

RAJASTHAN HIGH COURT

Sohan Lal

Vs.

State Of Rajasthan

D.B. Criminal Appeal no. 796 of 1998
(Shiv Kumar Sharma & Khem Chand Sharma, JJ.)

10.09.2003

JUDGMENT

Shiv Kumar Sharma, J.

1. As many as 9 accused were indicted for trial before the learned Additional Sessions Judge No. 3, Alwar in Sessions Case No. 24/1997 for having committed murder of Girdhari. Learned Judge vide judgment dated November 23, 1999 convicted and sentenced the appellants Sohan Lal, Kamruddin, Kallu, Asuddin, Rahmat Khan, Mauj Khan and Rahmuddin Khan as under: -

Kallu:

Under Section 302 Indian Penal Code To suffer Imprisonment for life and fine of Rs. 1.000/-# in default to further suffer One Year Rigorous Imprisonment.

Under Section 447 Indian Penal Code To suffer Six Months Rigorous Imprisonment.

Under Section 148 Indian Penal Code To suffer One Year Rigorous Imprisonment.

Under Section 325/149 Indian Penal Code To suffer Two Year Rigorous Imprisonment and fine of Rs. 500/- in default to further suffer three Months Simple Imprisonment.

Under Section To suffer One and a half Year Rigorous Imprisonment and fine of
324/149 Indian Rs. 500/- in default to further suffer Three Months Simple
Penal Code Imprisonment.

Under Section
323/149 Indian To suffer Six Months Simple Imprisonment.
Penal Code

Sohan Lal# Mauj
Khan & Asuddin:;

Under Section To suffer Imprisonment for life and fine of Rs. 1,000/-# in default
302/149 Indian to further suffer One Year Rigorous Imprisonment.
Penal Code

Under Section
447 Indian Penal To suffer Six Months Rigorous Imprisonment.
Code

Under Section
148 Indian Penal To suffer One Year Rigorous Imprisonment.
Code

Under Section To suffer Two Year Rigorous Imprisonment and fine of Rs. 500/- in
325/149 Indian default to further suffer three Months Simple Imprisonment.
Penal Code

Under Section To suffer One and a half Year Rigorous Imprisonment and fine of
324 Indian Penal Rs. 500/- in default to further suffer Three Months Simple
Code Imprisonment.

Under Section
323/149 Indian To suffer Six Months Simple Imprisonment.
Penal Code

Kamruddin &
Rahmat Khan:;

Under Section To suffer Imprisonment for life and fine of Rs. 1,000/-# in default

302/149 Indian To further suffer One Year Rigorous Imprisonment.

Penal Code

Under Section

447 Indian Penal To suffer Six Months Rigorous Imprisonment.

Code

Under Section

148 Indian Penal To suffer One Year Rigorous Imprisonment.

Code

To suffer Two Year Rigorous Imprisonment and fine of Rs. 100/- in
Under Section default to further suffer three Months Simple Imprisonment. under
325 Indian Penal Section 324/149 Indian Penal Code To suffer One and a half Year
Code Rigorous Imprisonment and fine of Rs. 500/- in default to further
suffer Three Months Simple Imprisonment.

Under Section

323/149 Indian To suffer Six Months Simple Imprisonment.

Penal Code

Rahmuddin:,

Under Section

302/149 Indian To suffer Imprisonment for life and fine of Rs. 1.000/-# in default
Penal Code to further suffer One Year Rigorous Imprisonment.

Under Section

447 Indian Penal To suffer Six Months Rigorous Imprisonment.

Code

Under Section

147 Indian Penal To suffer Six Months Rigorous Imprisonment.

Code

To suffer Two Year Rigorous Imprisonment and fine of Rs. 500/- in
Under Section default to further suffer three Months Simple Imprisonment. under
325/149 Indian Section 324/149 Indian Penal Code To suffer One and a half Year
Penal Code Rigorous Imprisonment and fine of Rs. 500/- in default to further

suffer Three Months Simple Imprisonment.

Under Section
323/149 Indian To suffer Six Months Simple Imprisonment.
Penal Code

All sentences were ordered to run concurrently.

Other accused Mahboob and Taiyab Khan were however acquitted.

2. Seven convicted appellants have assailed the impugned judgment by filing DB Criminal Appeal (No. 796/1998), whereas the complainant Raghuveer Singh has assailed the judgment of acquittal of accused Mahabood and Taiyab Khan by filing the DB Criminal Revision Petition (No. 188/1999). During the pendency of the appeal appellant Rahmat Khan died and proceedings against him stood dropped.

3. The prosecution story is woven like this:-Informant Raghuveer Singh (PW.1) submitted a written report on August 7, 1997 at 5.30 PM to the SHO Police Station Malakhera Alwar stating therein that Prabhu Koli and his brothers mortgaged their agricultural land bearing Khasra No. 250 measuring 5 bighas to him. On August 7, 1997 around 2.00 PM when the informant along with Chhote Lal, Rajendra, Munshi and Girdhari were in the process of ploughing the said land. Kallu, Kamru, Taiyab and Rehmu came over their on two tractors and started ploughing the land. When the informant protested they made attempt run him over by the tractor. In the meanwhile Asuddin, Mahboob, Mauj, Rahmat, Sohan Lal and Kamru armed with Farsi, Tanchia, Danti and lathies attacked on them. Mauj and Asuddin inflicted blows with Danti and Tanchia on the head of Girdhari, while Kallu and Rahmu ran him over by the tractor. When the informant intervened Asuddin, Taiyab and Kamruddin gave blows with Tanchia, Farsi and lathi on his head. Girdhari died on the spot whereas Chhote Lal, Lallu, Rajendra and Munshi sustained injuries. Police Station Malakhera registered a case under Sections 147, 148, 149, 323, 307, 308, 302 and 447 Indian Penal Code and investigation commenced. On completion of the investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No. 3, Alwar. Charges under Sections 147, 148, 447, 302, 302/149, 307, 307/149, 325, 325/149, 324, 324/149, 323 and 323/149 Indian Penal Code were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 17 witnesses. In their explanation under Section 313 Criminal Procedure Code, the appellants claimed innocence. One witness in defense was

examined. Learned Trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

4. In order to establish that death of Girdhari was homicidal the prosecution examined Dr. Sanjay Gupta (PW.14), who conducted autopsy on the dead-body of Girdhari. As per post mortem report (Ex.P-33) Girdhari sustained following injuries:-

" 1. Perforating injury on back on left side L-L (toom) region deep upto peritoneal cavity size 12 x 5cm x deep upto peritoneum also fracture of 9, 10 & 11th rib on posterior side."

2. Abrasion: 4 x 2cm left side to the injury No. 1.

3. Incised wound 5 x 1.5cm Margins regular on right parieto frontal region transversely.

4. Incised wound 5 x 1.5cm on centre of head between both parietal bone longitudinally, margins regular.

5. Lacerated wound: 2 x 1cm x 0.5cm in middle of left leg medical side."

The injuries were ante mortem in nature and cause of death was hemorrhage & shock due to injury to spleen & left kidney by injury No. 1."

5. At this juncture it will be appropriate to consider the injuries sustained by members of the complainant party and the accused persons. As per Injury Report (Ex.P-7) Raghuveer (PW.1) sustained following injuries:-

"1. Lacerated wound 5x 1 x 1cm.

Anterio Posteriorly on scalp of

left parietal bone region.

2. Bruise (Red) 3x 1cm.

just behind right ear longitudinal

on right mastoid bone.'

3. Bruise (Red) 4 x 1cm.

Back of left arm longitudinal just

above left elbow joint.

4. Bruise (Red) 5 x 1cm.

Longitudinal wound on dorsal aspect of right forearm 2" below the right elbow joint."

As per Injury Report (Ex.P-10) Rajendra Kumar (PW.2) sustained following injuries:-

"1. Lacerated wound 3 x 0.2 x 0.2cm.

Oblique wound on scalp of left parietal bone region.

2. Bruise (Red) 4 x 1.5 cm.

Longitudinal wound on lateral side of left arm on upper part.

3. Bruise (Red) 2 x 1cm.

Horizontal wound on upper back just above superior border of left scapula.

4. C/o pain & swelling around left elbow.

5. Abrasion: a) 1 x 1 cm.

b) 1 x 0.1cm.

On lateral side of left elbow joint.

6. C/o Pain in left hand.

7. C/o pain over ribs on lateral side on left joint elbow left axilla.

8. C/o pain above left nipple."

As per Injury Report (Ex.P-11) Chhotey Lal (PW.3) sustained following injuries:-

"1. Incised wound 5 x 1 x 0.5cm.

On scalp. oblique wound on
left parietal bone region.

2. Abrasion 1 x 1cm.

On scalp on right parietal bone region.

3. Bruise (Red) 10 x 1cm.

Horizontal wound on left upper back is
above the superior scapular border of
left scapula.

4. Abrasion 4 x 1cm.

Horizontal wound on left upper back 1cm
above the supero- lateral side of injury No. 3."

As per Injury Report (Ex.P-34) Munshi Ram (PW.4) sustained following injuries:-

"1. C/o Pain & Swelling over left hand.

2. C/o Pain & Swelling 4 x 2cm.

On lateral half of right eyebrow.

3. Abrasion 0.5 x 0.5cm.

Just above the superior margin of middle part of injury No. 2.

4. C/o Pain over thenar eminence of right hand.

5. C/o Pain over back on lower ribs & area between ribs & iliac crest on right side.

6. Abrasion 1 x 1cm on dorsal side of left foot.

7. Abrasion 1 x 1cm on left foot just below medial malleolus."

As per Injury Report (Ex.P-35) Lallu Ram (PW.5) sustained following injuries:-

"1. Incised wound 8 x 0.7 x 0.7cm.

On scalp antero posteriorly in
midline in middle part of scalp.

2. Swelling & C/o Pain on left hand.

3. Bruise (Red) 10 x 2cm.

Oblique on back of left side 2" below
left inferior scapular angle.

4. Bruise (Red) 4 x 1cm.

On upper back of left side 2cm medial
to medial border of left scapula.

5. C/o Pain chest on right side but no external evidence of injury seen.

6. C/o Pain on left knee joint but no external evidence of injury seen."

As per X-ray Report (Ex.P-38) Rajendra Kumar Ram (PW.2) sustained fracture of lateral condyle of Lt. humerus at his left elbow.

As per X-ray report (Ex.D-9) Munshi Ram (PW.4) sustained fracture of mid-shaft of fifth metacarpal bone at his left hand.

As per Injury Report (Ex.D-12) accused Mahabood sustained one abrasion of left side of elbow of the size of 1/4cm x 1/4cm.

As per Injury Report (Ex.D-13) accused Taiyab Hussain sustained following injuries:-

"1. Bruise as radish-blue 1/2cm x 1/2cm

Lt. side of lower lip inner side

haematoma.

2. C/o Pain Lt. leg No. ext. evidence inj. seen.

As per Injury Report (Ex.D-14) accused Kallu Khan sustained following injuries:-

"1. Abrasion-scab 1, 1/2cm x 1, 1/2cm.

Rt. side of intero parietal.

Reg. of scalp.

4. Abrasion-scab 4cm x 1/2cm.

Lt. shoulder joint posteriorly."

As per Injury Report (Ex.D-15) accused Rehmoo sustained following injuries:-

"1. Bruise 6cm x 2cm.

Lt. side of chest transversely

below clavicle Lt. side.

C/o Pain in It. arm no ext. evidence of inj."

As per Injury Report (Ex.D-16) accused Asuddin sustained following injuries:-

"1. Abrasion-scab 1,1/2cm x 1cm.

Lt. side of post curicular ear.

2. Abrasion-scab 1/4cm x 1/2cm Lt. forearm Swelling 6cm x 4cm elbow joint."

As per Injury Report (Ex.D-17) accused Kamruddin sustained following injuries:-

"1. Lacerated wound-scab 4cm x 1/2cm x 1/4cm. Lt. side of frontal partial region of

scalp.

2. C/o backing pain post side waist but no ext. evidence of inj. seen.

3. C/o Pain Perineum & scrotum but no ext. evidence to claim

evidence of injury seen."

6. Learned counsel appearing for the appellants canvassed that there are several infirmities in the statements of prosecution witnesses and conviction based on such evidence is. not sustainable. No satisfactory evidence is produced by prosecution to prove the possession of complainant party over the land in dispute. The observation of

the learned trial court that the complainant party was in possession over the land in dispute is perverse. According to the testimony of Investigating Officer the incident had occurred over the land which came in the possession of the accused. It is also contended that ocular evidence is not corroborated by medical evidence and alleged recovery of weapons is also not trustworthy. The incident had not taken place in the manner as alleged by the witnesses. The injuries sustained by the accused were not explained. As there was free fight between both the parties, the conviction with the aid of Section 149 Indian Penal Code is not sustainable.

7. Per contra, learned Public Prosecutor and the learned counsel appearing on behalf of the complainant urged that there is ample evidence on record to establish that all the appellants formed unlawful assembly, the common object of which was to kill Girdhari therefore, the appellants have been rightly convicted.

8. The prosecution led the evidence of Raghuveer Singh (PW.1), Rajendra Kumar (PW.2), Chhote Lal (PW.3), Munshi (PW.4), Lallu (PW.5), Suresh Kumar (PW.6) and Than Singh (PW.7) establish that accused Mauj Khan and Asuddin have blows with Danti and Tanchia on the head of Girdhari, thereafter accused Kallu hit Girdhari with tractor; when Girdhari fell down, Kallu moved the tractor and got the cultivator penetrated on the body of Girdhari.

9. Informant Raghuveer Singh, however admitted in his cross examination that Patwari informed him that they were free to cultivate their land which situated towards east side but they were warned not to cultivate the land towards hill side. Samaydeen (PW.17) the Investigating Officer in his cross examination deposed that there was a free fight between both the parties and the persons from both sides sustained injuries, therefore he submitted charge sheets against both the parties. He registered FIR submitted by accused Kallu and filed charge sheet. In his investigation he found that Girdhari was also accused.

10. Fact situation emerges from the testimony of prosecution witnesses may be summarized thus:-

(i) Land towards hill side where the occurrence did take place belonged to Forest Department. Adjacent to it fields of Mauj Khan and Rahmat situated.

(ii) Complainant party on the fateful day had gone for the first time to cultivate the said land of Forest Department although Patwari warned them not to cultivate it. The accused party claimed to have possession over the said land

and finding complainant party there, the accused party protested and started ploughing it with cultivator which was attached to tractor.

(iii) Free fight ensued and persons from both sides sustained injuries. Girdhari received perforating injury on back of left side which damaged spleen and left kidney and caused his death. He also sustained two incised wounds on his head.

(iv) On the basis of FIR of accused Kallu cross case was registered against the complainant party including Girdhari.

11. In order to attract the culpability under Section 149 Indian Penal Code, it has to be borne in mind that Section 149 Indian Penal Code does not create new offence but deals with vicarious liability of the members of the unlawful assembly for the acts done in prosecution of common object and for such offence as its members knew to be likely to be committed in prosecution of the common object. The case under Section 149 Indian Penal Code requires deep scrutiny and detailed and specific proof for holding that the accused persons were members of an unlawful assembly with a common object with particular reference to the part played by each of the accused persons who constituted the unlawful assembly.

12. It is well settled that where there is a spontaneous fight between two parties, each individual is responsible for the injuries, he causes, *Puran v. State of Rajasthan*¹ was a case of sudden mutual fight between the parties and it was held that there could be no question of invoking the aid of Section 149 Indian Penal Code for the purpose of imposing constructive criminal liability. In the case on hand as earlier noticed, the Investigating Officer himself admitted that there was a free fight between the parties, therefore provisions contained in Sections 149 or 148 or 147 Indian Penal Code are not attracted and each accused can be held responsible for his individual act.

13. Charge under Section 447 Indian Penal Code is also not established against the accused as the incident had taken place on the land belonged to Forest Department and it could not be proved that the complainant party was in possession over it.

14. That takes us to the allegations levelled against the accused persons for their individual acts. Accused Kallu was charged for having caused perforating injury on back of left side of Girdhari with cultivator by driving the tractor over and running Girdhari over. The deceased was put under the tractor and their cultivator pushed down which caused injury on the body of Girdhari. It would be too much to say that Kallu while sitting on a driver seat of the tractor had any intention to kill Girdhari. In

Jinder v. State of Punjab ² the deceased was put in front of a wheel cart, thereafter the accused drove the cart passing the wheel over the body of the deceased and running him over. After post-mortem of the dead body it was found that the abdomen was slightly distended and death was due to rupture of the bladder and peritonitis which could have been as a result of the deceased having been seen run over under the cart. It was held by the Apex Court that the accused was guilty under Section 304 Part II Indian Penal Code. The facts of the on hand are similar to that of the facts of *Jinder v. State of Punjab* (supra), and thus the guilt of accused Kallu does not travel beyond Section 304 Part II Indian Penal Code. From the evidence on record it is established that accused Sohan Lal, Mauj Khan and Asuddin committed offence under Section 324 Indian Penal Code whereas Kamruddin is guilty of the offence under Section 325 Indian Penal Code. Accused Rahmuddin did not cause injury to any body therefore he can not be held guilty for any offence.

15. In so far as criminal revision preferred by informant Raghuveer Singh against the judgment of acquittal of Mahaboob and Taiyab Khan is concerned, we find that ocular allegation against them have not been corroborated by medical evidence. Even if it is found that they were present at the time of incident, they can not be held vicariously liable. We are of the view that they were rightly acquitted.

16. As a result of the above discussion we dispose of the instant matters in the following terms:-

(i) Appeal of appellant Rahmuddin is allowed and he is acquitted of the charges under Sections 302/149, 447, 147, 325/149, 324/149 and 323/149 Indian Penal Code. He is on bail, he need not surrender and his bail bonds stand discharged.

(ii) As appellant Rahmat Khan died during the pendency of the appeal, proceedings against Him stand dropped.

(iii) Appeal of appellants Kallu, Asuddin, Sohan Lal, Kamruddin and Mauj Khan stands partly allowed. Conviction of appellant Kallu under Sections 302, 447, 148, 325/149, 324/149 and 323/149 is set aside, instead he is convicted under Section 304 Part II Indian Penal Code. As he has been in confinement for a period of more than six years, ends of justice would be met in sentencing him to the period already undergone by him in confinement. Kallu, who is in jail, shall be set at liberty forthwith if not required in any other case.

(iv) Conviction of appellants Sohan Lal, Mauj Khan and Asuddin under Sections

302/149, 447, 148, 325/149 and 323/149 stands set aside and they are acquitted of the said charges. Their conviction under Section 324 Indian Penal Code is however confirmed and they are sentenced to the period already undergone by them in confinement. Sohan Lal and Mauj Khan are on bail, they need not surrender and their bail bonds stand discharged. Appellant Asuddin, who is in jail, shall be set at liberty forthwith, if not required in any other case.

(v) Conviction of appellant Kamruddin under Sections 302/149, 447, 148, 324/149 and 323/149 is set aside and he is acquitted of the said charges. His conviction under Section 325 Indian Penal Code however stands confirmed and he is sentenced to the period already undergone by him in confinement. He is on bail, he need not surrender and his bail bonds stand discharged.

(vi) D.B. Criminal Revision No. 188/1999 being devoid of merit stands dismissed.

(vii) The impugned judgment of the learned trial Judge stands modified as indicated above.

Revision petition disposed of.

Cases Referred.

1. (Air 1976 Sc 912)
2. (1980 Sc Cr.R. 108)