

(2006) 02 RAJ CK 0042

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Appeal No. 230 of 2003

Shyoji and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: Feb. 6, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 120B, 147, 148, 149, 302
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3, 3(2)(5)

Citation: (2006) 3 RLW 1932 : (2006) 2 WLC 483

Hon'ble Judges: Shiv Kumar Sharma, J; Shashi Kant Sharma, J

Bench: Division Bench

Advocate: Birisingh Sinsinwar and Kamlendra Sihag, for the Appellant; R.P. Kuldeep, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

Shiv Kumar Sharma, J.

The six appellants before us were tried by the Special Judge SC/ST (Prevention of Atrocities) Act Jhalawar in Sessions case No. 6/1998. Learned Judge vide judgment dated January 30, 2003 found the appellants guilty and convicted them as under:

Shyoji, Ramchandra and Mangi Lal;

Under Section 147 IPC:

Each to suffer rigorous imprisonment for six months and fine of Rs. 500/- in default to further suffer fifteen days simple imprisonment.

Under Section 323/149 IPC:

Each to suffer rigorous imprisonment for three months and fine of Rs. 500/-in, in default to further suffer fifteen days simple imprisonment.

Under Section 324/149 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 1000/-, in default to further suffer two months rigorous imprisonment.

Under Section 325/149 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs. 2000/-, in default to further suffer three months simple imprisonment.

Under Section 302/149 IPC:

Each to suffer imprisonment for life and fine of Rs. 5000/-, in default to further suffer six months rigorous imprisonment.

Amar Lal, Devkishan and Madan Lal:

Under Section 148 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 1000/-, in default to further suffer one month simple imprisonment.

Under Section 323/149 IPC:

Each to suffer rigorous imprisonment for three months and fine of Rs. 500/-, in default to further suffer Fifteen days simple imprisonment.

Under Section 324/149 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs. 1000/-, in default to further suffer two months rigorous imprisonment.

Under Section 325/149 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs. 2000/-, in default to further suffer three months simple imprisonment.

Under Section 302/149 IPC:

Each to suffer imprisonment for the life and fine of Rs. 5000/-, in default to further suffer six months rigorous imprisonment.

Substantive sentences were directed to run concurrently.

2. The prosecution story is woven like thus:

On September 19, 1997 at 6.45 PM Govind Singh Second Officer of Police Station Sangod recorded parcha bayan of Rekhraj (PW. 1), who was admitted in Primary Health Centre Sangod. It was interalia stated in parcha bayan by Rekhraj that in the

proceeding night around 9.30 PM, he along with Dhanraj Meena (now deceased) had gone to village Akodia for watching play of Tejaji Maharaj. After reaching village when they found that the play was cancelled because of rain, they proceeded back to their village. On the way while they were passing through village Sarola around 2.30 AM. they were encircled near the house of Devkishan by Amarlal, Ramchandra, Madanlal, Devkishan, Kishore, Sheoji, Mangilal, Jagdish and two other persons and informant and Dhanraj were given beating by them with Lathis, Kuntias and Gandasis. Amarlal and Mangilal were instigating all the assailants to kill the informant and Dhanraj and bury them in a pit. As a result of beating Dhanraj died on the spot and informant sustained injuries. On that parcha bayan offence under Sections 147, 148, 341, 323, 307, 302/149 IPC and Section 3 of SC ST Act, 1989 found to have been committed. Since the incident occurred in the jurisdiction of Police Station Khanpur (District Jhalawar), parcha bayan was sent to Police Station Khanpur where a case under the aforesaid sections was registered and investigation commenced and after usual investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge SC ST (Prevention of Atrocities Cases) Jhalawar. Charges under Sections 147, 148, 341, 307, 307/149, 302, 302/149, 324, 324/149, 120B IPC and Section 3(2)(5) of SC/ST (PA) Act, 1989 were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 20 witnesses. In the explanation u/s 313 Cr.P.C., the appellants claimed innocence and stated that it was rainy and dark night and the thieves had made attempt to break the house in the village. Hearing the noise, villagers gathered and gave beating to the thieves. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have given our anxious consideration to the rival submissions and with the assistance of the learned Counsel we have gone through the evidence on record.

4. Death of deceased Dhanraj was indisputably homicidal in nature. As per postmortem report (Ex. P. 8) he received following ante mortem injuries:

1. Incised wound 2" x 1/2" x bone deep with multiple fracture of occipital bone and occipital region.

Incised wound 1 1/2" x 1/4" x bone deep over occipital region with fracture of occipital bone.

Injury No. 1 & 2 make V shape over occipital region of scalp with flap Open out from wound.

3. Incised wound 2" x 1/4" bone deep - right temporal region.

4. Lacerated Wound 3" x 3/4" x bone deep with compound fracture of right tibia and fibula bones coming out from wounds.

5. Incised wound 1" x 1/2" x 1/2" over right scapular region.

6. Incised wound 1 1/2" x 1/2" x 1/2" over right shoulder.
7. Lacerated wound 2" x 1/2" x bone deep over left leg.
8. Bruise 3" x 1" over right scapular region.
9. Bruise 2" x 1" over left supra scapular region.
10. Bruise with hematoma 3" x 2" over right upper arm.
11. Bruise with fracture of left wrist joint size 2 1/2" x 2".

In the opinion of Dr. Laxmi Nath Meena (PW. 6) the cause of death was coma as a result of brain and head injuries which were sufficient to cause death in the ordinary course of nature.

Rekhranj also received injuries during the incident, which according to injury report (Ex. P. 10) are as under:

1. Lacerated wound 4 x 1/2 cm x bone deep on vertex of scalp.
2. Contusion with diffuse swelling 5 x 5 cm on Lt. wrist.
3. Incised wound 4 x 2 cm x bone deep on Rt. knee.
4. Contusion 15 x 2 cm on Lat. side of Lt. thigh.
5. Abrasion 40 x 1/4 cm transverse on Lt. lateral side of abdomen.
6. Contusion 5 x 5 cm on Lt. Lat. side of chest lower aspect.

Vide X-ray report (Ex. P. 11) fracture of lower end of ulna and Lt. 9th rib was found.

5. Having closely scanned the material on record we noticed following admitted facts:

(i) Informant Rekhranj (PW. 1) deposed that at 9 PM he along with Dhanraj reached at village Akodia to watch the play of Tejaji but immediately proceeded back since it was raining. While returning back Ramhet and Hariram also joined them. They reached village Sarola around 2.30 AM. In the cross examination Rekhranj stated that distance between Akodia and Sarola was only one kilometer.

(ii) Ramhet (PW. 8) in his examination in chief stated that while they were passing in front of Mangilal's house, a katla (stone slab) got kicked by Hariram and it had fallen in the mud. Mangilal then came out of the house and demanded explanation from Hariram. Dhanraj and Rekhranj as to what were they doing there and why they had broken the stone slab. In the cross examination Ramhet stated that at the place where stone slab had fallen, there was darkness. He further stated that if the stone slab did not fall the incident would not have occurred. He did not however hear Mangilal saying that they had come there for house breaking.

(iii) Ram Bharose (PW. 12), brother of informant Rekhraj, deposed that he had also gone to watch the play of Tejaji at village Akodia. When he was coming back and passing through village Sarola, Mangilal Karad told him that he got the thieves cut.

(iv) As per site plan (Ex. P. 7) incident had occurred in front of the house of appellant Mangilal.

(v) In their explanation u/s 313 Cr.P.C. the appellants stated that it was rainy and dark night and the thieves had made attempt to break the house in the village. Hearing the noise, the villagers gathered and gave beating to the thieves.

6. It was sought to be argued before us that the testimony of informant Rekhraj in regard to covering the distance of one kilometer in five hours is highly unnatural. Admittedly he left village akodia at 9.30 PM and village Sarola is only one kilometer away from village Akodia. Even waling at a slow pace, the distance of one kilometer would have been easily covered within half an hour. It was further submitted that according to the testimony of Ramhet (PW. 8) the incident occurred because Hariram had kicked the stone slab of Mangi Lal's house in the odd hours of night. From the statement of Ram Bharose (PW. 12) it was sought to be urged that in fact the villagers had beaten the thieves and the appellants were falsely implicated.

7. In response, learned Public Prosecutor for the State submitted that the statements of the prosecution witnesses clearly establish the role played by the appellants and they have been rightly convicted and sentenced.

8. Probabilities of a case are a material test in judging the credibility of a witness. According to Murray's English Dictionary, probability means "the appearance of truth or likelihood of being realised which any statement or event bears in the light of present evidence." By probability it meant the likelihood of anything to be true, deduced from its conformity to our knowledge, observation and experience. Probabilities are important elements of consideration, where the evidence appears unreliable. In the instant case we find it difficult to believe that informant Rekhraj and deceased Dhanraj took five hours in covering the distance of one kilometer from village Akodia to village Sarola on foot. The prosecution has failed to explain satisfactorily as to what were the deceased and Informant doing in front of the house of appellant Mangi Lal at 2.30 AM in the dark and rainy night. It is also inexplicable as to under what circumstances the stone slab near the house of appellant Mangi Lal had fallen from the kick of Hariram. In view of these unanswered questions, the defence theory that the villagers had beaten up the thieves who had made attempt to break the house in the village, appears to us more probable. Testimony of informant Rekhraj and other eye witnesses examined by the prosecution does not inspire confidence and no reliance can be placed on it. We thus have no option except to grant benefit of doubt to the appellants.

9. For these reasons, we allow the appeal and set aside the impugned judgment dated January 30, 2003 of learned Special Judge, SC/ST (Prevention of Atrocities)

Cases, Jhalawar. We acquit the appellants Sheoji, Ramchandra and Mangilal of the charges under Sections 147, 323/149, 324/149, 325/149 and 302/149 IPC. We also acquit the appellants Amarlal, Devkishan and Madan Lal of the charges under Sections 148, 323/149, 324/149, 325/149 and 302/149 IPC. Appellants Sheoji, Ramchandra, Mangilal, Madanlal and Amarlal are on bail, they need not surrender and their bail bonds stand discharged. Appellant Devkishan, who is in jail, shall be set at liberty forthwith if not required to be detained in any other case.