

Devender @ Ramu Vs. State

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Court : Delhi

Decided On : Nov-24-2014

Judge : S. Muralidhar

Appellant : Devender @ Ramu

Respondent : State

Advocate for Pet/Ap. : Mr. D.K. Pandey, Mr. Rajat Katyal

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 851 of 2010 LAXMI NARAYAN @ LAMBU Appellant Through: Mr. D.K. Pandey, Advocate along with Appellant in person. versus STATE OF NCT OF DELHI Respondent Through: Mr. Rajat Katyal, APP. And CRL.A. 853 of 2010 DEVENDER @ RAMU Appellant Through: Mr. D.K. Pandey, Advocate along with Appellant in person. versus STATE Respondent Through: Mr. Rajat Katyal, APP. CORAM: JUSTICE S. MURALIDHAR

ORDER

2411.2014 1. These two appeals are directed against the impugned judgment dated 19th May 2010 passed by the learned Additional Sessions Judge-1 (ASJ) (North East), Karkardooma Courts, Delhi in Session Case No.38/09 convicting the Appellants, Laxmi Narain @ Lambu and Devender @ Ramu, for the offences under Sections 452 read with 34 IPC and Sections 308/34 IPC and the order on

sentence dated 21 st May 2010 whereby each of them was sentenced to undergo two years rigorous imprisonment (RI) for the offence under Section 452/34 IPC and three years RI for the offence under Section 308/34 IPC and to pay a fine of Rs. 10,000 each and default, to undergo further RI for six months.

2. It must be mentioned here that the fine deposited by the Appellants, as directed by the trial Court, is stated to have been paid to the victim, Parveen, as compensation.

3. The case of the prosecution is that Parveen (PW-1), who is a tailor, was present in the shop at No.F-39, Gali No.4, Khajuri Khas, Delhi at 8.30 pm on 15th May 2005 along with his wife, Lalita (PW-2) and one worker Abdul Rashid and at that time three accused, i.e., Laxmi Narayan @ Lambu, Accused No.1 (A-1) [Appellant in Criminal Appeal No.851 of 2010]., Devender Singh @ Ramu, Accused No.2 (A-2) [Appellant in Criminal Appeal No.853 of 2010]. and Sandeep @ Monu, Accused No.3 (A-3) entered his shop. While entering the shop, A-3 who was having a beer bottle in his hand, asked A-1 and A-2 to catch hold of PW-1 exhorting to kill him. A-1 and A-2 caught hold PW-1 and A-3 attacked on his head with beer bottle as a result of which the beer bottle got broken and PW-1 received injuries on his head. In the meanwhile, when Lalita wife of PW-1 (PW-2) and the worker, Abdul Rashid, tried to rescue PW1, the accused threatened the worker to remain at his place failing which he would be killed by them. PW-2 is also stated to have been given kicks by the accused as a result of which she fell down. The accused again attacked PW-1 with said broken bottle and caused injuries on the left side of his abdomen. PW-1 became unconscious due to the injuries. He was taken to the GTB Hospital where he was medically examined. The MLC (Ex.PW-5/A) showed that he had two stab wounds on left side of the chest wall and there was 1 cm long muscle deep wound and 0.5 cm long muscle deep wound. There was also an abrasion 1 cm long superficial in left front parietal area of skull. As per the surgical report the injuries were stated to be simple. Dr. Anshuman Shukla (PW-5) also confirmed the above injuries.

4. The trial Court proceeded to frame the charge against the accused for the offences under Section 452, 307 and 34 IPC.

5. The prosecution examined nine witnesses. The accused examined Kalpana (DW-1) sister of A-3. DW-1 alleged that PW-1 had misbehaved with her some time before her marriage. In her cross-examination, DW-1 admitted that the incident spoken about occurred two years earlier to her marriage but no report was filed before the police.

6. The trial Court held that the evidence was sufficient to hold the Appellants guilty for the aforementioned offences. It proceeded to sentence them in the manner indicated above.

7. In terms of the nominal roll of the Appellant No.1, Laxmi Narayan @ Lambu, he has undergone imprisonment of about nine months. As far as Appellant No.2 is concerned, he appears to have undergone imprisonment for less than a month so far. However, neither of them have been shown to be involved in any other offence.

8. The two star witnesses of the prosecution were PW-1 and PW-2. Both of them, in their examination-in-chief, were consistent about the material particulars of what transpired. They were consistent that A-1 and A-2 caught hold of PW-1 and A-3 attacked on his head with a beer bottle as a result of which the beer bottle broke and PW-1 received injuries on his head. They were also consistent in their description of the manner in which further injuries were caused to PW-1 on his abdomen by A-3 with the broken beer bottle. Neither PW-1 nor PW-2 was cross-examined despite several opportunities given to learned counsel for the accused for that purpose.

9. As pointed out by learned APP for the State, it appears that the attack by A-3 did not stop with his hitting PW-1 with the beer bottle on his head. After the bottle broke, and despite PW-1 trying to escape from their clutches, A-3 continued to inflict injuries on his abdomen and these have been corroborated by the MLC (Ex.PW-5/A).

10. Although learned counsel for the Appellants, i.e., A-1 and A-2 tried to point out that the injuries were not grievous, and were only muscles deep, as explained by the Supreme Court in Sunil Kumar v. N.C.T. of Delhi (1998) 8 SCC55 the nature of

offence under Section 308 IPC for which the Appellant has been convicted is of a different nature, distinct from the offence of causing hurt and grievous hurt which are covered under Sections 323 to 326 IPC. It was observed that for the offence under Section 308 IPC, what was important was the intention or knowledge that if one by that act caused death, he (the assailant) would be guilty of culpable homicide not amounting to murder. The fact that the three accused were persistent in attacking PW-1 even as he was trying to escape from their clutches, is sufficient to attract the offence under Section 308/ 34 IPC. The motive of the crime was explained by PW-1 who stated that A-3 used to consume liquor and ganja, enter his shop and demand money. The PW-1 after meeting such demands on a couple of occasions declined thereafter. This also led to PW-1 complaining to the sister of A-3, as a result of which A-3 was upset.

11. It was submitted that the police failed to send the beer bottle with the blood stains, and the blood-stained clothes of PW-1 to the FSL for examination. It has been pointed out by learned APP that they were indeed sent to the FSL for examination. However, the results were inconclusive. The fact was that the beer bottle did have blood stains, but there was no reaction to the test for determining the blood group.

12. The Court is satisfied that the prosecution has been able to prove the offence under Section 452 and 34 IPC and 308/34 IPC against A-1 and A2 beyond reasonable doubt. It, therefore, confirms their conviction for the said offences.

13. On the question of sentence, as already noticed A-1 has undergone imprisonment for about nine months and A-2 for about 27 days. Neither of them has any previous criminal record. In the circumstances, the Court considers it appropriate to modify the substantive sentence awarded to each of them by the trial court for the offences under Section 308/34 IPC and Section 452/34 IPC to imprisonment of one years RI and increase the fine amount by Rs. 10,000 on each of them, which fine amount should be paid within four weeks from today. In default, each Appellant shall undergo simple imprisonment for one month each. As and when the enhanced fine amount is deposited by A-1 and A-2 in the trial Court, it shall be made over to PW-1 as compensation, by the trial Court forthwith.

14. Appellant in Crl. A. No.851 of 2010, who is produced in custody, shall be taken back in custody to serve out the remainder sentence. Appellant in Crl. A. No.853 of 2010, who is present in Court, shall be taken into custody forthwith to serve out the remainder sentence.

15. The appeals are disposed of in the above terms. The trial Court record along with a certified copy of this order be sent back to the trial Court forthwith.

16. A copy of this order be given dasti to learned counsel for the parties under the signature of the Court Master. S. MURALIDHAR, J.

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