

Ayodhya Singh Vs. State of Bihar

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Court : Patna

Decided On : Feb-19-2009

Judge : Dharnidhar Jha, J.

Acts : Evidence Act - Sections 60; Indian Penal Code (IPC) - Sections 307, 324 and 380

Appeal No. : Criminal Appeal No. 322 of 1993

Appellant : Ayodhya Singh

Respondent : State of Bihar

Advocate for Def. : Dashrath Mehta, A.P.P.

Advocate for Pet/Ap. : V.B. Ambastha, Adv.

Disposition : Appeal allowed

Judgement :

Dharnidhar Jha, J.

1. The present appeal arises out of the judgment of conviction and order of sentence dated 7th September, 1993 passed by the learned 7th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 330 of 1985 by which the solitary appellant was convicted under Sections 324 and 380 of the Indian

Penal Code and was directed to suffer terms of rigorous imprisonment for six months and two years respectively on the two above counts. No sentence of fine was imposed. The appellant was charged also under Section 307 of the Indian Penal Code but the learned Judge did not record a conviction against the appellant under that provision of the Penal Code.

2. The prosecution story is very short. It is not disputed that the informant Ramadhar Sharma, P.W. 5, and the present appellant Ayodhya Singh were residing together and carrying on the business in potato together. It is alleged that one Kameshwar Singh of Chandanpura came and paid Rs. 8000/- to the informant on the day of the occurrence in presence of the appellant. The informant and appellant had taken dinner together and slept in the same shop. At about 2 A.M., the informant woke up after being given a blow with chhoora and he found that it was this appellant who had inflicted the blow upon his right cheek which was bleeding profusely. He raised an alarm and that attracted persons of the neighbourhood and seeing that, the appellant is alleged to have run away with the theft property i.e. Rs. 8000/-. The informant was taken, as per his statement, to the hospital where fardbeyan, which has not been exhibited, was recorded and on that basis, investigation was initiated and after completion of the same, the appellant was sent up for trial which ultimately ended in his conviction and the order of sentence passed on him as indicated above.

3. The defence of the appellant was that there was no such occurrence as was alleged and that the informant had been assaulted at some other place and had falsely implicated the appellant due to some business dispute.

4. During the course of trial, the prosecution examined six witnesses. P.Ws 1 and 3 gave statement that they came on hearing the halla of the informant P.W. 5 and were told by him that he had been assaulted with chhoora by the appellant who had run away with Rs. 8000/- belonging to P.W. 5. P.W. 2 was tendered for cross-examination. P.W. 4 Sohan Prasad Sahni appears making statement of learning about the incident in the next morning but he has not stated as to from whom he could learn about the incident and as such, his evidence, on the very face of it, appears inadmissible. P.W. 5 has supported the version of the occurrence in toto,

as narrated in the fardbeyan and, likewise, the doctor Dr. Birendra Kumar Singh deposed that one incised wound 2' x 1/4' transversely placed on right side of cheek starting from right ala of nose towards posteriorly up to half an inch in front of right zygoma was found by him on P.W. 5. Injury was described simple.

5. The contention is that the very genesis of the occurrence that the informant was paid Rs. 8000/- in presence of the present appellant, for committing theft of which, the appellant gave a blow with chhoora on him, had not been established. It was further contended that the case suffers from inherent improbability and patent absurdity inasmuch as if the appellant was to commit only the theft of Rs. 8000/- from the possession of P.W. 5, then he needed not give a blow as alleged. Further contention was that the attention of the informant was drawn to many important facts and the non-examination of the Investigating Officer appears a prejudice caused to the appellant. It was next contended that may be that the informant had received injuries somewhere else and after weaving out a false story for any reason best known to him, he implicated the appellant probably for putting pressure upon the appellant.

6. Learned Additional Public Prosecutor has supported the conviction and order of sentence passed against the appellant by drawing the attention of the court to paragraph 11 of the judgment in which the learned Judge has referred the evidence of few witnesses and has accepted the version given by them.

7. As pointed out in the earlier part of the present judgment, the evidence of P.W. 4 is completely improbable. The evidence of a witness that he learnt a fact from a particular person could be admitted if that person also comes into the witness box and says that he had narrated that particular fact to the particular witness. Here, in case of P.W. 4, he does not disclose as to from whom he learnt about the incident taking place. Thus, there could not be any question that his evidence could not be read as admissible evidence. As regards evidence of P.Ws 1 and 3, they have stated that they learnt about the incident from P.W. 5 and P.W. 5 also states in his evidence in paragraph 2 that when P.W. 1 Fauzdar Singh and P.W. 3 Shrawan Kumar Singh came along with other persons, he narrated to them that the appellant had stabbed him and run away with money. Thus, their evidence

appears admissible to me in the light of the provisions of Section 60 of the Evidence Act but that, by itself, would not be sufficient to uphold the judgment of conviction and order on sentence.

8. The criticism has been that the genesis of the occurrence has not been established. As noted above, one Kameshwar Singh gave Rs. 8000/- to the informant in presence of the appellant and it was for the commission of theft of that particular sum of money that the appellant stabbed him. So, the first thing which was required to be proved by the prosecution was that indeed the informant P.W. 5 had received a sum of Rs. 8000/- from Kameshwar Singh. For establishing this fact, the evidence of informant is there but most important evidence would have come from Kameshwar Singh who is said to have given the above noted sum of money to P.W. 5. Kameshwar Singh has not been examined. There is no explanation offered nor anything discussed in the judgment of conviction as to for what reason Kameshwar could not be brought into the witness box for deposing on that particular fact of payment of Rs. 8000/- to P.W. 5 in presence of the appellant. This creates a very serious infirmity in the prosecution evidence.

9. As regards the evidence of P. Ws 1, 2 and 3, as held earlier, their evidence is admissible. But on reading their evidence, I find that they could not identify the appellant as the person who had committed the offence. It is not the case of the prosecution that either the informant or the appellant was not known to each of the two witnesses, rather, as facts are stated, the informant and the appellant were long standing partners in business of potato and appear living at the place of occurrence which is a tiny market place Tilauthu and it could safely be presumed that the persons of the neighbourhood must be knowing P.W. 5 and the appellant quite well. The inability of P.Ws 1, 2 and 3 in identifying the appellant appears significant as regards his participation.

10. The other aspect which was highlighted during the course of argument was improbability as regards giving a blow and then committing the theft. It really does not stand to reason as to why the appellant for committing the theft of the sum of money from the possession of the informant he could have stabbed him first; he could have done it merely by taking it out of the possession of P.W. 5. The

admitted fact is that both of them were sleeping together. There is nothing on record to indicate that there was an attempt in thwarting commission of theft of money and that for eliminating that attempt, it was necessary for the appellant to have given a blow so as to immobilizing the informant in order to run away with the sum of money. The ordinary human conduct defies the allegation and it really appears absurd and improbable that indeed the informant had been first given a blow with chhoora on his cheek and thereafter deprived of his money. There could be many reasons for the false implication of an accused. No accused could say as to why and for what reason he was implicated in the case. It would be best known to the informant as to what for he was implicating his friend, neigh his partner in business in an offence of such serious proportion.

11. After having considered the evidence of witnesses from all angles and in the light of the criticism as placed before this Court by the learned Counsel for the appellant, I find that the prosecution could not prove the charge satisfactorily and with some of the best evidence which could have been produced by it during trial. The appellant deserves to be given the benefit of doubt. The same is extended to him.

The appeal is allowed and the judgment of conviction and order of sentence is set aside. Appellant is discharged from the liability of his bail bond.

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