

Latal Sheikh Vs. State of Bihar

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Court : Patna

Decided On : Mar-30-1998

Judge : S.K. Chattopadhyaya. J.

Appeal No. : Criminal Appeal No. 238 of 1990 (R)

Appellant : Latal Sheikh

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

S.K. Chattopadhyaya. J.

1. The appellant, Latal 'Sheikh, who has been convicted under Section 326 IPC and sentenced to undergo R.I. for 4 years, has impugned the judgment dated 19th November, 90 passed by the learned 3rd Additional Sessions Judge, Giridih in Session Trial No. 129/87 arising out of G.R. No. 44/88.

2. The prosecution case is that the appellant married to Saidrun Bibi, cousin sister of the informant, Mansoor Sheikh. As the appellant was contemplating to perform another marriage within a short period, Mansoor conveyed a Panchayati on 11.6.84 at 8 p.m. in order to restrain the appellant from performing another marriage. Panches interrogated the appellant regarding his reasons to perform second marriage, in which Latal replied that he would keep his both wives. On this

Mansoor and his brother Muzaffar Sheikh objected which led to some altercation between the informant and his brother on the one hand and the appellant and other accused namely, Noor Mohammad, Jakir Sheikh and Jabbar Sheikh on the other. The appellant, in

the meantime, brought a Chhura from his house and inflicted injuries on the abdomen of Muzaffar Sheikh with the said Chhura. Latal inflicted Chhura blow on the left side of abdomen of the informant. Panches intervened and brought both the injured to their house. Babujan (PW 2) rushed up to Bengabad to call a Doctor and for informing to the police. One Dr. Poddar administered first aid and went away. Muzaffar was taken to State dispensary, Bengabad where after examining, Dr. Radheshyam Prasad (PW 5), referred his case to Sadar Hospital, Giridih. At Giridih Dr. Suresh Chandra Mtshra (PW 6) examined Muzaffar. Mansoor Sheikh (PW 1) gave his fardbeyan, which was recorded by S.I. Narendra Kumar of the said police station. Formal FIR is Ext. 3 and fard beyan is Ext. 4. Charges under Sections 307, 324, 341 read with Section 34 IPC were framed against the appellant and other accused persons.

3. The defence took a plea before the trial Court that Saidrun Bibi was married to the appellant 10 years ago but after the marriage she remained at the matrimonial house

for (sic) months and mostly lived at her paternal house. Even though a Panchayati was held but she did not reside at her matrimonial house. Therefore, the appellant was contemplating to divorce her. for which a Panchayati was held in his house on 11.6.84 at 8 p.m. In the course of Panchayati there was some altercation and Mansoor caught hold of the hair of the appellant and assaulted him with slaps and fist. On being intervened by his mother, she was also assaulted. On this allegation a complaint was filed by Noor Mohammad giving rise to Complaint Case No. 291/84 in which Mansoor Sheikh and other were tried and found guilty under Sections 323, 341 and 427 IPC but were released on probation of good conduct. The said judgment has been marked as Ext. 'Kh'.

4. In order to prove its case, the prosecution examined seven witnesses, out of which PWs 1 and 2 are on the point of Panchayati and witness to the said assault.

PW 3 is the informant and PW 4 is injured Muzaffar Sheikh. Two doctors, who examined Muzaffar, are PWs 5 and 7. PW 6 is S.I., Raj Kishore Singh, who took charge for investigation of the case from S.I. Jitu Ram and submitted chargesheet of the case. However, said Jitu Ram was not examined by the Prosecution.

5. The factum of occurrence could not be denied by the defence because PWs 1,2,3 and 4 are all eye-witnesses to the occurrence. The only question which is to be considered is as to whether on the facts and circumstances and manner of injuries the appellant could have been convicted under Section 326 of the Penal Code.

6. PW 5, Dr. Radhey Shyam Prasad, examined Muzaffar on 12.6.84 at 3.15 a.m. He found one stab injury on the right side of his abdomen which was 1/2' x 1/4 x 1' caused by sharp pointed weapon such as knife. According to doctor, this injury was dangerous to life. According to him Muzaffar was profusely bleeding and his pulse rate and B.P. was low and as such, he was of the opinion that his life was in danger. He also found abrasion on the left side of axillary region which was 1/2 x 1/4 x 1/4 and just lateral to injury No. 1. He also found abrasion on the left side of mid axillary region of 1/4 x 1/4 'x 1/4 ' incise. To defence question, this witness has categorically stated that Muzaffar was not unconscious but he was under a grievous shock. He was able to speak. According to him, the knife used to inflict the injury must have single sharp edge. Nothing could be brought by the defence from him which can support the defence case.

7. PW 7, Dr. Suresh Chandra Mishra, while posted as Civil Assistant Surgeon at Sadar Hospital, Giridih, operated upon Muzaffar and found the following injury:

Penetrating wound 1/2 ' x 1/4 ' x peritoneal cavity deep on right part of abdomen.

According to him, this injury was caused by sharp cutting weapon such as knife. This doctor was subjected to lengthy cross-examination but nothing adverse to the prosecution could be brought.

8. Under the facts and circumstances discussed above, in my view, the conviction of the appellant by the trial court under Section 326 IPC cannot be said to be

unjustified. Though the charge was framed under Section 307 but the trial Court has taken a sympathetic view and convicted the appellant under Section 326 on the ground that he inflicted only one blow on the injured. Under this circumstance, the conviction of the appellant under the said section, in my opinion, cannot be interfered with. The question of sentence is to be considered on the background that admittedly the appellant: is the brother-in-law of the informant, Mansoor and injured Muzaffar. There was some altercation between him and brother-in-law regarding contemplating of having a second wife by the appellant in the life time of first wife Saidrun Bibi, who is cousin sister of Mansoor and Muzaffar. Evidences on record show that there was free-fighting between the parties but the appellant had brought out a knife and assaulted Muzaffar and Mansoor in their abdomen. There is no denial of the fact that only one assault was inflicted by Latal. though doctor found the said injury serious. The trial court considering other facts convicted the appellant under Section 326 of the Penal Code and not under Section 307. Moreover, there is nothing on record to show that injured Muzaffar was confined to bed for several months. This case was instituted in the year 1984 and the appellant was released on bail by the Sessions Judge on 28.6.84 after his surrender on 25.6.84. Similarly, after pronouncement of the judgment, he was taken into custody on 19.11.90 and was granted bail by this Court on 7.12.90. Under these circumstances, if the appellant is directed to serve out the remaining period of sentence, in my opinion, it may again cause some bitterness among the family members of the prosecution and the appellant. Though punishment under Section 326 is not rigorous imprisonment or fine but in the facts and circumstances, I am of the view, that justice demands the sentences imposed on the appellant may be modified for the ends of justice.

9. In the result, this appeal is dismissed with modification of the sentences to the period already undergone and subject to payment of Rs. 25,000/- by the appellant to the injured Muzaffar Sheikh within one month from today. The appellant who is on bail, will be discharged from the bail bonds on depositing the said amount before the trial Court within the said periods and after receipt of the same by Muzaffar Sheikh. It is made clear that if the appellant fails to comply with this direction, he will be taken into custody immediately to serve out the sentences imposed by the trial Court.

