at neck. Thus appellant is rightly convicted for the offence of Section 326, 324 and 323 IPC but appellant is not proved to have committed act punishable under Section 307 IPC and is to be convicted for only under Ss. 326, 324, 323 IPC.

27. Per record, appears that appellant was arrested in last week of October, 1988 and released in June, 1989. Thus, he remained in custody for about eight months. Per memo of arrest, his age at that time was 59 years and the learned trial Judge has estimated age of 55 years. From the other facts also appear that appellant at that time was definitely above 55 years and now after 22 years of incident around 80. As above, appellant has undergone eight months. In the totality of circumstances and now, in the opinion of the Court, no useful purpose shall be served by further imprisoning the appellant and just shall be sentence of imprisonment already undergone with appropriately enhanced fine.

28. Accordingly, the appeal is partly allowed. While acquitting the appellant for the offence of Section 307 IPC, the conviction of appellant Ramjas for the offence of Section 326, 324 and 323 IPC is affirmed and he sentenced as (i) for Section 326 IPC - period already undergone with Rs. 10,000/- fine in default 45 days imprisonment (ii) for Section 324 IPC - period already undergone with Rs. 2000/- fine, in default 15 days imprisonment (iii) for Section 323 IPC - period already undergone with Rs. 500/- fine in default 10 days simple imprisonment.

29. Appellant Ramjas S/o Hanutaram is convicted for the offence of Section 326, 324 and 323 IPC and acquitted of the offence of Section 307 IPC and appellant for the offence of (i) Section 326 IPC is sentenced to the period already undergone with fine Rs. 10,000/- (ii) for the offence of Section 324 IPC also imprisonment for the period already undergone with fine of Rs. 2000/-, (iii) for the offence of Section 323 IPC, imprisonment for the period already undergone with fine of Rs. 500/-. In default of payment of fine Rs. 10,000/- for Section 326 IPC, appellant to undergo 45 days simple imprisonment and in default of payment of Rs. 2000/- & Rs. 500/- respectively to undergo fifteen days and seven days simple imprisonment. Of the total fine imposed Rs. 12,500/-, Rs. 6000/- to be deposited in the trial court on or before 20.05.2010 and remaining by 30.06.10 failing which he to appear in trial court. The bail bonds of appellant shall stand discharged on deposit of fine as above.