

Krishna Ram Das Vs. the State

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Court : Guwahati

Decided On : Aug-05-1963

Judge : C.S. Nayudu, J.

Appellant : Krishna Ram Das

Respondent : The State

Prior history : C.S. Nayudu, J. 1. This appeal is directed against the conviction and sentence passed by the Sessions Judge Lower Assam Division, Gauhati, finding the appellant guilty of the offence Under Section 325 Indian Penal Code and sentencing him to rigorous imprisonment for three years. 2. The facts of the prosecution case briefly are as follows: The accused is the son of the deceased Mahesh Das. On 18-12 59, the latter when he was coming towards his house from the village was attacked by the appella

Judgement :

C.S. Nayudu, J.

1. This appeal is directed against the conviction and sentence passed by the Sessions Judge Lower Assam Division, Gauhati, finding the appellant guilty of the offence Under Section 325 Indian Penal Code and sentencing him to rigorous imprisonment for three years.

2. The facts of the prosecution case briefly are as follows:

The accused is the son of the deceased Mahesh Das. On 18-12 59, the latter when he was coming towards his house from the village was attacked by the appellant with a lathi, and six or seven blows were inflicted on the person of the deceased by the appellant with the lathi. As a result of the injuries inflicted by the appellant on the deceased, the latter died in the Civil Hospital,, Gauhati, on 23-12-59.

3. The evidence of the prosecution consists of three eye-witnesses, P. W. 3 Dharani Das, the son of the deceased, P. W. 4 Laghanuram Das, the brother of the deceased, and P. W. 6 Bhagiram Dm, the son-in-law of the deceased. According to the evidence given by P. W. 3 in the Sessions Court, he was at his Pam house on the date of occurrence which was about one-fourth mile away from the scene of occurrence. On receiving information from his brother-in-law Bhagiram P. W. 6 that the appellant had assaulted his father, he came home and found the deceased lying injured on the verandah of his house. He also found marks of injuries both on the chest and the back. On being questioned, the deceased told him that the appellant assaulted him with a lathi. He then called Dr. Debendra Kakati P. W. 5, who administered first aid and advised the deceased to be taken to the Gauhati Hospital, which was accordingly done.

The witness lodged a written ejahar at Sualkuchi Police out-post, marked Ext. 1 in the case. Permission was obtained from the Sessions Court to declare this witness as hostile, and he was cross-examined by the Public Prosecutor with reference to his statement before the committal court, which was produced in the case Under Section 288 of the Code of Criminal Procedure. In that statement this witness stated that when his father (the deceased) was returning from the village and as he was approaching his house, accused Krishna (the appellant), who was waiting in ambush, came out and assaulted his father with a short lathi, that he gave seven strokes and that his father cried out, and that on hearing the cries, he ran to the spot and found his father lying on the ground. The appellant had run away and he could not catch him. He further stated that Bhogi-ram P. W. 6, his brother-in-law, and Loghanu, his uncle, P. W. 4, had also come there with him. They lifted the deceased and carried him to his house. In view of the discrepancies in the evidence of this witness given before the committal court and in the Court of

Session, the learned Sessions Judge formed the opinion that the witness was not present at the time of the occurrence. He, however, accepted the evidence of the witness with reference to the dying statements made by the deceased to him to the effect that the appellant had inflicted the injuries on the person of the deceased.

In this connection, argument, has been advanced before me by the learned Counsel for the appellant to the effect that Section 32(1) of the Evidence Act has no application to the instant case as the cause of the death was not the fracture of the ribs, and that, therefore, any statement made by the deceased with reference to the circumstances in which he received the injuries is not relevant Under Section 32(1). The argument is not understood. Section 32(1) lays down that when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question such a statement is relevant. This provision directly applies to this case inasmuch as the deceased as soon as he was carried to the veranda of his house and questioned by his son P. W. 3 as to how he sustained the injuries, he, is reported to have stated that it was the appellant who had inflicted the injuries on his person. This statement is made by a person who subsequently died, and obviously related to the circumstances of the transaction which ultimately resulted in his death. There is no doubt in this case, according to the doctor's evidence that the fracture of the ribs was a contributing factor to the death. I have, therefore, no difficulty in rejecting the argument that Section 32(1) of the Evidence Act is not applicable to the instant case.

That apart, the statement made by the deceased very shortly after he sustained the injuries, is admissible in evidence Under Section 6 of the Evidence Act. Under this section, any statement made by a victim or the by-standers so shortly after the incident as to become part of the same transaction with it is relevant, and accordingly the statement made by the deceased almost immediately after the assault on him by the appellant is perfectly relevant Under Section 6 of the Evidence Act. In any view of the matter, the learned Sessions Judge was quite justified in accepting the evidence concerned, that is the statement made by the deceased, as relevant and relying on it as a credible piece of evidence.

That apart, the evidence of P. Ws. 3, 4 and 6 establishes that it was the accused that had attacked the deceased. It is contended that these witnesses were inside their respective houses and could not have witnessed the beating. The evidence of these witnesses is that as soon as they heard the shouts of the deceased 'I am dying', 'I an dying', they cam? out of their houses and saw the accused appellant inflicting the injuries with a stick on the person of the deceased, and as they approached the deceased, they found the accused running away from the place. There is, therefore, no substance in the contention that according to the evidence of these witnesses the accused was not at the spot when they reached the place of occurrence. Obviously, he was not there, as he was running away at the time.

On a careful consideration and scrutiny of the evidence of these witnesses, I am satisfied that they are telling the truth and that their evidence is corroborated by, the evidence of P. W. 3, even assuming that the learned Sessions Judge was right in the view taken by him that he cannot be regarded as an eye-witness. I am, therefore, satisfied on the evidence that the learned Sessions Judge was quite justified in relying on their evidence and finding the accused guilty on that evidence.

4. One other circumstance which requires to be noticed is that a& the incident occurred in the broad day-light near the house of P. W. 6 and the deceased, it would be most unnatural that these witnesses who are so closely connected with the deceased should come forward to implicate their own close relation, namely the appellant, who is the brother of P. W. 3, the nephew of P. W. 4 and the brother-in-law of P. W. 6, leaving the real culprits to go scot free. There is absolutely no motive suggested anywhere on the record by- the accused appellant to justify the inference that these persons were so in-imically disposed towards him as to unjustly implicate him in a charge with which he was not in any way concerned. The only point which the learned Counsel for the appellant urged against P. W. 5 is that he was not on speaking terms with the accused-appellant. This, in my opinion, is hardly a ground to justify the conclusion that he would have gone to the length of falsely implicating his own relation in a serious charge. Taking all these facts and circumstaflces into consideration, I am satisfied that the accused-appellant has been rightly convicted and that this appeal must fail.

5. I am surprised to note that the medical officer, who gave evidence in the case and who conducted; the post mortem examination, did not take the trouble of opening the skull and examining the brain to see whether there was any effect of concussion on the brain. This was particularly necessary and ought to have put the medical officer on enquiry into this matter, in view of the fact that the deceased was brought to the hospital unconscious, a fact which he knew, and that he remained unconscious throughout the, time he was alive and he died in an unconscious state. It is this gross failure of the medical officer to perform their obvious duty that some times Results in good cases failing and in the guilty person\$ escaping the penalty that is lawfully due to them, j Thei carelessness of this medical officer is something which should receive serious notice of the authorities concerned.

6. I am also constrained to notice that the charge in this case was framed Under Section 304 Indian Penal Code. If it is the prosecution case that the act of the accused in inflicting the injuries on the person of the deceased caused the death of the deceased, obviously the charge should be Under Section 302 Indian I Penal Code and not Under Section 304, unless special circumstances are present which clearly and beyond any doubt indicate that the offence could only by one Under Section 304. This is not such a case. The prosecution should invariably leave the matter pf determining the guilt of the accused under the correct section of the Penal Code that is applicable, to the Sessions Court and they should not decide for themselves or prejudge the case by deciding to frame a charge Under Section 304. There is also another aspect which should be noticed that if a chajrge is framed Under Section 302 and the Court ultimately comes to the conclusion that the offence is one Under Section 304, it would be open to the learned Sessions Judge to come to that finding and convict the accused on that charge, acquitting him of the pharge Under Section 302.

7. Even assuming that the conviction of the appellant I Under Section 325 Indian Penal Code is to be accepted, the sentence, in my opinion, having regard to the circumstances of the case, is extremely light, but as no application has been made by the State for enhancement, I do not propose to interfere with the sentence.

8. In the result, the appeal fails and is dismissed. The bail bond is cancelled and the accused must surrender to serve out the sentence.

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