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Surjan Seikh and Ors. Vs. State

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Court : Jharkhand

Decided On : Dec-16-2016

Appellant : Surjan Seikh and Ors.

Respondent : State

Judgement :

1 Cr. Appeal (DB) No. 247 of 1992(P) [Against the judgment of conviction and order of sentence dated 30th June 1992 and 3rd July, 1992, respectively, passed by learned Additional Sessions Judge, Deoghar in Sessions Case No. 12 of 1991]

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1. Surjan Seikh son of Mohammad Seikh

2. Abdul Seikh son of Tanuk Seikh

3. Allauddin Seikh son of Alijan Seikh

4. Bigar @ Alijan Seikh son of Karim Seikh

5. Amir Seikh son of Mohammad Seikh

6. Raffique Seikh son of Tanuk Seikh

7. Bara Muslim Seikh son of Late Raju Seikh

8. Muslim Seikh son of Karim Seikh

9. Kachi Seikh son of Alijan Seikh

10. Hadish @ Hari Seikh son of Tanuk Seikh All residents of village Pathal Jore, P.S. Mukku, District Deoghar. .Appellants. -Versus- The State of Jharkhand. ...Respondent. ----- For the Appellants : Mr. Arvind Kumar Choudhary, Advocate For the Respondent : Mr. Hardeo Prasad Singh, APP. ----- PRESENT THE HONBLE MR. JUSTICE SHREE CHANDRASHEKHAR THE HONBLE MR. JUSTICE RAJESH SHANKAR ----- By Court: (Rajesh Shankar, J.)

1. The present appeal is directed against the judgment of conviction and order of sentence dated 30th June, 1992 and dated 3rd July, 1992, respectively, passed by learned Additional Sessions Judge, Deoghar in connection with Sessions Case No.12 of 1991, corresponding to G.R. No.3 of 1989, arising out of Madhupur P.S. Case No.2 of 1989, by reasons of which Appellant no.1-Surjan Seikh has been held guilty for the offences punishable under Sections 147, 323 and 302 IPC and sentenced to undergo rigorous imprisonment for life under Section 302 IPC and further sentenced to undergo rigorous imprisonment for two years under Section 147 IPC and one year under Section 323 IPC; Appellant no.2-Abdul Seikh and Appellant no.3- Allauddin Seikh have been held guilty for 2 the offences punishable under Sections 148/324 IPC and sentenced to undergo rigorous imprisonment for three years under Section 148 IPC and rigorous imprisonment for two years under Section 324 IPC; and rest of the appellants i.e. Appellant nos.4 to 10 have been held guilty for the offences punishable under Sections 147/323 IPC and sentenced to undergo rigorous imprisonment for one year under Section 323 IPC. The sentences so awarded have been ordered to run concurrently and the period of detention as undertrial prisoner has been allowed to be set off.

2. Appellant no.1-Surjan Seikh and Appellant no.4-Bigar @ Alijan Seikh have died during the pendency of the present appeal. In support of the said fact, the learned A.P.P. has produced a letter dated 14th December, 2016 issued by the Superintendent of Police, Deoghar, which has been taken on record, affirming the fact that the Appellant nos.1 and 4 are dead. Consequently, the appeal preferred by them stood abated.

3. The prosecution story, as borne out from the Fardbeyan of Moham Jan Sheikh, recorded on 3rd January, 1989, at 20:00 hours, at Dutta Hospital, Madhupur, is that on 3rd January, 1989, at about 10 a.m., all the appellants, forming an unlawful assembly, armed with deadly weapons, came in front of the house of Khatir Sheikh, brother of the informant, started abusing and quarrelling with him. The appellants, namely, Abdul Sheikh and Allauddin Sheikh were armed with spear (Bhala) and Barchha, respectively, and remaining appellants were armed with Lathi. The appellants started assaulting Khatir Sheikh, as a result of which he fell down on earth in front of his house. Surjan Sheikh instigated his associates upon which they started assaulting Khatir Sheikh. Surjan Sheikh assaulted Khatir Sheikh with big stone on his head. Abdul Sheikh assaulted him with spear on his head. Allauddin Sheikh assaulted him with Barchha on different parts of his body. Rafique Sheikh assaulted him by Lathi on his hydrocele (scrotum). Other appellants 3 also assaulted Khatir Sheikh with Lathi and stone. When the informant, his wife, his son and his father wanted to save Khatir Sheikh, appellant-Abdul Sheikh gave spear blow to Sarif Sheikh. Surjan Sheikh assaulted Salauddin with Lathi, Amir Sheikh assaulted the informants wife with Lathi, causing injuries to them. The father of the informant, namely, Marijan Sheikh also sustained injuries by stones. The occurrence was witnessed by Suro Sheikh, Mustafa Sheikh and the family members of the informant. The appellants did not allow Khatir Sheikh, who had become unconscious, and other injured persons to go to the police station or to hospital. Khatir Sheikh remained fallen on earth till the evening when Chowkidar, namely, Hussaini Mian reached the place of occurrence. Thereafter, Khatir Sheikh was removed from the place of occurrence and was sent to the hospital. Since he was unconscious, he could not make any statement. On the basis of the Fardbeyan of Moham Jan Sheikh, Madhupur P.S. Case No.02 of 1989 dated 3rd January, 1989 under Sections 147, 148, 149, 307, 325, 324 and 323 of the Indian Penal Code was registered against all the appellants. Subsequently, since Khatir Sheikh died, Section 302 of the Indian Penal Code was also added. The investigation was carried out and charge sheet was submitted. Accordingly, cognizance was taken and the case was committed to the Court of Sessions and registered as Sessions Case No.12 of 1991.

4. Charges were framed against Appellant Nos.2 and 3 under Sections 148, 307, 324 and 302 of the Indian Penal Code and against Appellant Nos.5 to 10 under Sections 147, 307, 323, 325 and 302 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried. The prosecution in order to substantiate the charges examined altogether thirteen witnesses and proved postmortem report (Ext.1), injury reports (Exts.2 to 2/2), Fardbeyan (Ext.3), formal first information report (Ext.4), seizure list (Ext.5), inquest report (Ext.6) and letter of the Officer-in-charge, Madhupur Police Station (Kaman) (Ext.7). 4 Learned Trial Court, placing reliance on the documents and evidences available on record, held the appellants guilty for the offences alleged and awarded sentence as indicated herein above.

5. The learned counsel for the appellants, while confining the appeal to Appellant no.2, 3 and 5 to 10, submitted that they have been convicted by the learned trial court without appreciating the materials on record. In order to appreciate the ocular as well as the documentary evidences led against the appellants, the same are required to be examined. The allegation against Appellant no.2-Abdul Seikh and Appellant no.3-Allauddin Seikh is that they were armed with sharp cutting weapons i.e. Bhala and Barchha respectively. The informant Moham Jan Sheikh appeared as P.W.

9. He has deposed that on the date and time of occurrence, he heard noise while he was in his house and thereafter he came out and saw that his cousin Khatir Seikh (deceased) was being assaulted by the appellants. He named all the appellants and stated that they were assaulting the deceased. He saw that Appellant nos.2 and 3 were armed with sharp cutting weapons, while others were armed with Lathies. He further stated that Appellant nos.2 and 3 assaulted the deceased with Bhala and Barchha, respectively. P. W.2-Sharif Seikh also deposed that Appellant no.2 and 3 were armed with Bhala and Barchha, respectively. He also deposed that Appellant no.2 gave a Bhala blow on the head of the deceased. Further, P.W.5-Suro Seikh has also deposed that the Appellant nos.2 and 3 were armed with sharp cutting weapons, but he is not the eyewitness to the occurrence, as he reached the place of occurrence after the deceased had fallen down due to the assault given by the appellants. The aforesaid prosecution witnesses have stated that Appellant nos.2 and 3 were armed with sharp cutting weapons,

whereas P.Ws. 2 and 9 had specifically stated that Appellant no.2 had given a Bhala blow on the head of the deceased and Appellant 5 no.3 had given a Barchha blow on the body of the deceased.

6. In order to analyze the depositions of the aforesaid prosecution witnesses, it would be pertinent to mention herein the injuries inflicted upon the body of the deceased. Dr. M.A. Sattar-P.W.4 conducted post mortem examination on the dead body of the deceased and found following injuries. (i) Penetrating injury over right temporal region- 1 x 1/6 x (ii) Penetrating injury over voult of scalp- 2 x x bone deep. (iii) Lacerated injuries over scalp at right parietal bone and left parietal bone- 2 x x skin deep and 2 x 1/6 x skin deep respectively. (iv) Multiple abrasions of varying size and shape over back and chest as well as over abdomen. (v) External injury- genitatis. (vi) Blood clots in nostrils. P.W.4 has stated that the Injuries no.(i) and (ii) were simple which seemed to be a week old as the same were healing up. P.W.4 has also opined that the cause of death of the deceased was due to haemorrhage and shock caused by hard and blunt substance. Injury no.(iii) can be caused even by one blow and can also be caused by two separate blows. If there will be one blow there can be laceration on the other side as well. The two injuries can be caused by one blow if it is hit on one side not on the middle of the scalp. Such injury will be by the impact of blow and by pressure. P.W.4 has also opined that injuries Nos.(iv), (v) and (vi) were simple in nature.

7. From perusal of the deposition of P.W. 4 and the post mortem report, it would appear that the medical evidence does not corroborate the allegation of inflicting injuries by Appellant nos.2 and 3 on the body of the deceased by any sharp cutting weapon. Although two sharp cut injuries were found on the head of the deceased but both the injuries were found to be a week old as the same 6 were healing up. Therefore, the Appellant nos.2 and 3 could not have inflicted injuries on the body of the deceased which could have caused death.

8. In the case of Mani Ram versus State of U.P., reported in 1994 Supp. (2) SCC289 the Honble Supreme Court has held in Para 9 as under:- 9It is well settled by long series of decisions of this Court that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most

material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case. Further in case of Kapildeo Mandal v. State of Bihar, reported in (2008)16 SCC99 the Honble Supreme Court has held in Para 23 as under:-

23. It is now well settled by a series of decisions of this Court that while appreciating variance between medical evidence and ocular evidence, oral evidence of eyewitnesses has to get primacy as medical evidence is basically opinionative. [See Mange v. State of Haryana (conviction based on sole testimony of eyewitness), State of U.P. v. Krishna Gopal (SCC in para

24) and Ramanand Yadav v. Prabhu Nath Jha (SCC in para 17).] But when the court finds inconsistency in the evidence given by the eyewitnesses which is totally inconsistent to that given by the medical experts, then evidence is appreciated in a difficult perspective by the courts. Also in case of Mahendra Pratap Singh v. State of U.P., reported in (2009) 11 SCC334 the Honble Supreme Court has held in para 62:-

62. From the above discussion of the evidence of the eyewitnesses including injured witnesses, their evidence does not at all inspire confidence and their evidence is running in conflict and contradiction with the medical evidence and ballistic experts report in regard to the weapon of offence, which was different from the one sealed in the police station. The High Court has, in our opinion, disregarded the rule of judicial prudence in converting the order of acquittal to conviction. 7 9. In the present case, the ocular evidence of P.Ws.2 and 9 to the effect that Appellant No.2 had given a Bhala blow on the head of the deceased and Appellant No.3 had given Barchha blow on the body of the deceased is not supported by the medical evidence led by the doctor (P.W.4).

10. However, the ocular evidence led by the other prosecution witnesses as well as the deposition of Dr. Biswanath Das-P.W. 11 coupled with the injury reports would reasonably go to show that Appellant nos.2 and 3 have rather inflicted

injuries on the bodies of P.Ws. (the informants side). Therefore, the prosecution has though failed to bring home the charges against Appellant nos.2 and 3 under Section 302 IPC yet the offence under Section 148/324 IPC have been proved against them beyond the shadow of reasonable doubt.

11. So far as Appellant nos.5 to 10 are concerned, the allegation of the prosecution against them is that all of them were armed with Lathies on the day and time of occurrence. Almost all the prosecution witnesses have led sufficient corroborative ocular evidences that they had given Lathi blows on the body of the deceased and also upon P.Ws. 1, 2 and 7. All the prosecution witnesses have stood the test of cross-examination, but except minor contradictions, they have sufficiently been able to prove that on the date and time of occurrence the Appellant nos.5 to 10 were present during the scuffle, as a result of which, injuries were inflicted upon the deceased and other prosecution witnesses, as discussed hereinabove, though the said injuries were found to be simple in nature by Dr. Bishwanth Das (P.W.11) who had examined P.Ws. 1, 2 and 7.

12. Resultantly the conviction of the Appellant nos.2 and 3 and Appellant nos.5 to 10 is hereby affirmed. However, since the case is of the year 1989 i.e. about 27 years old and the appellants have faced the rigor of the trial over the years, it would meet the ends of justice, if the sentence awarded by the learned Additional Sessions 8 Judge, Deoghar is reduced to the period already undergone to the following extent:- (i) Sentence imposed upon appellant no. 2 namely Abdul Seikh and appellant no. 3 namely Allauddin Seikh, who have been convicted under Section 148 and 324 IPC is reduced to the period already undergone with fine of Rs. 10,000/-each. (ii) Sentence awarded to the remaining appellants- convicts i.e. appellant no. 5 to appellant no. 10 is reduced to the period already undergone with fine of Rs. 500/- each. (iii) Fine imposed upon appellants shall be paid to the family of the deceased namely Khatir Seikh. (iv) The fine imposed upon the appellants shall be deposited by them within a period of three months failing which, they shall undergo S.I. for 30 days.

13. The instant appeal is partly allowed on the point of sentence, as discussed herein above. The Appellant Nos.2 and 3 and Appellant Nos.5 to 10 are

discharged from the liability of their respective bail bonds, if they are not wanted in any other case. (Shree Chandrashekhar, J.

) (Rajesh Shankar, J.) Jharkhand High Court Ranchi Dated 16th December, 2016 Sanjay/AFR

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