

Gopal and Others

Vs

The State of Rajasthan

Criminal Appeal No. 111 of 1969

(D. G. Palekar, A. N. Grover, M. H. Beg, A. N. Ray JJ)

08.02.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Rajasthan High Court.
2. Five persons were tried by the Sessions Judge, Gangangar, on charges under Sections 147, 449, 307 and 302 read with Section 149, Indian Penal Code. According to the case of the prosecution Adram, Sohanlal and Kashiram were sitting at the house of Adram when Dhanpat appellatant came there in a state of intoxication. He started hurling abuses and was asked to leave. Dhanpat went towards his house and returned after a short time armed with a Gupti. He was accompanied by Gopal who had a Barchha and Dhonkal who was armed with a Kassia. The wives of Gopal and Dhonkal, Mst. Chawali and Mst. Kheevni were armed with lathis and accompanied the other assailants. It may be mentioned that Gopal and Dhonkal are brothers and Dhanpat is the son of Gopal. It was alleged by the prosecution that Dhanpat attacked Sohanlal with the Gupti, Gopal hit him on his head with Barchha and Dhanpat hit Adram with Kassia. This attack was attributed to some old enmity between the assailants and Adram and Sohanlal. This was the prosecution case as embodied in the first information report which was lodged by Madu Ram, P.W. 2 at police station Bhadra on September 12, 1965, at 11 p.m. Bhadra is at a distance of 19 miles from village Kunji where the occurrence is alleged to have taken place. The learned Sessions Judge found that Section 149 could not be applied to the facts as found by him and each accused person would be liable for his individual action. It was held that the grievous injuries on the head of Sohanlal were caused by Gopal. He found him guilty under Section 302, Indian Penal Code, and sentenced him to imprisonment for life. He was also convicted under Section 324, Indian Penal Code, for causing injuries to Adram and awarded a sentence of one year's rigorous imprisonment on that count. The two sentences were to run concurrently. Dhonkal was convicted under Section 324, Indian Penal Code, for causing injuries to Sohanlal and Adram and was sentenced to 1 1/2 year's rigorous imprisonment. Dhanpat was convicted under the same provisions for causing injuries to Sohanlal and was awarded one year's rigorous imprisonment. Mst. Kheevni and Mst. Chawali were convicted under Section 323, Indian Penal Code, and were directed to pay a fine of Rs. 50/- each; in default they were to undergo a simple imprisonment for 15 days.
3. The convicted persons filed an appeal to the High Court. Now on the side of the complainants Sohanlal deceased had sustained four injuries which were all incised wounds. The first one was an incised wound on the upper part of the right parietal region and the second one on the lower part of that region. Indeed it were these injuries which ultimately caused his death. Adram had sustained seven injuries four of which were incised wounds, two contusions and one abrasion, all the injuries

being simple, Maduram had three contusions and two abrasions the injuries being simple in nature. Out of all the accused persons Gopal had a contusion on the medial surface of dorsum of left head, a curved incised wound on the right side of the parietal region, a contusion on the left shoulder region and an abrasion. The first injury was grievous and the others were simple in nature. Injury No. 2 had been caused by a sharp-edged weapon. Dhonkal had six contusions, one contused wound on the right parietal region and haematoma on the left side of his back. The injuries were simple. Dhanpat had four contusions and one abrasion injuries being simple. Mst. Kheevni had one contused wound on the right side of the frontal region and three contusions. Mst. Chawali had two contusions and five incised wounds on the left parieto occipital region connecting one with the other. The third injury had been caused by a sharp-edged weapon.

4. The defence of the accused persons was that the complainant party had come to house of Gopal armed with weapons and they had started inflicting injuries on all the five accused persons. Dhanpat thereupon picked up a Kasia and moved it in all directions and dealt blows to the members of the complainant party. It was denied that the accused persons went to the house of Adram. It is apparent that the case of the accused persons was that whatever injuries had been inflicted on the deceased or on others had been inflicted in exercise of the right of defence of person when the complainant party came to Gopal's house and started attacking them. The Sessions Judge had rejected the defence case that any incident took place at the house of Gopal. The High Court did not agree with this finding completely. In its opinion a part of the incident took place at the house of Gopal. After considering the evidence this is what the High Court observed :

"It cannot, therefore, be ruled out that when Dhanpat abused Adram and Sohanlal, these persons accompanied by some other persons went to the house of Dhanpat and there beating was administered to the ladies of the family of Gopal and also to the male accused. The male accused, in order to wreak vengeance, may have taken up the weapons such as Ex. 1 and Ex. 6 produced by the prosecution at the trial, and may have assaulted the complainant party. It appears that the male accused, namely, Gopal, Dhonkal and Dhanpat did not leave the matter by driving away Adram and Sohanlal and others from their house but pursued them and went to the house of Adram which was at a distance of about fifty steps from the house of Gopal as deposed by Sheodansingh, P.W. 8 and at that place they caused fatal injuries to Sohanlal and may have caused further injuries to Adram and Maduram."

The High Court set aside the conviction of Mst. Kheevni and Mst. Chawali and also acquitted Gopal of the charge under Section 302, Indian Penal Code, but convicted him under Section 326 read with Section 34, Indian Penal Code, and sentenced him to three years' rigorous imprisonment. Dhonkal and Dhanpat were also convicted under the same provisions and each of them was sentenced to one year's rigorous imprisonment. The conviction and sentence on other counts was maintained.

5. Counsel for the appellants before us has contended that the view of the High Court that after the party of the complainants had injured the accused persons in their house including their female members the male members went armed to the house of Adram and there caused fatal injuries to Sohanlal and further injuries to Adram and Maduram is based on pure conjecture and there is no evidence whatsoever to support such a conclusion. We have not been shown any evidence on which the aforesaid conclusion could be based except that the blood-stains were found at the house of Adram and that Sohanlal was also found injured in his house. The injuries which were inflicted on the members of the accused party were so numerous and extensive and even involved two ladies. This lends support to the case set up in defence that the injuries which were inflicted by the accused

were caused in defence of their person when they had been attacked in the house of Gopal. It is somewhat significant and this fact has been stressed by the High Court also that one of the ladies, namely, Mst. Chawali was about 75 to 80 years of age. We are unable to agree with the High Court that Gopal could be convicted under Section 326, read with Section 34, Indian Penal Code, as had been done by the High Court nor can the conviction of Dhonkal and Dhanpat be sustained under those provisions as was the view of the High Court Mst. Chawali and Mst. Kheevni had already been acquitted by the High Court and therefore the only persons left whose case required consideration was that of Gopal, Dhonkal and Dhanpat. In our opinion the prosecution has not excluded the possibility of Sohanlal having gone to the house of Adram after receiving the injuries in the house of Gopal. None of these persons, therefore, was guilty of any offence as injuries to Sohanlal and Adram which were inflicted were in exercise of the right of defence of person.

6. The appeal of Gopal, Dhanpat and Dhonkal is consequently allowed and they are acquitted. They were released on bail and their bail bonds shall stand cancelled.

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