

Kanhiyalal and Others

Vs

State of Rajasthan

Criminal Appeal No. 78 of 1986

(S. Natarajan, A. M. Ahmadi JJ)

21.04.1989

JUDGMENT

AHMADI, J. -

1. Gokul (accused 3) and his three sons Kanhiyalal (accused 1), Geelaram (accused 2) and Ratanlal (accused 4) were charged for the murder of Chhotu and for causing injuries to his brother Bhura and to other family members. The learned Additional Sessions Judge, Ajmer convicted accused 1 and 2 under Section 302, IPC and Section 302/34, IPC for causing the death of Chhotu. Accused 3 and 4 were convicted under Section 325, IPC and Section 325/34, IPC for causing injuries to Chhotu, Bhura and others, Accused 1 and 2 were sentenced to suffer rigorous imprisonment for life. Accused 3 was sentenced to suffer rigorous imprisonment for 4 years under Section 325, IPC. Accused 4 being under 21 years of age was given the benefit of Section 4 of the Probation of Offenders Act and was directed to be released on his executing a personal bond in the sum of Rs. 1000 to maintain peace and be of good behaviour for a period of two years.

2. The accused feeling aggrieved by the order of conviction and sentence preferred an appeal to the High court of Rajasthan. The Division Bench of the High Court which heard the appeal came to the conclusion that in the facts and circumstances of the case the conviction of accused 1 and 2 under Section 302/34, IPC was not maintainable and they could properly be convicted under Section 304 Part I read with Section 34, IPC. Their substantive conviction under Section 302, IPC was held to be wholly unsustainable. So far as accused 3 and 4 are concerned, their conviction under Section 325/34, IPC was sustained, Accused 1 and 2 were directed to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 250 each, in default to suffer further imprisonment for the months. It appears that in the meantime accused 3 passed away. The remaining three accused 1, 2, and 4 have approached this Court under Article 136 of the Constitution of India on special leave. The learned counsel for the appellants contended that the facts and circumstances of the case show that the accused persons had caused injuries to Chhotu, Bhura and others in exercise of their right of private defence and therefore their conviction were thoroughly unsustainable. In order to appreciate this contention we may notice the relevant facts.

3. The incident occurred one day after Hole i.e. On March 27, 1975 at about 11.00 or 11.30 a.m. On that day the deceased Chhotu, Bhura and other family members were harvesting the wheat crop in their field adjacent to Bantawali Kuai (well). The accused were also in their field at some distance from the field of Chhotu and Bhura. The prosecution case is that one day before Hole accused 1 and 2 were acquitted of the charge of beating PW 18 Hazari (Mali), an incident which had taken place a couple of years back. On that occasion PW 18 was saved by Chhotu and others. Jubilant about their acquittal, the accused are alleged to have come to the field of Chhotu and Bhura armed with

'lathis'. The accused addressing the complainant party stated that you saved Hazari but who will save you now. So stating accused 2 opened the assault on Chhotu followed by accused 1. On receipt of injuries from accused 1 and 2 Chhotu fell down. Accused 3 and 4 who were in the field had also arrived in the meantime and they too gave stick blows to the fallen Chhotu. After seriously injuring Chhotu they turned to Bhura and caused serious injuries to him also. Injuries were also caused to PW 1 Prem, Daughter of Chhotu, PW 3 Champa, wife of Bhura and PW 19 Lad, daughter of Bhura, PW 4 Hagami, wife of Chhotu also claimed to have received injuries but so injury marks were found on her person. After causing these injuries the accused ran away in the direction of their field.

4. After the accused left the place of occurrence, the womenfolk raised an alarm which attracted the attention of PW 8 Kana. The injured were put in his bullock cart. PW 3 Champa, PW 4 Hagami and PW 19 Lad also went along with the injured in the bullock cart. When the bullock cart carrying the injured was proceeding in the direction of Shafakhana (dispensary), accused 1 and 2 stood in the way and asked PW 8 to leave the victims to their fate. On PW 8 refusing they pelted stones at him, whereupon he ran away. The womenfolk saw PW 20 Govindram in his field and requested him to help them carry the injured to the dispensary for treatment. PW 20 obliged and drove the bullock cart to the dispensary. Unfortunately the medical Officer was not available and the nurse on duty advised them to take the injured to the Kekri Hospital. A motor car was hired and the injured were brought to the Kekri Hospital. The medical officer on seeing the condition of Chhotu advised that he may be taken to the Civil Hospital, Ajmer. The injured Bhura was, however, admitted to the Kekri Hospital for treatment, Chhotu, while on his way to Ajmer, passed away. PW 20 Govindram who had parted company after sending the injured in a motor vehicle, returned to the village with the bullock cart and then went to Kekri Hospital by the next bus. After visiting the hospital, on the request of PW 2 Bhura, he went to Sawar Police Station and lodged a report, Ex. P-15. On the basis of the said report an offence was registered under Section 307, IPC which was later converted to Section 302, IPC on the death of Chhotu. This in brief is the prosecution case.

5. The defence version is that accused 1 and 2 had taken their cattle to the Bantawali Kuai for water. While they were there Chhotu and Bhura hurled abuses and stated that although they were acquitted in Hazari (Mali)'s case, they would not be spared. Sensing the mood of Chhotu and Bhura the accused turned to leave but Chhotu asked them to return. On their return Chhotu inflicted a blow with a 'salia' on the head of accused 1. When accused 2 intervened, he too was beaten up by Chhotu and Bhura. Accused 1 and 2 tried to run away but they were chased and beaten by Chhotu, Bhura, Prem, Champa, Hagami and Lad. Thereupon accused 3 and 4 rushed to their help but they too were assaulted. The learned counsel for the accused, therefore, contended that in the circumstances the accused, apprehending danger to their lives, caused injuries to Chhotu and Bhura in self-defence. In support of this contention the defence has led evidence. We have perused the same.

6. The conviction of accused 3 Gokul is of no consequence since he has passed away. So far as accused 4 Ratan is concerned, the learned counsel for the appellants did not make any submission as he has been released on probation. The learned counsel confined his arguments to the convictions of accused 1 and 2 (appellants 1 and 2) only.

7. The evidence of Dr. O. P. Tak reveals that Chhotu had received three injuries namely (1) a lacerated wound 3 " x 1/2" bone deep over right frontal region with bluish swelling of right eye; (2) a lacerated wound 1 1/2" x 1/4" x 1/2" over the occipital region and (3) a lacerated wound 1/4" x 1/6" x 1/4" over the tip of the right middle finger. The post mortem examination was conducted on the dead body of Chhotu on March 28, 1975. On internal examination it was found that the deceased had a linear fracture 2" in length over the right frontal bone. The brain was congested and there was

clotting of blood. This injury corresponds to external injury No. 1 In the opinion of Dr. Tak death was due to shock and haemorrhage on account of fracture of the skull bone. The injuries were ante-mortem. It is, therefore clear that Chhotu die a homicidal death.

8. PW 2 Bhura deposed that he received two injuries on the forehead and two injuries on the left hand. There was a fracture resulting from the injury on the left hand. He was in hospital for 8 or 10 days. The prosecution evidence shows that the injury on the forehead was a serious one and had caused profuse bleeding. The injuries to other prosecution witnesses PW 1 Prem, PW 3 Champa and PW 19 Lad were of a simple nature. PW 4 claimed that she was injured but no external marks of injury were noticed. The prosecution relied on the direct testimony of PWs 1, 2, 3, 4, 9, 18 and 19 bring home the guilt against the accused persons. We have perused the evidence of these witnesses, all of whom unfold the prosecution version regarding the incident narrated earlier. Both the courts below have found these witnesses to be reliable. The fact that Chhotu and Bhura received severe injuries in the incident cannot be doubted. So also the fact that PWs 1, 3, and 19 received simple injuries cannot be doubted. The only question is whether the accused persons were the aggressors as alleged or whether they were obliged to caused injuries in self-defence.

9. Accused 1 Kanhiyalal had sustained six injuries three abrasions one bruise and two lacerations on the left eye and right forehead. All these injuries were simple in nature except that there was bleeding from the gums which had loosened the lower front four teeth. Accused 2 Geelaram had one laceration on the frontal region, two abrasions on the scapular region and a linear scar on the right hand. All these injuries were of simple nature. Accused 3 Gokul had four abrasions and a swelling on the left forearm, all of which were simple in nature. Accused 4 Ratanlal had two abrasions, one on the scapular region and another on the left little finger which were simple in nature. It will be seen from the above that the injuries suffered by the accused were of a simple nature as against the injuries suffered by Chhotu and Bhura. If the assault was opened by the complainant party, as is alleged by the counsel, we do not think that the accused would have escaped with simple and minor injures. According to the accused they were unarmed when the assault was opened by Chhotu and Bhura and they picked up the 'salia' from the nearby bullock cart to protect themselves. This means that there was a gap between the assault launched by Chhotu and Bhura and the accused arming themselves with 'salia'. It is, therefore, difficult to believe that the accused would have escaped with such injuries if the complainant party had in fact opened the attack on unarmed persons. Both the courts below have also reached the conclusion and in our view rightly that the facts and circumstances of the case reveal that the assault was launched by accused 1 and 2, accused 3 and 4 joining a little later. There is another circumstances which betrays the revengeful mood of the accused persons. After Chhotu and Bhura were injured and the accused had left the place of occurrence, the womenfolk had requested PW 8 to take the injured in his bullock cart to the dispensary. PW 8 agreed and both the injured who were in critical condition were placed in the bullock cart. The bullock cart had hardly covered a distance of 4 or 5 fields when the accused appeared and told PW 8 to leave the injured to their fate if the considered his life precious.

10. PW 8 showed initial resistance but fled on being attacked with stones. It was thereafter that the womenfolk requested PW 20 Govindram to drive the bullock cart to dispensary. This part of the prosecution evidence which has remained virtually uncontested goes to show that even after the incident the accused did not permit PW 8 to take the injured to the dispensary for treatment. This is a circumstance which betrays the mood of the accused persons at the time of and immediately after the incident. We are, therefore, of the opinion that the courts below did not commit any error in the appreciation of the prosecution evidence in coming to the conclusion that the accused persons were the aggressors. The accused persons therefore, were not entitled to any right of private defence.

11. It was next contended by the learned counsel for the appellants that there was an inordinate delay in lodging the first information report. The court below have come to the conclusion that the delay is properly explained. We think that this conclusion is correct. Immediately after the incident all the members of the complainant's party except PW 1 Prem who was a minor had accompanied the injured Chhotu and Bhura in the bullock cart. On reaching the dispensary it was realised that since the medical officer was not available it was necessary to remove the injured to Kekri Hospital. PW 20 returned with the bullock car to the village and thereafter went to Kekri Hospital by bus. It was there that PW 2 Bhura requested him to him inform police. PW 20 thereafter went to the police station and lodged the complaint. In these circumstances we do not think that the delay is unexplained. We, therefore, see no substance in this contention.

12. It was lastly contended that the prosecution witnesses have suppressed the true facts. We have carefully read the prosecution evidence and we do not think that the prosecution witnesses are guilty of suppression of facts.

13. In view of the above we see no merit in this appeal and dismiss the same. The appellants 1 and 2 will surrender to the bail and serve the sentence.

</html