(1958) 07 AHC CK 0004

Allahabad High Court (Lucknow Bench)

Case No: Criminal Appeal No. 219 of 1956

Dronacharya		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: July 16, 1958

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 342, 367

Citation: AIR 1959 All 526 : (1959) 29 AWR 566 : (1959) CriLJ 1029

Hon'ble Judges: B.N. Nigam, J; A.N. Mulla, J

Bench: Division Bench

Advocate: S.D. Misra, for the Appellant; P.N. Chaudhri, for the Respondent

Final Decision: Disposed Of

Judgement

A.N. Mulla, J.

Appellant Dronacharya who is a young lad of about 14 or 15 years of age has been convicted u/s 302 I. P. Code and sentenced to imprisonment for life by the Additional Sessions Judge, Hardoi. The charge against the appellant was that on 15-5-1955, at about sunset time he attacked Ram Kishore aged about 16 years, with a lathi in the grove known as Mithnu Wala Bagh in village Dhonhi, Police station Sandi, District Hardoi as a result of which Ram Kishore sustained serious injuries and died a few days later. The appellant''s younger brother Kirpacharya aged ten years and his father Mohan Lal were also prosecuted in this case on the allegation that they had also participated in this attack upon Ram Kishore, but the learned trial court acquitted them and did not believe the prosecution evidence on this point.

2. The prosecution story is that both the appellant and Ram Kishore deceased belonged to the same family though they were very distantly related. Sheo Charan and Ganga Charan were two brothers and Ram Kishore was the great grandson of Sheo Charan, while the appellant was the grandson of Ganga Charan. Even on the date of the incident there was some property which was owned jointly by the two

branches of the family and Mithnu Wala Bagh was included in this joint property. According to the prosecution some ten or twelve days before the incident Ram Kishore deceased had given a beating to Dronaeharya appellant in this very grove and the dispute arose on the plucking of mangoes.

When the appellant complained to his parents, they went to Jamuna Shankar (P. W. 1), the father of Ram Kishore and protested against the conduct of Ram Kishore. Jamuna Shankar did not take any action against Ram Kishore on this complaint and. Mohan Lal, the father of the appellant came dissatisfied after the interview. He even gave an expression to the thought that he would settle the matter himself. It is alleged that it was on account of this ill-feeling that Mohan Lal and his two sons attacked Ram Kishore.

3. Coming to the date of the incident, the prosecution story is that P. W. 2 Chheda Lal, the younger brother of Ram Kishore deceased, was in the Mithnu Wala Bagh plucking and eating mangoes. Mohan Lal along with the appellant and his younger sou Kirpacharya was also present in this grove and was collecting some mangoes. Accidentally a calif belonging to Jamuna Shankar strayed away and Ram Kishore came to the Mithnu Wala Bagh in search of that calf. When the appellant and his father saw Ram Kishore in the mango grove, they thought it to be a good opportunity of taking vengeance.

According to the prosecution case Mohan Lal was the first to give a lathi blow to Ram Kishore and then his two sons joined in the fight and showered lathi blows upon Ram Kishore. Ram Kishore tried to run away, but he succeeded in running away upto a few paces only where he was lolled down, Chheda Lal (P. W. 2), who was already present in the grove raised an alarm and so did Ram Kishore. On hearing the shouts of his two sons, Jamuna Shankar, who was at a short distance, rushed up towards the grove. So did many other persons who, when they came to the Mithnu Wain Bagh, saw the appellant along with his father and brother giving lathi blows to Ram Kishore.

Jamuna Shankar himself did not sec the actual assault, but he saw the three assailants running away. Jurnuna Shankar and Chheda Lal then brought Ram Kishore, to their house and next morning when his condition deteriorated they took him to Sandi Hospital, which was 4 1/2 miles away. When the Doctor saw Ram Kishore, he told Jamuna Shankap that the condition of Ram Kishore was serious and advised him to lodge a report at the police station. It was after this advice was given to Jamuna Shankar that he proceeded to police station Sandi and lodged the first information report, which was recorded at 2.10 P. M. on 16-5-1955.

4. In the report the facts mentioned above were briefly narrated with the noticeable omission of Chheda Lal''s presence in the grove at the time of the incident. This report was recorded under Sections 308/323 I. P. Code. It seems that after this report was lodged the police sent instructions to the Medical Officer at Sandi

Hospital to record the injuries of Ram Kishore. Dr. Mittal thereupon examined Ram Kishore at 5 P M. on 16-5-1955 and noted down the injuries found on the body of Ram Kishore. He also mentioned that Ram Kishore was in a semiconscious state and his condition was grave.

It seems that after the examination at Sandi Hospital, Ram Kishore was taken by his father to the Sadar Hospital at Hardoi and he finally died in the early hours of the morning on 18-5-1955. Dr. Section K. Mukherji, Civil Surgeon, Hardoi, conducted the post-mortem examination the same day at 5 P. M. and again noted the same injuries which were noted by Dr. Mittal earlier. On internal examination he found that the head of Ram Kishore was fractured at several places and these head injuries were really responsible for his death.

5. When the death of Ram Kishore was reported to police station Sandi, the charge was altered to one u/s 304. I. P. Code and Sri Harpal Singh, Station Officer, Sandi started the investigation.

Sri Harpal Singh took the statements of witnesses, but he has offered no satisfactory explanation as to why he did not examine several other boys who were admittedly present at the time when this incident'' occurred. He tried to contact Mohan Lal and his two sons, but he could not find them on the 18th. The appellant and his younger brother Kirpacharya surrendered in the court on the 19th, but Mohan Lal still kept absconding. Warrants of attachment were issued against Mohan Lal''s property and when on 11-6-1955, Sri Harpal Singh, went to execute these warrants, he found Mohan Lal at home and arrested him. After completing the investigation he prosecuted Mohan Lal and his two sons.

6. The defence of the appellant was that he was plucking mangoes in the joint grove and on the date and time of occurrence alleged by the prosecution he had climbed up a tree for this purpose. Ram Kishore deceased came there and began to abuse him. When the appellant was getting down from the tree Ram Kishore, who possessed a lathi, assaulted him. He gave him six or seven blows and thereupon the appellant struck Ram Kishore with a lathi which he possessed and then the appellant went to his home. The appellant examined only Dr. S. K. Sharrna, the Jail Doctor in his defence before the committing Magistrate''s court and his statement was tendered in evidence before the trial court. This evidence did not help the defence. It is not necessary to mention the defence taken up by Mohan Lal and Kirpacharya, as they have been acquitted.

7. The trial court came to the conclusion that only the appellant attacked Ram Kishore and Mohan Lal and Kirpacharya were falsely implicated. It also came to the conclusion that the witnesses had enmity with Mohan Lal and they were not reliable and trustworthy. It also doubted their presence at the time of the incident. It came to the conclusion that perhaps only Chheda Lal, was present in the grove at the time of the incident, but Chheda Lal also was an unreliable witness and he succumbed to

the pressure of his father Jamuna Shankar when he named Mohan Lal and Kirpacharya as the assailants of Ram Kishore. It however, relied upon the admission of the appellant made in his two statements u/s 342 Cr. P. C. to the effect that it was he who caused injuries to Ram Kishore.

The other Dart of the statement of the appellant, namely that he caused these injuries after he was attacked by Ram Kishore in the exercise of his rights of private defence was found to be incorrect by the trial court in view of the medical evidence and, therefore, it accepted part of the statement of the appellant and rejected the other part. It is mainly on the admission of the appellant himself that the trial court based its conviction against him.

8. We would like to incorporate an extract from the decision of the trial court which would show the view taken by it. When assessing the tesimony of prosecution witnesses in this case, it observed:

"We, therefore, find that practically all the witnesses have something or the other against the accused. They are all chance witnesses and they came from long distances. It is, therefore, highly suspicious if they could have seen the marpit. Apart from that the witnesses have improved on their statements as originally given by them. For the first time in this court all these witnesses stated that Ram Kishore was beaten twice--first at the place where he was and again at the place where he fell down. There is also contradiction in the statements of there witnesses on the point that according to some all the three accused beat the deceased twice and according to some at first only Mohan Lal gave a lathi blow and after Ram Kishore fell down all the three accused beat him. It, therefore, becomes clear that the only natural witness of any value is Chheda Lal P. W. 2, whose presence was natural, but Chheda Lal has not been corroborated by any reliable and independent, testimony. He is admittedly an interested witness playing in the hands of his father. He is a young boy of about 11 years of age only and in spite of the fact that the story given by him appears to be correct to a great extent, it was very easy for him to implicate "at the instance of his father two other accused namely Mohan Lal and Kripacharya."

From the above extract it is obvious that the trial court doubted the presence of other witnesses apart from Chheda Lal at the time of the incident. In its opinion Chheda Lal alone was a competent witness, but even his evidence suffered from grave short-comings. The evidence against Mohan Lal, Kirpacharya and the appellant was uniform and Chheda Lal incriminated them also in his statement. It, is, therefore, obvious that the trial court did not consider the evidence of Chheda Lal alone as sufficient to bring conviction to its mind. It, therefore, naturally follows that it was the statement of of the appellant himself which turned the balance against him in the assessment made by the trial court. We may also mention that in our opinion Chheda Lal''s presence in the grove is highly doubtful. The trial court did not consider the fact which we have pointed out earlier when giving the facts of the case that the presence of Chheda Lal was not mentioned by Jamuna Shankar when he

lodged the first information report. This perhaps escaped the attention of the trial court.

9. There is another circumstance which makes us feel that Chheda Lal could not have been in the grove. The prosecution case is that Kripacharya who is only ten years of age was wielding a lathi. Chheda Lal is a year older than Kirpacharya. There is nothing to indicate that this fight was premeditated or that Mohan Lal and his two sons came prepared to beat Ram Kishore. Admittedly they did not even know that Ram Kishore would come to the grove at that time. It is, therefore, difficult for us to accept that normally Kirpacharya would carry a lathi, but Chheda Lal would not carry a lathi. Either both of them carried lathis or none of them had a lathi. They belong to the same family and their ages being the same it is not easy to accept that one would be armed with a lathi and other would not be doing the same. We are, therefore, of the opinion that it would not be safe to accept that Chheda Lal was present in the grove when this incident occurred. If he had been there, he was bound to support his brother and then a scratch or two might have been found on his body also.

10. Once the prosecution evidence is rejected in toto, the only thing left against the appellant is his statement. It is settled law that if the admission of an accused is to be used against him, it should be used as a whole and it cannot be split up in two parts. There is no justification for the procedure adopted by the trial court when it accepted the inculpatory part and excluded the exculpatory part. The trial court fell into the error of testing the statement in the light of the medical evidence, which was not permissible. The law has been laid down in Hanumant Vs. The State of Madhya Pradesh, Their Lordships observed at page 350:

"The trial Magistrate and the learned Sessions Judge used part of the statement of the accused for arriving at the conclusion that the letter not having been typed on Article B must necessarily have been typed on Article A. Such use of the statement of the accused was wholly unwarranted. It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole Or not at all." It is, therefore, clear from the extract cited above that it is not open to a court to split up the statement of an accused person and accept part of it and reject the other part, No doubt there are occasions when the statement of an accused person may contain more than one admission and in such cases where these admissions are separable and distinct, it is open to the court to accept one admission and reject the other. The law on this point was clearly laid down in Karnail Singh v. State of Punjab AIR 1954 S. C. 204. The learned Judges observed at page 206;

"With reference to the statement of the accused u/s 342, Cr. P. C., it is true that if it is sought to be used as an admission it must be read as a whole; but where it consists of distinct and separate matters, there is no reason why an admission contained in one matter should not be relied on without reference to the statements relating to

other matters."

11. The two decisions cited above have been followed by our High Court in other decisions, which we need not cite. In the present case the statement of the appellant which is the basis of his conviction is as follows:

"I was on a mango tree plucking mangoes on the date and time of occurrence. Ram Kishore came there and began to abuse. I was getting down when Ram Kishore assaulted me with lathi. After I got down he again assaulted. I received injuries. I also then struck him with lathi in self defence. Then I went home."

This statement can be divided in two parts one an admission that he struck Ram Kishore and the other that he struck him in self-defence after receiving several injuries. The trial court found the second part to be false in view of the medical evidence. It, therefore, rejected the second part and accepting the first part it convicted the appellant. As pointed out above the trial court could not do this. Irrespective of the fact whether the second part was true or false the admission made by the appellant could not have been split up. It relates to the same act and it cannot be described as an admission which relates to two separable and distinct matters. In our opinion as the statement of the appellant, if read as a whole, cannot be made the basis for his conviction, there is no evidence on the record on the basis of which he can be convicted.

12. The result is that the conviction of the appellant cannot be maintained. We, therefore, set aside the order of conviction passed against the appellant in this case u/s 302 I. P. Code and acquit him. The appellant is in jail. He should be released forthwith, unless wanted on some other charge.