

Deoki Rai and Others Vs. State of Bihar

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Court : Patna

Decided On : Mar-26-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) No.161 of 2002

Appellant : Deoki Rai and Others

Respondent : State of Bihar

Judgement :

1. The present appeal arises out of the judgment dated 21.03.2002 passed by the learned 4th Additional Sessions Judge, Samastipur in Sessions Trial No.406 of 1998 by which the learned Judge held the appellants Deoki Rai, Raj Kumar Rai and deceased appellant Sitiya Devi alias Sarswati Devi guilty of committing offences under Sections 323, 452, 307/34 and 325 of the IPC and directed them to suffer rigorous imprisonment of one year each for being convicted under Section 323 of the IPC, rigorous imprisonment of seven years each as also to pay a fine of Rs.5,000/- each for being convicted under Section 452 of the IPC. In case of non-payment of fine each of the appellants was directed to suffer rigorous imprisonment for a further period of one year. As regards the sentences passed upon the appellants for being convicted under Section 307/34 and 325 of the IPC, they were to suffer terms of rigorous imprisonment of ten years and seven years respectively on each of the two counts and were also directed to pay a fine of Rs.5,000/- each on each of the counts and in case of making default in payment of

fine, they were again to suffer additional period of rigorous imprisonment of one year on the two counts. Appellant Raj Kumar Rai, in addition to being convicted as above was also convicted under Section 380 of the IPC and was directed to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- and in case of default in making payment of fine, he was to undergo rigorous imprisonment for a further period of one year. The present appeal was preferred by three appellants to challenge the correctness of the judgment of conviction and order of sentence. Appellant Sitiya Devi alias Sarswati Devi was reported dead and her appeal has been ordered to be abated by an order passed today itself.

2. The case of the prosecution is contained in the fardbeyan (Ext-1) of P.W.8 Ram Prakash Rai who stated that he had stocked some bricks in front of his house and on 28.07.1997 at about 8 A.M, the accused persons started carrying away the bricks from there. The informant objected to the acts of the accused persons who went away after some hot exchange of words, but reappeared with weapons. Appellant Deoki Rai was armed with a farsa while appellant Raj Kumar Rai was carrying a garasa fitted with a handle. Deceased appellant Sitiya Devi alias Sarswati Devi was carrying a lathi. Seeing the accused persons coming armed, the informant ran from the scene of occurrence and entered into his house to regain safety. But, the appellants chased him and entered inside the house of the informant and as per allegation appellant Deoki Rai dealt a farsa blow on Sita Devi (P.W.5), who came to intervene into the matter. Sita Devi was hit on her head. The daughter-in-law of the informant and Sita Devi, namely, Phulpari Devi (P.W.4) came to save her mother-in-law and she was also given a blow with garasa by appellant Raj Kumar Rai on head. The informant stated that he was beaten up by the three accused persons with lathies and he became injured. P.W.1 Suresh Rai, P.W.2 Shankar Rai and Birat Rai (not examined) alongwith others were attracted to the scene of occurrence and saw it.

3. On the basis of the fardbeyan (Ext-1), P.W.10 S.I. Satyendra Kumar Sinha drew up the FIR of the case (Ext-2) on 30.07.1997, who had already taken up the investigation on 28.07.1997 during which course he obtained the injury certificates of the four injured witnesses, namely, P.W.3 Rajendra Rai, P.W.4 Phulpari Devi, P.W.5 Sita Devi and P.W.8 Ram Prakash Rai. The investigating officer also

recorded their statements and further requested the doctor to finally give his opinion after obtaining the report of X-ray of the injured persons. The injury certificates alongwith final opinion have been marked exhibits in this case as Ext-3 to 3/G and 4 to 4/C. After close of investigation, the accused persons were sent up for trial.

4. After hearing the learned counsel for the appellants and the learned counsel for the State what this Court finds is that the appeal has to be decided on a very limited question of facts. All the appellants have been convicted under Section 307/34 of the IPC. It was rightly submitted by the counsel appearing for the appellants that for attracting the provisions of Section 307 of the IPC, it was incumbent upon the prosecution to lead evidence of the quality which could satisfy the Courts enquiry that the injury or injuries on any of the injured persons were as serious as to be dangerous so as to raising a probability that the death could have been probably result. However, the five injured witnesses were bearing simple injuries except P.W.5 who had the fracture of the distal phalanx of his left index finger. Thus, it was contended that the facts did not constitute an offence under Section 307 of the IPC. The other contention was that even if assuming that it could be a case under Section 307 of the IPC for the purposes of framing charges and trial of the accused, the opinion of the doctor rendered the whole manner of occurrence unacceptable and possibly false. In the above regard, the attention of the Court was drawn to the evidence of P.W.9 Dr. Dilip Kumar Sharma who had examined the five injured witnesses and had issued injury certificates Ext-3 series.

5. Before I advert to the arguments of the sides, I want first to notice some of the material evidence which were produced before the trial court. I am not concerned much about the evidence of P.W.1 or P.W.2 because P.W.1 Suresh Rai after having been examined in examination-in-chief appears not having turned up for cross-examination and, as such, his evidence was inadmissible. So far as the evidence of P.W.2 Shanker Rai was concerned, he himself stated that he came on hulla and it further appears from his evidence in paragraph-2 that when he arrived at the scene of occurrence after having traversed a distance of about 15-20 meters, he had seen the two injured persons lying injured there. Thus, the evidence of P.W.2 in paragraph-2 renders him not a witness to the main part of the

occurrence. P.Ws.3,4,5 and 8 were injured witnesses and they claimed being injured in the same incident. Except P.W.8 Ram Prakash Rai other witnesses were assaulted either by farsa or by garasa. The evidence is consistent of these injured witnesses especially P.W.3 Rajendra Rai, P.W.4 Phulpari Devi and P.W.5 Sita Devi that Sita Devi was assaulted by appellant Deoki Rai with a farsa on head and she received injury on that account while Phulpari Devi who intervened to save her mother-in-law was given a garasa blow by appellant Raj Kumar Rai. The ordinary inference arising out of this evidence could be that sharp cutting parts of the weapons had struck the parts of the body of the injured. For raising this inference one could refer to the case of Hallu and Others v. State of Madhya Pradesh reported in (1974) 4 SCC 300. In that case also the accused persons were alleged to have used either an axe or a spear while dealing blows to the injured persons or the deceased. Autopsy report or the report of the doctor indicated that the injuries which were present on the injured or the deceased could never have been caused either by an axe or by a spear rather the injuries had been caused by some hard and blunt substance. In that background the Supreme Court held that it was case of doubtful presentation of the story by suppressing the real manner of assault.

6. Coming to the facts of the present case when the evidence of witnesses as regards giving blows either with farsa or garasa on Sita Devi and Phulpari Devi are concerned one could find that none of the two witnesses, i.e., P.Ws.4 and 5 were bearing even a simple scratch which could be caused by sharp cutting weapon. The doctor was very categorical that the injuries was simple in nature and those were lacerated wounds of different dimensions caused by hard and blunt substance. Applying the principles of Hallu (Supra), this Court does not have any hesitation in holding that the whole manner of occurrence was rendered doubtful and, probably, false by the evidence of P.W.9 Dr. Dilip Kumar Sharma as he had not found a single wound on any of the injured which could be said to be caused either by a farsa or by a garasa. This was the reason that I was noting that the appeal has to be decided a very simple and limited question of fact.

7. The learned trial Judge appears very generous as regards inflicting sentences. He was probably measuring the period of sentence by the fixed yardstick of seven years or up to ten years without caring to find out the discrepancy in the oral

testimony and the evidence of the medical man. I have today only pointed out by referring to the observations of Justice H.R.Khare that criminal trial is not a fairy tale in which one could be free to give flights to his imaginations and fantasies. Crime is a real event in life. While referring to the above observation, I have pointed out that the eventful nature of the crime may be appreciated by taking into account the fall out of a man being convicted and sentenced to the term of imprisonment. The whole movement of life and its quality not only of the convicted man but also of his dependents comes is changed. As to how the above observation is meaningful could be comprehended by noting that on account of being convicted the man is stigmatized as a criminal in archives of police department and is also looked down upon by his neighbours, by his friends and even by his close family members. This is the reason that a Judge has to be very sensitive in appreciating the facts of the case and then to apply laws to those facts. While the learned trial Judge gave an impression as if he had some formula on his own to judge the facts and he never had any sense of appreciation as regards balancing the facts under the recognized yardsticks of appreciation. Had the learned Judge done it, this court feels, the impugned judgment would never have been passed against the appellant. It was a case which was framed by the prosecution on fabricated facts and the natural fall out was that the medical evidence was exploding on the truthfulness of the story. The prosecution case was doubtful and the prosecution in the opinion of this Court had failed in bringing the charges home against the appellants.

8. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and the order of sentence. As pointed out earlier appellant Sitiya Devi alias Sarswati Devi is dead and her appeal has abated. The two appellants, namely, Deoki Rai and Raj Kumar Rai are on bail. They shall stand discharged from the liabilities of their respective bail bonds.

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