

Ram Das Vs. State of U.P.

Ram Das Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/1115595

Court : Allahabad

Decided On : Sep-07-2012

Judge : Imtiyaz Murtaza

Appeal No. : Criminal Appeal No. 1773 of 1982

Appellant : Ram Das

Respondent : State of U.P.

Judgement :

1. Present Appeal preferred in this Court dates back to the year 1982. It was preferred by the appellants assailing the judgment and order dated 24.7.1982 passed by the then Addl Sessions Judge Mainpuri in Sessions Trial No 65 of 1980 whereby the case culminated in the conviction and sentences of the appellants. The appellant was convicted for offence under section 304 IPC and sentenced to under go RI for five years. Appellant Ram Singh was convicted for offence under section 324 IPC and sentenced to pay a fine of Rs 200/- with default stipulation to undergo RI for two months. The third appellant Thakur Das was convicted for offence under section 323 IPC and sentenced to pay fine of Rs 100/- with default stipulation to undergo RI for one month. The incident relates back to 29.6.1979 and it occurred in village Daya Ram Mauza Apur PS Eka Distt Mainpuri. In the instant case, the dispute erupted between the appellant and the complainant side over raising of boundary of the field. According to the allegations in the FIR, at about 8 am when the complainant alongwith his father Kishan Lal was placing

fresh earth on the boundary of his field, the appellants arrived and objected to raising of boundary claiming that the field belonged to them. At that time, Ram Das was armed with Kulhari (Axe), Ram Singh was armed with Phawda (flat shaped implement), and Thakur Das was armed with Lathi. When they were confronted by Kishan Lal, Ram Das assaulted Kishan Lal from the obverse side of the Axe on his head as a result of which his father fell down on the ground.. It is further alleged that when he and his brother rushed to rescue his father from further assault, Ram Singh assaulted him with Phawda as a result, he suffered injury in his right hand. Attributing role to Thakur Das, it is alleged that Thakur Das also assaulted them by wielding lathi. It is also alleged that when they raised hue and cry, village people namely Poti Lal, Ram Prasad son of Rati Ram Lodhi, Beni Ram of Brahmapur came to their rescue and saved them from further assault. The FIR was registered at case crime no 59 of 1979 under section 323, 324 IPC

2. In the instant case, a cross FIR was also lodged by Thakur Das which was registered under section 323/324 IPC in which the theme set up was that at about 8 am, Kishan Lal, Ram Singh and Shyama Charan were repairing/strengthening boundary in his field and when he objected, the aforesaid accused persons assaulted them with their respective weapon namely Pharsa, Lathi and Phawda. It is further alleged that when he screamed for help, his wife Phoola Devi and son Ram Singh rushed to his rescue but they were also assaulted by the accused persons. It is also alleged that Village people namely Ram Lal, Mishri Lal and Thakur Das came to the rescue and saved him from further assault. It is also alleged that he suffered injuries from the assault of Pharsa while his wife and son suffered Lathi injuries. He explained that for fear of reprisal from accused he could not go to police Station Eka and he had come to police station Jasra for lodging the report. Immediately after the occurrence, according to the case of the prosecution set up on behalf of complainant Siya Ram, his father Kishan Lal who had fallen unconscious due to assault, was rushed initially to Eka from where his father was taken to Primary Health Centre Eka where since doctor was not available, he could not be administered proper treatment, and he succumbed to his injuries at the Hospital. The post mortem was conducted by Doctor P.K.Jain Medical officer District Hospital Etah on 30.6.1979 at 12 noon. The following anti mortem injuries were found on his person.

"(1) Contusion 10 x 8 cm with lacerated wound 1,1/2 x 1/2cm on the (L) side skull 8 cm above the (L) Year with clinical evidence of fracture of skull bones."

Siya Ram injured who is complainant in the instant case was also examined at District Hospital at 2 pm on 30.6.1979. The injuries suffered by him are noted below.

(1) Lacerated wound (R) elbow back side 1.5 cm x 0.5 cm x skin deep with associated traumatic swelling (R) elbow 7 cm x 5 cm (21) Incised wound (R) forearm 3.5 cm x 0.2 cm x skin deep. On the other side, three people suffered injuries. The injuries sustained by Thakur Das are as under:

1. Incised wound 5 cm x 05 cm x scalp deep on the right side of his skull 9 cm above the right ear.

2. Contusion 12 cm x 2 cm on the right side of scapular region. The injuries suffered by Ram Singh are as under:

1. Incised wound 2.5 cm x 05 cm x scalp deep on left side of the skull about 5 cm above the left ear.

2. Contusion 6 cm x 1.5 cm on the left scapular

3. Swelling 3 cm x 8 cm on the left shoulder joint

4. Contusion 6 cm x 1.5 cm on the posterior aspect of the right forearm. Smt Phoola Devi sustained four injuries which are quoted below.

1. Lacerated wound 2 cm x 05 cm x scalp deep on the left side of the head about 8 cm above the right ear

2. Lacerated wound 1.5 cm x 02 cm x skin deep on the right side of the head 5 cm above the right ear.

3. Swelling 4 cm x 2 cm on the posterior aspect of the left ring finger. X ray was advised.

4. Contusion 4 cm x 1.4 cm on the lateral aspect of the middle of the right thigh.

Only four witnesses were examined by the prosecution out of whom PW 1 is Siya Ram complainant, PW 2 is Beni Ram, who claimed to have come to Nagla Daya Ram to sell mangoes in a Basket and before he could reach the village Nagla Daya Ram, he saw the occurrence. PW 3 J.P.Tyagi, the investigating officer has conducted investigation in the case and submitted charge sheet after conclusion of the investigation. Without embarking upon precise details, it would suffice, if I advert to the main brunt of the submission advanced across the bar. The main brunt of the argument advanced by Diwakar Singh who was appointed amicus curiae in the case is that the injuries of the other side has not been explained by the prosecution. The injuries suffered by the other side are quoted above and the same need not be reiterated all over again.

I have gone through the evidence on record in order to find out whether the submission of the learned counsel is loaded with some substance or not. PW 1 Siya Ram. This witness was extensively cross examined and all that he said in his cross examination is that neither of them assaulted Thakur Das but stated in subdued tone that he might have suffered some injuries during intervention in the incident by them. He denied knowledge whether Phoola Devi suffered any injury. He reiterated the self same cliché that she also might have suffered injury during the course of incident. He also denied knowledge whether Ram Singh had also suffered any injury. On similar line is the testimony of PW 2 Beni Ram. He denied that he had seen any injury on the person of Thakur Das. He also denied knowledge whether Ram Singh had also suffered any injury. It may be noticed here that Thakur Das suffered one incised wound on the scalp, Ram Singh sustained one lacerated wound on the scalp and Phoola Devi has sustained two lacerated wound on the scalp/head. The injuries were on vital parts of the body and cannot be brushed aside as being simple in nature. Looking to the nature of injuries, it cannot be said that the injuries could be self inflicted. I have searched the entire record and I do not find that the prosecution has given any explanation for the injuries suffered on the other side. The witnesses examined have also stated that they had no knowledge of injuries suffered on the other side. It thus follows that if eye witnesses could given precise details of the occurrence, they could have come with clean hands by explaining how the other side suffered injuries. The Apex Court in Lakshmi Singh v State of Bihar AIR 1976 SC 2263,

(para 11) has observed that "Indeed if the eye witnesses could have given such graphic details regarding the assault on the two deceased and Dasrath Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case."

In the self same paragraph, the Apex Court held as under:

" It is well settled that fouler the crime , higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence."

Referring to a decision of the Apex Court in Mohar Rai v State of Bihar AIR 1968 SC 1281, it was observed that in that case the Apex Court clearly pointed out that where the prosecution fails to explain the injuries on the accused two results follow:

(1) that the evidence of the prosecution witnesses is untrue and

(2) that the injuries probabalise the plea taken by the present case has not correctly applied the principles laid down in the decision referred to above.

3. In the instant case, no doubt, Thakur Das went to another police station namely PS Jasra, a police station other than the police station which includes village Daya Ram in its jurisdiction but he has explained the circumstances that he feared reprisal from the other side. As a result of foregoing discussion, the appeal succeeds and is allowed. The conviction and sentences recorded against them are set aside and they are acquitted of the charges. The appellants are on bail. They need not surrender. Their bonds shall stand discharged. Let a copy of this decision be communicated to the court below alongwith the record with the direction to comply with the judgment and order of this Court.