

State of Bihar Vs. Rukmini Devi and ors.

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Court : Patna

Decided On : May-23-2007

Judge : Abhijit Sinha, J.

Appellant : State of Bihar

Respondent : Rukmini Devi and ors.

Disposition : Appeal dismissed

Judgement :

Abhijit Sinha, J.

1. Aggrieved by the, judgment and order dated 31st July, 1986 passed by Sri Mohan Prasad, the then Judicial Magistrate, IInd Class, Patna, in G.R. No. 4684 of 1983, T.R. No. 30 of 1986 arising out of Phulwari P.S. Case No. 398 of 1983, whereby the learned Magistrate while convicting three of the accused, has acquitted three respondents herein, the State has filed the instant appeal.

2. According to the prosecution case at about 7 a.m. on 11-11-1983 the informant Parmeshwar Choudhary was sleeping at his darwaza when stepbrother Baleshwar Choudhary with whom dispute and differences had cropped up over landed property and wherein the Mukhia following Panchayati had given his rulings which was not accepted by Baleshwar, arrived armed with Chhura. It is said that Baleshwar proposed to the informant to get the land measured once more by the

Amin but when the informant did not agree to the proposal since it was the day of Chhat festival and agreed to get the measurement done later which did not appeal to Baleshwar who allegedly dealt two chhura blows on the informant the first one caused injury on the left eyebrow and the second causing injury to the small finger of the left foot. The informant is said to have raised cries of alarm attracted whereby Dinesh Choudhary armed with lathi came over and dealt a lathi blow on the hip of the informant and the result whereof he started wreathing in pain. It is said that when the informant's wife Uma Devi came to his rescue Baleshwar's wife Rukmini Devi caught hold of her hair and assaulted her and Ramesh Choudhary arrived armed with lathi and dealt a lathi blow on her causing injury to her elbow joint of the left hand and she fell to the ground seeing which the informant's younger son rushed towards the village calling for help when he was apprehended on the way by Harish Chandra Choudhary along with Kapil Thakur who assaulted the informant's son with slaps and fist. It is said that co-villagers including Madanlal and Baleshwar Rai arrived and intervened thereby saving the informant and his family members.

3. At the trial the prosecution sought to examine as many as 5 witnesses including the I.O. and the doctor and also adduced certain documents in support of the prosecution case.

4. The defence plea was one of innocence and false Implication.

5. After consideration of the materials on record and the submissions advanced by the counsels of both the parties the learned Magistrate while acquitting the respondents herein convicted Baleshwar Choudhary, Dinesh Choudhary and Ramesh Choudhary under Sections 323/341/34, I.P.C. and sentenced them to simple imprisonment for 3 months for both the offences.

5A. It has been submitted on behalf of the appellant-State that the learned Magistrate had erred in law in coming to a finding that there was no sufficient materials on record regarding the allegations made against the accused-respondents and that too when the evidence as against the convicted accused and the acquitted accused was the same. Grievance has also been made that there was an absence of detailed discussion of evidence as against the

respondents herein.

6. To see whether the assertions raised by the learned Counsel for the appellant-State can be sustained, one has to delve into the evidence of the witnesses examined by the prosecution.

7. The informant Parmeshwar Choudhary figuring as P.W. 1 has sought to support his fardbeyan story with minor variations. He has stated that at around 7 a.m. while he was sitting at his darwaza after completing the formalities of the festival of Chhat when Kapil Thakur arrived and stated that he should get the lands belonging to him and his step brother Baleshwar Thakur measured by the Amin whereupon the informant said that since the Chhat festival was on he would get the same measured after the festival ended. The witness further stated that upon this Kapil called Baleshwar Choudhary who arrived armed with Chhura and dealt two blows on the left side of his head and as he tried to avoid the blows he Sustained in-Jury in the little finger of his left leg. He has further stated that on hulla being raised by him Dinesh Choudhary armed with lathi arrived along with Ramesh Choudhary and Ram Das Choudhary and all the four assaulted him with lathi. He also stated that as soon as his wife Uma Devi rushed to his rescue Rukmini Devi caught hold of her hair and assaulted her and the remaining others assaulted her with lathi. He also stated that Suraj, his son raised hulla and started summoning the co-villagers whereupon Kapil Thakur assaulted Suraj, Harish Chandra Choudhary is also alleged to have assaulted his son with lathi. The witness asserted that many people of the Mohalla arrived on hearing hulla but he could not recall the names of those persons. The witness claims to have got to Gaurichak Police Station where he gave his fardbeyan whereafter he was sent to the hospital for treatment. The witness giving the genesis of the occurrence stated that his step brother had encroached upon his land by two cubits and had constructed wall which had occasioned in giving rise to a dispute.

8. The witness was cross-examined in detailed where he has submitted that Baleshwar was armed with chhura whereas Dinesh, Ramesh, Ram Das, Kapil and Haris Chandra were armed with lathi. He stated that Baleshwar had dealt two blows but he was not in a position to say as to how many lathi blows had

showered upon him by which of the accused. He strictly remembered that all the accused were assaulting him at the same time. He also stated that on hearing the hulla some 20-25 persons had arrived amongst whom he could provide the names of Madan Babu, Baleshwar Ram, Ram Sundar, Sarju Ram only. He also stated that he had divulged the names of these 4 persons before the police in his fardbeyan. He admitted that the 4 witnesses he had named who belonged to Changar and Shohrangpur. From the evidence of P.W. 1 no specific allegation appears to have been made against any of these respondents. The only allegation against Rukmini is of her having caught hold of hair of Uma Devi and assaulted her. The allegation against Kapil Thakur is of having requested of the informant to get the disputed lands measured once again by the Amin and of having assaulted his son Suraj with lathi. The allegation against Harish Chandra is also of having assaulted Suraj but the weapon if any used by Harish for such assault has not been divulged.

9. P.W. 2 Ramashis Singh stated that on hearing hulla coming from the house of Parmeshwar Choudhary he rushed there and claims to have seen Baleshwar Choudhary giving a chaku blow on Parmeshwar causing injury on the left forehead. He also stated that when Parmeshwar wife came to rescue he sought a woman catching hold of hair and throwing her on to the ground. He have to state that later on he came to know that the aggressive woman Was Baleshwar's wife. He also stated that Ramesh, Dinesh and Ramdas armed with lathi and had assaulted Parmeshwar and when Parmeshwar's son came out from the house he was' assaulted by Harish Thakur with slaps.

10. From the evidence of P.W. 2 it would appear that the only allegation against the respondent-Rukmini Devi was of having caught hold of Parmehswar wife but here again he did not know Rukmini and stated by way of hearsay. The witness does not attribute any overt act to Kapil Thakur and as a matter of fact he has not even named Kapil. The only allegation against Harish Thakur is of having assaulted Suraj with slaps.

11. P.W. 3 is none other than Uma Devi the wife of the informant who came to state that about 7 in the morning Kapil Thakur has come to his house and asked

her husband to call the Amin. Whereupon her husband replied that since that date was the festival of Chhat he would summon the Amin on another date. She further stated that Kapil went back and came with Baleshwar and Baleshwar aggressively asked her husband to summon the Amin immediately and when the husband stated that he would not summon the Amin due to the Chhat festival. Baleshwar allegedly given one blow with chhura upon the head of the husband and as the husband tried to catch hold the chhura the same fell down and caused injury in the little finger of the left foot. She also stated that when she went to rescue her husband Dinesh, Ramdas and Parmeshwar assaulted her with lathi and Rukmini caught hold of her hair and assaulted her.

12. P.W. 4 is Dr. Nageshwar Prasad who examined Uma Devi and Parmeshwar Choudhary. Uma Devi had four wounds, namely,

(a) Tenderness and swelling measuring 2" x 1" on the right knee In its inner side and X ray thereof showed no bony injury.

(B) Tenderness and swelling on the inner side on the right wrist joint measuring about 2' x 1/2'.

(c) Tenderness and another swelling on the right wrist measuring 1' x-1'.

(d) Tenderness on the right buttock.

In the opinion of the doctor all the injuries were simple in nature and caused by hard, blunt substance which were within 12 hours.

13. Parmeshwar Choudhary had three injuries namely.

(a) one lacerated wound 2 1/2" x 1/4" x skin deep on the left side of the forehead.

(b) another lacerated wound measuring 1 1/2" x 1/2" x 1/4" on the 4th interflangial space of the left foot.

(c) tenderness of the right side of buttock x ray showed no bony injury.

In one opinion of the doctor the injuries were simple in nature and caused by hard blunt substance like lathi:- danta within 12hrs.

14. Apparently the injury sustained by Uma Devi and Parmeshwar Choudhary are not occasioned by any of the overt acts of the 3 respondents herein. And as a matter of fact except for Rukmini of having caught hold of hair of Uma Devi and of Kapil and Harish Chandra having assaulted Suraj, the son of the informant, there is no specific allegation against these respondents. As a matter of fact the informant's son Suraj has not even been examined by the doctor and it remains a matter of surmises and conjectures as to the injury sustained by Suraj.

15. Tribhuwan Singh, A.S.I. figures as P.W. 5 who came to prove the fardbeyan of Parmeshwar Choudhary (Ext 2) which had been penned by him. He also claims to have seen the injured and to have referred them to Nalanda Medical College and Hospital for treatment. He examined the place of occurrence which was a hut constructed of straw in mohalla New Jaganpura belonging to the informant. He has given the topography of the place and of the surrounding houses. He claims to have recorded the statement of the witnesses and also having submitted the charge-sheet. In course of his cross-examination he stated that he did not find any sign of blood at the place of occurrence, although he found blood dripping from the body of the informant. He further stated that the blood splattered clothes were not handed over to him.

16. From the material available on the record including the deposition of the witnesses nothing has come forward so as to show the three respondents herein having resorted to any overt act, which was worth taking into notice or which could have been levelled as an offence punishable under the provisions of the Indian Penal Code. To my mind the learned trial Court has rightly acquitted the three respondents herein of the charges framed against them.

17. Apparently this appeal is a frivolous one and the State Govt. would be well advised to be refrained from filing such frivolous and perfunctory appeals in future.

18. With above observations the appeal preferred by the State is dismissed as there is no merit therein.

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