

Ram Singh Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-08-2012

Appellant : Ram Singh

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Ramesh Kumar

Judgement :

1 Cr. A. No.2207/1996 HIGH COURT OF MADHYA PRADESH JABALPUR
Criminal Appeal No.2207/1996 Ram Singh Vs. State of Madhya Pradesh
----- Present :Hon'ble Shri
Justice N.K. Gupta. ----- Name
of counsel for the parties: Shri Ramesh Kumar, counsel for the appellant. Shri Ajay
Tamrakar, Panel Lawyer for the respondent/State.

JUDGMENT

(Delivered on 8th day of October, 2012) The appellant has preferred this appeal against the judgment dated 16.10.1996 passed by the learned Sessions Judge, Sehore in S.T. No.56/95, whereby the appellant was convicted for the offence punishable under Section 307 of IPC and sentenced for ten years R.I. with fine of the `5,000/- and in default of payment of fine, an additional R.I. for six months.

2. The prosecutions case in short is that on 8.11.1994 at about 10:30 a.m. in the morning, the victim Dayaram (PW-2) and the appellant were taking tea in the hotel of one Mansingh (PW-4). There was a dispute between the victim and the appellant who believed that the victim had burnt the 2 Cr. A. No.2207/1996 motor of the appellant with a bad intention. At the hotel of Mansingh (PW-4), the appellant suddenly raised a knife from his pocket and started assaulting the victim. He assaulted him on the chest, abdomen and other parts of the body including the right hand and left waist. When Mansingh saw the fight, shouted to save the victim Dayaram. Many persons gathered around but in the meantime, the appellant ran away from the spot. Intestines of the victim Dayaram came out from the abdomen and therefore, primary bandage was done by the witness Akbar (PW-8) and others. Thereafter, the victim was taken to the District Hospital, Sehore. Mansingh (PW-4) had lodged an FIR Ex.P/11 at Police Station Doraha, District Sehore. Dr. Anand Sharma (PW-1) examined the victim Dayaram at District Hospital, Sehore and gave his report Ex.P/1. He found five incised wounds on the victim Dayaram, which were on his right hand, left hand, right chest and left waist and also one stab wound was found on the left side of his abdomen from which intestines were coming out. After preliminary treatment, Dr. Sharma referred the victim Dayaram to the Hamidiya Hospital, Bhopal. Dr. Dinesh Modi (PW-18) had examined the victim Dayaram and gave his report Ex.P/20. He performed the operation of the victim and his intestines were placed at proper place and stitches were also given. Dr. Modi opened his chest and a rubber tube was inserted in the chest to remove the liquid collected in the 3 Cr. A. No.2207/1996 cavity. In his opinion, the injuries caused to the victim Dayaram were sufficient to cause his death in the ordinary course of nature. After due investigation, a charge sheet was filed before the C.J.M. Sehore, who committed the case to the Sessions Court.

3. The appellant abjured his guilt. He did not take any specific plea in defence. However, he has stated that he was falsely implicated in the matter. Babulal (DW-1) was examined to show about the dispute of a motor, whereas Kamta Prasad (DW-2) was examined to show that the victim fell upon some pieces of glass in the condition of intoxication. Baijnath Singh (DW-3) was examined to show about the groupism in the village.

4. The learned Sessions Judge after considering the evidence adduced by both the parties, convicted the appellant for the offence punishable under Section 307 of IPC and sentenced as mentioned above.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the appellant has submitted that no fatal injury was caused to the victim Dayaram and the eyewitnesses had turned hostile therefore, the testimony of the victim was not dully corroborated. The motive was not proved. The defence witnesses are believable that the victim fell upon the pieces of glass in a drunken condition. In the incident, it was alleged that the victim was assaulted by a 4 Cr. A. No.2207/1996 dagger which was alleged to have been seized from the appellant and the report of the concerned doctor relating to the dagger is not corroborative to the incident. Learned counsel for the appellant has placed his reliance upon the judgment passed by the Honble Apex Court in the case of Sarju Prasad Vs. State of Bihar. [1965 SC 843]. to show that no offence under Section 307 of IPC is made out against the appellant. Similarly, he placed his reliance upon the judgment passed by the Single Bench of this Court in the case of Hannu Vs. State of M.P.

. [1997(1) M.P.W.N. 61]. to show that no offence under Section 307 of IPC is made out and the sentence directed against the appellant was excessive. Hence, it prayed that the appellant may be acquitted from the charge of said offence. In alternate, learned counsel for the appellant has submitted that a harsh sentence is imposed upon the appellant and therefore, it is also prayed that his jail sentence may also be reduced to the period, which he has already undergone in the custody.

7. On the other hand, the learned Panel Lawyer has submitted that the conviction as well as the sentence directed against the appellant appears to be correct and it is prayed that no interference may be done in the appeal.

8. After considering the submissions made by the learned counsel for the parties and looking at the facts and circumstances of the case, it is to be considered as to 5 Cr. A. No.2207/1996 whether, the appeal filed by the appellant can be

accepted?. And whether the sentence passed against him may be reduced?.

9. Dayaram (PW-2) has stated that a dispute took place between the appellant and him because the victim Dayaram had burnt a motor of the appellant. However, Dayaram had sworn in the temple and said that he did not burn his motor. Defence witness Babulal (DW-1) has accepted that a dispute of motor had taken place between the parties and Dayaram told in the temple that it was not his fault by which the motor was burnt. However, it is accepted by so many witnesses that the appellant as well as the victim were gathered in the hotel of Mansingh (PW-4) and they were taking tea. Dayaram has stated that suddenly the appellant raised a dagger from his pocket and assaulted upon the victim Dayaram in a brutal manner. Mansingh (PW-4) Jagdish (PW-5), Babulal (PW-6), Chandulal (PW-7), Akbar Ali (PW-8), Ramdayal (PW-9), Deen Dayal (PW-14) and Jagdish Prasad (PW-17) were examined as eyewitnesses. Except the witness Jagdish Prasad, remaining witnesses have turned hostile but they have accepted that the victim Dayaram was assaulted and he was lying on the earth and his intestines were coming out from his abdomen and the victim told that he was assaulted by the appellant. Mansingh (PW-4) was an author of Dehatinalishi Ex.P/4 and the same was written by A.S.I. R.P. Pandey (PW-13). A.S.I. Pandey has 6 Cr. A. No.2207/1996 stated that the quarrel took place at village Khandwa and therefore, he mentioned the information in Rojnamchasanah and thereafter, he went to the village Khandwa. When he reached to the spot, he inquired from Mansingh, owner of the hotel and description given by Mansingh was recorded in Dehatinalishi Ex.P/4, whereas the appellant was already taken to the District Hospital and there was nobody to give any tinted version of the incident from the side of the victim.

10. The documents can be proved by two persons. One who dictated the same and secondly who wrote the document. In the present case, where Mansingh (PW-4) has turned hostile, Dehatinalish Ex.P/4 was properly proved by A.S.I. Pandey, who wrote the same and on that Dehatinalishi, his signature as well as the signature of Mansingh were present. Dehatinalish is an FIR lodged by the complainant Mansingh, though, not he turned hostile from his testimony. Dehatinalishi was the first version of the incident, which corroborates the evidence of the victim Dayaram. The appellant took a defence that there was a dispute

between the victim and the appellant and therefore, he was falsely implicated in the matter. The dispute between the appellant and the victim is proved by Babulal (DW-1). However, the enmity is a double edged weapon by which either the parties can assault each other or parties may allege a false report against the previous party. Under such circumstances, the 7 Cr. A. No.2207/1996 testimony of the witnesses should be considered cautiously.

11. In the present case, the victim Dayaram sustained some injuries, which could not be sustained by falling on the pieces of broken glass. If the victim fell down on the pieces of broken glass then, how the intestines could come out due to the pieces of broken glass, but the hostile witnesses have also admitted that the intestines of the victim Dayaram were coming out of the abdomen and a temporary bandage was done by them. It is nowhere accepted by any hostile witnesses that the victim was under intoxication. The testimony of the hostile witnesses can be accepted up to that extent, which appears to be acceptable on the basis of circumstances and therefore, by the testimony of various witnesses, it is proved that the victim Dayaram was found injured and his intestines were coming out of his abdomen. Mansingh (PW-4) has accepted that initially he saw the victim and the appellant, who were quarreling at the outside of his shop. Similarly, the witness Jagdish has also proved the entire incident. He was not found at all as an interested witness. It was suggested to the witness Jagdish that he was mentally sick, 8-10 years prior to the incident, but such a position does not make any difference to his testimony. He was of sound mind at the time of incident and he was examined before the Court, his past mental condition is not hurdle to his testimony.

12. Under such circumstances, it is proved beyond 8 Cr. A. No.2207/1996 doubt that the appellant was the person, who assaulted the victim by a dagger. Also the testimony of the victim was duly confirmed by Dr. Anand Sharma (PW-1), who examined the victim Dayaram at District Hospital, Sehore and gave his report Ex.P/1, which was also corroborated by Dr. Dinesh Modi (PW-18), who examined the victim at Hamidiya Hospital, Bhopal. Both the doctors gave their opinion that the injury caused in the abdomen was fatal in nature and if any surgery was not done upon the victim then, the victim could have died in natural course of his life

and therefore, Dr. Sharma has opined that the injuries were fatal in nature. Learned counsel for the appellant placed his reliance upon the judgment passed by the Hon'ble Apex Court in the case of Sarju (supra), in which it is laid that any of the three kinds referred in Section 300 of IPC should be established. In the present case, the overt act alleged against the appellant falls within the purview of 2 n d portion of the Section 300 of IPC. The appellant was not intended to kill the victim Dayaram but his intention is visible that he caused such fatal injuries to the victim with the knowledge that the victim could die. He started assaulting by a 9 Cr. A. No.2207/1996 dagger and he gave 4-5 blows. Out of them, three blows were caused on the vital part of the body and blows were given with force and therefore, a blow which was given in the abdomen caused a fatal injury to the victim and hence, in the light of the judgment passed by the Hon'ble Apex Court in the case of Sarju (supra), the overt act of the appellant squarely falls within the 2 n d point of Section 300 of IPC and therefore, he is guilty of the offence punishable under Section 307 of IPC. The learned Sessions Judge has rightly convicted the appellant for the offence punishable under Section 307 of IPC.

13. So far as the sentence is concerned, the appellant remained in the custody from 9.11.1994 to 31.12.1994 and thereafter, from 16.10.1996 to 12.12.1996, hence he remained in the custody for approximately four months. It is true that the appellant was the first offender and he has faced the trial and appeal for last 17 years. However, he was enlarged on bail and looking to his overt act, it is not a good case in which his jail sentence may be reduced to the period, which he has already undergone in the custody but looking to the aforesaid circumstances, his sentence may be reduced in the light of the judgment passed by the Single Bench of this Court in the case 10 Cr. A. No.2207/1996 of Hannu (supra) and therefore, his jail sentence may be reduced from the period of ten years to the period of three years.

14. On the basis of aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. The conviction directed for the offence punishable under Section 307 of IPC is affirmed, but the sentence is reduced from the period of ten years to the period of three years. No change in the fine amount. Similarly, no change in the default sentence directed by the trial Court. The custody period of

the appellant shall be adjusted in the jail sentence of three years. The appellant is directed to surrender before the trial Court forthwith so that his sentence may be executed.

15. A copy of the judgment be sent to the trial Court alongwith its records immediately so that the judgment passed by this Court may be complied. (N.K. GUPTA) JUDGE 08 10.2012 pnkj

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