

Ram Swaroop & Ors. Vs.state Govt. Of n.c.t. Of Delhi

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Court : Delhi

Decided On : May-29-2017

Appellant : Ram Swaroop & Ors.

Respondent : State Govt. Of n.c.t. Of Delhi

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on : May 29, 2017 CRL.A. 942/2001 RAM SWAROOP & ORS. Appellant Through: Mr. R.N. Mittal, Senior Advocate with Mr. Arvind Kumar Gupta, Mr. Anshul Garg, Mr. Abhishek Goyal, Mr. Rachit Gupta, Advocates for appellant No.1 and 2. Mr. Rajat Bhardwaj, Mohd. Ainul Ansari, Advocates for appellant No.3 versus STATE GOVT. OF N.C.T. OF DELHI Respondent Through: Mr. Akshai Malik, Additional Public Prosecutor for the State with Sub- Inspector Gopal Singh, Police Station Mehrauli, Delhi. CORAM: HON'BLE MR. JUSTICE P.S.TEJI JUDGMENT P.S.TEJI, J.

By this appeal filed under Section 374 of Cr. P.C., 1. the appellants seek to challenge the impugned judgment dated 21.11.2001, passed in SC No.199/2000 in a case registered as FIR No.87/1999 under Section 452/323/308/5 of IPC, at Police Station Mehrauli, Delhi. The appellants also challenge the order on sentence dated 21.11.2001, whereby they have been sentenced as follows: Crl. A. No.942/2001 Page 1 of 13 a) b) c) Rigorous imprisonment for a period of 2 years for the offence under Section 3 of IPC; Rigorous imprisonment for a period of 3 years for the offence under

Section 4

of IPC and payment of fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months each; and Simple imprisonment for a period of 1 year for the offence under Section 5

of IPC. All the sentences were ordered to run concurrently.

2. The facts as emerging from the impugned judgment are that an information was received in Police Station Mehrauli on 13.02.1999 that a quarrel had taken place in Sedulajab Colony. Head Constable Surender Mohan with a constable reached the spot where they came to know that injured had been taken to Safdarjung Hospital. Thereafter, they reached the hospital and found the injured Smt. Prema and Raj Kumar admitted in hospital. The injured were declared fit by the doctor to make statement, but at that time Devtadin was present in hospital and had volunteered to make a statement. On his statement the present case has been registered.

3. Devtadin stated in his statement before the police that one Chaudhary Dilip Singh who belonged to his village, wanted to capture his land at S-72/B139. He stated that on 12.02.1999 at about 11 pm at night when he alongwith his family members was sleeping in his Crl. A. No.942/2001 Page 2 of 13 jhuggi, accused Jeete, Sheeshpal, Pawan and Ram Swaroop trespassed in his jhuggi. They all were equipped with dandas and all of them started beating him and his family members. He specifically stated that his wife Prema was repeatedly assaulted with dandas by the accused persons on her head. After assaulting them, all the accused persons fled away from the spot. Thereafter, he called the police and police took the injured to the hospital. Accordingly, the present case was registered and after completion of investigation, charge sheet for the offences under Section 308/34, 323/34, 4

and 5

was filed before the trial court. All the incriminating material was put before the accused persons to which they pleaded not guilty and claimed trial.

4. To prove the charges against the appellants, the prosecution examined 8 witnesses. They are; Head Constable Prakash Singh (PW- 1); Devtadin (PW-2); Prema (PW-3); Raj Kumar (PW-4); Constable Mahesh Chander (PW-5); Sub-

Inspector Joginder Singh (PW-6); Investigating Officer (PW-7) and Dr. Narsh Sood (PW-8). Upon considering the facts, evidence led and the material on 5. record, the learned Additional Sessions Judge held the appellants guilty for offence punishable under Sections 324/452/506 read with Section 34 of IPC by impugned judgment dated 21.11.2001, and vide order on sentence dated 21.11.2001, the appellants were sentenced as indicated above. Hence, the appellants have filed the instant appeal against the judgment and order on sentence passed by learned Additional Sessions Judge. During pendency of the present appeal, the Crl. A. No.942/2001 Page 3 of 13 sentence imposed upon the appellants was suspended vide order dated 13.12.2001. Learned counsel for the appellants contended that the evidences 6. emerging out of the deposition of Devtadin (PW-2), Prema (PW-3), Raj Kumar (PW-4) and Surender Kumar, Investigating Officer (PW-7) have wrongly been appreciated by the learned Additional Sessions Judge. Even the identity of the appellants has not been established and proved by the prosecution. Discrepancies regarding the time of incident; there being electric connection or electric light in the jhuggi; and different versions of the witnesses of the cases about the mode and manner of injuries inflicted upon them were highlighted on behalf of the appellants. It is further contended that Devtadin (PW-2) stated in his cross-examination that Prema was first hit by the accused persons, however Raj Kumar (PW-4) stated in his cross-examination that first of all he was given injury when he was sleeping and thereafter his mother received injuries. Later, he deposed that he became unconscious after receiving injuries and regained consciousness in the hospital and he does not know who had caused injuries to his mother and father. More so, Devtadin (PW-2) was not medically examined, which shows that he had not received any injury. Even the MLC mentions the name of Prema (PW-3) and Raj Kumar (PW-4) and the name of Head Constable Dharampal which according the appellants falsifies the claim of complainant Devtadin (PW-2) that he had seen the occurrence. So far as recovery of weapons of offence being danda or lathi are concerned, they were not recovered from the possession or Crl. A. No.942/2001 Page 4 of 13 at the instance of the appellants. Therefore, the injuries sustained by Devtadin, Prema and Raj Kumar cannot be attributed to the appellants. On the point of sentence, it is contended that the learned Additional Sessions Judge has wrongly denied the benefit of probation to

the appellants. Therefore, the impugned judgment and order on sentence are liable to be set aside.

7. Per contra, learned Additional Public Prosecutor for the State has opposed the aforesaid contentions raised on behalf of the appellants and submitted that there is no illegality or infirmity in the impugned judgment and order on sentence as passed by learned Trial Court as the appellants have been identified by PW-2, PW-3 and PW- 4 and they have corroborated each others statements with regard to giving danda/lathi blows by the appellants and in cases of this kind, the injured witness is sufficient to prove the guilt of the accused persons. Therefore, the appeal filed by the appellants is liable to be dismissed.

8. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as impugned judgment and order on sentence passed by the learned Trial Court. This court observes that the learned Trial Court has convicted the appellants on the deposition of PW-2, PW-3, PW-4, PW-7 and PW-8. Let us scrutinize the deposition of the complainant Devtadeen 9. (PW-2) on whose statement the present case was registered. PW-2 has deposed in his statement that on 12.02.1999 at about 11 PM, when he CrI. A. No.942/2001 Page 5 of 13 was sleeping in his house with his family members, all the accused persons entered in his house armed with dandas. Accused - Pawan gave danda blows on the head of his wife Prema; accused - Sheesh Pal gave danda blows to the left hand of his son Ram Kumar; Accused Jeetey and Ram Pal gave beatings to him. He further deposed that all the accused persons left the jhuggi while saying that they would kill his entire family. He further stated that the accused persons wanted to take forcible possession of his jhuggi and when he refused to vacate the jhuggi they assaulted him. During his examination he further deposed that the accused persons were still threatening him. In his cross-examination, Devatadin deposed that he had seen accused persons assaulting his son Raj Kumar. He, however deposed that Ram Kumar had not received any injury, rather Raj Kumar had received injury. He further deposed that first of all, his wife Prema was hit by accused, then he hid himself in the corner of the jhuggi. At that time his wife Prema and son - Raj Kumar were unconscious.

10. Similarly, Prema (PW-3) in her deposition before the court corroborated the statement of complainant Devtadin (PW-2) to the effect that she knew all the accused persons and they wanted to take forcible possession of their jhuggi; on the date of incident, she was sleeping in her jhuggi with her family. Accused persons armed with danda entered in her jhuggi and started beating them. She specifically named the accused Pawan who gave danda blows on her head; accused Sheesh Pal gave danda blows on the left hand of her son and accused Jeetey and Ram Swaroop gave danda blows to her husband. Crl. A. No.942/2001 Page 6 of 13 She further deposed that when her husband tried to escape, accused persons threatened them that in case they did not vacate the jhuggi, they would kill them. In her cross-examination, she categorically deposed that she had seen the accused persons entering the jhuggi and she had received injuries on her hand first of all and she herself had seen them assaulting her husband. injured witness - Raj Kumar 11. Another (PW-4) had also corroborated the deposition of PW-2 and PW-3 and categorically deposed that on the date of incident at about 11 pm, he was sleeping in his house alongwith his family and parents. Accused persons forcibly entered in his house and started assaulting them. He had also specifically named the accused - Sheesh Pal giving danda blows on his left hand; accused Pawan giving danda blows on the head of his mother and accused Jeetey and Ram Swaroop giving danda blows to his father. In his cross-examination, he deposed that there was no door in the jhuggi.

12. To corroborate the injuries sustained by the injured PW-3 and PW-4, it would be relevant to scrutinize the deposition of Dr. Naresh Sood (PW-8) of Safdarjang Hospital, who in his statement before the court deposed that the MLC (Ex.PW-8/A) records that Dr. Puneet had medically examined Prema and Raj Kumar when they were brought by the police with an alleged history of assault. During examination of Prema, doctor found the following injuries : - a) CLW5inches long gapping more than 1 cm. Crl. A. No.942/2001 Page 7 of 13 b) c) CLW3cm long on right forearm Restricted and painful movements on left shoulder. He further deposed that the injury was simply caused by blunt object and the injuries on the person of Raj Kumar were in the form of abrasion on left leg and left upper limb and the same were simple in nature and caused by a blunt object.

13. Head Constable Surender Mohan (PW-7) who was the Investigating Officer of the case, had deposed that on the intervening night of 12th and 13th February 1999 after receiving DD No.28 (Ex. PW-5/A) he alongwith Constable Krishan Lal reached at the spot where he came to know that injured was removed to hospital. No eye witness to the incident was available at the spot. Thereafter, he reached Safdarjung Hospital and found injured Prema and Raj Kumar admitted in the hospital. The statement of eye witness to the incident - Devtadin (PW-2) was recorded by him, which is Ex. PW-2/A, on the basis of which as well as MLC, rukka was sent and FIR of the case was registered. the spot was conducted with the complainant and site plan prepared, and after collecting MLCs and X- ray report of the injured persons, recording of statement of witnesses, accused ram Swaroop was arrested on 14.02.1999. On 04.03.1999, accused Shish Pal and Daljeet Singh were formally arrested, when they surrendered themselves before In his cross- examination, he deposed that he had recorded the statement of Raj Kumar and not Ram Kumar. He had gone to the jhuggi, which was Inspection of the court. CrI. A. No.942/2001 Page 8 of 13 quite big but there was no light inside the jhuggi. He did not see as to what material the roof of the jhuggi was made of. He further deposed that it was not possible to give lathi blow inside the jhuggi, but the same could be given by the danda as the height of the ceiling was not too high.

14. Now adverting back to the facts of the case, according to which the appellants entered into the jhuggi of the victim and started giving beatings with dandas. The victims received injuries and were medically examined in the hospital. While going through the MLCs of the injured, this court observes that the doctor of the hospital has opined the nature of injuries as being simple in nature and with a blunt object (which is danda in this case). So far as the identities of the appellants is concerned, they are not strangers to the victim and were already known to them being the residents of the same locality. Identity of the accused as well as fact of incident in question have also been corroborated with the deposition of PW-2, PW-3 and PW-4. Accordingly, the appellants have been convicted for the offence under Section 452/324/5 of IPC.

15. From the aforesaid narration of facts and deposition of the material witnesses, it is clear that the appellants have committed the offence under Section 452 of IPC by trespassing into the jhuggi of the victims. For better appreciation of intent of these sections, the same is reproduced hereunder:-

"452. House-trespass after preparation for hurt, assault or Crl. A. No.942/2001 Page 9 of 13 for assaulting any person, or wrongful restraint.-Whoever commits house-trespass, having made preparation for causing hurt to any person or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. This court further observes that 16. the appellants have been convicted for the offence under Section 324 of IPC, which reads as under:-

"324. Voluntarily causing hurt by dangerous weapons or means.-Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any for shooting, stabbing or cutting, or any instrument instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to in- hale, to swallow, or to receive into the blood, or by means punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. animal, any of shall be Crl. A. No.942/2001 Page 10 of 13 The appellants have also been convicted for the offence under 17. Section 506 of IPC, which reads as under:-

"for criminal intimidation.-Whoever 506. Punishment commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.- And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or

with fine, or with both. the present case, the learned 18. On the aforesaid facts of Additional Sessions Judge has awarded the sentence of rigorous imprisonment for a period of 2 years for the offence under Section 3

of IPC; rigorous imprisonment for a period of 3 years for the offence under Section 4

of fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months each; and simple imprisonment for a period of 1 year for the offence under Section 5

of IPC. To this extent, this court finds no infirmity and illegality in the impugned judgment thereby convicting the appellants for the aforesaid offences, as passed by learned IPC and payment of CrI. A. No.942/2001 Page 11 of 13 Additional Sessions Judge. Therefore, the same is upheld.

19. Now coming to the order on sentence, this court observes that through there is a corroboration of the fact of appellants giving danda blows on the victims, but there is no recovery of weapon of offence such as lathi/danda from the appellants. Absence of recovery of weapon of offence, creates some doubt about the injuries caused to the victims, particularly when the MLCs of the injured reveal that the nature of injuries caused to the victim were opined to be simple in nature with a blunt object. This court further notes that the incident in question had occurred on 13.02.1999. From the nominal roll of the appellants, it is revealed that none of the appellants remained behind bars even for a week.

20. In the peculiar facts and circumstances of the present case, considering the fact that the appellants have suffered the agony of trial for the last more than 18 years and all the appellants were young persons at the time of offence and the offence under Section 452, 324 and 506 of IPC do not prescribe for any minimum sentence, this court is of the considered opinion that the interest of justice would be met if the substantive sentence of the appellants is reduced to the period already undergone by them. However, the fine imposed on the appellants is increased to Rs.10,000/- each to be deposited with the trial court within a period of 15 days from the date of this order, which shall be paid to the injured Prema and Raj Kumar as compensation. In case of default of payment of fine, the appellants are directed to surrender before the trial court within 15 days to undergo simple

21. In view of the aforesaid discussions, the appeal filed by the appellants is partly allowed thereby upholding the impugned judgment on conviction and modifying the order on sentence to the extent indicated above.

22. Appellants are on bail. Their bail bonds are forfeited and surety bonds are discharged.

23. A copy of this order be sent to the Trial Court for information and necessary steps.

24. With aforesaid directions, the present appeal filed on behalf of the appellants is disposed of. MAY29 2017 pkb (P.S.TEJI) JUDGE Crl. A. No.942/2001 Page 13 of 13