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Shiv Singh Vs. State

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Court : Allahabad

Decided On : May-06-1974

Reported in : 1975CriLJ704

Judge : P.N. Bakshi and; Chandra Prakash, JJ.

Appellant : Shiv Singh

Respondent : State

Judgement :

P.N. Bakshi, J.

1. The appellant has been convicted under Sections 302, I.P.C. and 307, I.P.C. and sentenced to imprisonment for life and five years' rigorous imprisonment respectively by the Additional Sessions Judge, Aligarh vide his judgment and order dated 13-8-1970.

2. A short pedigree is necessary for a proper appreciation of the facts of this case:

MOTI RAM|
_____| |
| |Smt. Gobindi Natha Bam Chunui Singh Sher Singh Natha Ram | | || Hukum Singh | One daughters| | || _____ || | | || Shiv Singh (accused) Married(3) || one daughter daughters || || ||

_____| | | |

|Nauna=Smt. Darbo (deceased) Ramsarup Bahgwan Singh Ramjilal Sabran Manhori|Mahendra Singh P.W. 2=Smt. Angoori (Injured P.W. 4)

3. From a perusal of the pedigree noted above it is obvious that Srimati Angoori is the sister-in-law of Shiv Singh accused and Srimati Darbo is the aunt of the accused-appellant. The prosecution case is that on 16th September, 1969 at about 3 p.m. Srimati Angoori was repairing her Chulha in the Chauk. Shiv Singh objected to it saying that the smoke of the Chulha would enter his door and, therefore, it should not be repaired. Srimati Angoori did not oblige him and continued to repair the Chulha. Shiv Singh abused her. Srimati Angoori abused him back. The result was that the tempers ran high and the accused assaulted her with the blade of the spear. She raised an alarm which attracted her mother-in-law Srimati Darbo, who in an attempt to rescue her daughter-in-law Srimati Angoori, bent over her body. The accused struck a blow on Srimati Darbo. On hearing the alarm of Srimati Angoori, Ram Swaroop, Mahendra Singh, Baldeo and Mohan Singh also reached inside the house and witnessed the assault in question. The accused, thereafter, slipped away. Srimati Darbo succumbed to her injury.

4. The First Information Report of the incident was lodged at 4-30 p.m. at police station Mursan by Mahendra Singh. A case was duly registered against the accused-appellant, Investiga-' tion of the case was conducted by the Investigating Officers Sawaliya Singh P.W. 9 and K. N. Chaturvedi P.W. 12. After preparation,of the sitephm and recording' the statements of the witnesses and also after conducting the rest of the formalities of the investigation the accused-appellant was charge-sheeted and put up for enquiry and trial.

5. The appellant pleaded not guilty and ascribed his false implication due to enmity. He also asserted that there was litigation between him and Ram Swarup witness on account of certain property as a result of which he has been falsely implicated in this case. Chunni D. W. 1 has been examined on behalf of the accused, in support of the plea that the marpit took place between Smt. Angoori and Smt. Darbo in which they received injuries.

6. Dr. H. P. Goel, Medical Officer, Bagla Civil Hospital, Hathras examined Srimati Angoori on 19-6-1969 at 9 p.m. He found the following injuries on her person:

1. Incised wound li' X I' X 4' deep on the left side neck below the left ear.

2. Punctured wound 1/2' X 1/4' X 1' deep on the left arm front aspect upper third.

3 .Punctured wound 1/2' X 1/4' X 3/4' deep on the left arm 2' below injury No. 2.

4. Punctured wound ll' X 1/2' X li' deep on the left side back below the axillary fold. Direction downward and inward.

All these injuries were simple and had been caused by sharp edged weapon like a spear. These injuries could have been received at the time as alleged by the prosecution.

7. The autopsy on the dead body of Srimati Darbo was conducted by Dr. Jaswant Singh Medical Officer Malkhana Singh Hospital on 20-6-1969 at 2 p.m. He found the following ante mortem injury on her person: Stab wound with clean cut margins in oblique direction li' X 1/2' X cavity deep on the back right side in posterior axillary line in between the IX and XII ribs. On internal examination it was revealed that the peritoneal wall had been cut under the injury described above. According to the Doctor Srimati Darbo died as a result of shock and haemorrhage due to the aforesaid injury caused to the liver. In his opinion this injury was sufficient in the ordinary course of nature to cause death.

8. The prosecution in support of its case examined 13 witnesses. Out of whom Ram Swarup P.W. 1, Mahendra Singh P, W. 2 and Srimati Angoori P.W. 4 are the eye-witnesses of the incident. The rest of the witnesses are more or less formal in nature and their testimony shall be referred to, if necessary, at the appropriate stage.

9. The time and the place of the incident has not been disputed before us. It is also proved from the testimony of the eye-witnesses, namely, Ram Swarup, Mahendra Singh and Srimati Angoori. The medical evidence also discloses that the injuries on Srimati Angoori and Srimati Darbo could have been caused at 3 P. M, on 16th

September 1969. The recovery of blood from the site of the incident is another corroborative circumstance which supports the place of the occurrence. On a consideration of the entire evidence on the record, we are o the opinion that the prosecution has succeeded in conclusively establishing the time and the place of the occurrence as-alleged by it.

10. So far as the manner of the incident is concerned, that also admits of no doubt. Out of the three eye-witnesses produced by the prosecution, Srimati Angoori is the injured witness. She has given out the entire prosecution case. She has stated that at the relevant date and time she was repairing her Chulha in her Chauk. The accused-appellant came-there and asked her not to repair the Chulha as its smoke would enter his door,. She refused to oblige the appellant. Abuses were exchanged between the two> with the result that the appellant struck Srimati Angoori with a spear. She raised an alarm and on hearing it Srimati Darbor her mother-in-law, reached there Srimati Darbo bent over Sri Angoori in an; attempt to save her. The next stroke-which the appellant struck, however, hit Srimati Darbo on the back, as a result of which she died. Srimati Angoori has further deposed that she raised an alarm. On hearing the same the other witnesses Ram Swarup and Mahendra Singh rushed inside the house and witnessed the in* cident. From a perusal of her statement we find that she has given a cogent and* convincing version of the incident, which-is corroborated by the particulars of the-First Information report, which was promptly lodged after the incident in. question. We find no reason at all to discard her reliable and trustworthy testimony. Nothing has been pointed out to us in the statement of this eye-witness which can throw the slightest doubt on her reliability. We, therefore, have no hesitation in accepting her unshaken: testimony.

11. The other two witnesses are Ram Swarup P.W. l and Mahendra Singh P.W. 2, It is proved that both these witnesses are as much related to--Srimati Angoori as they are related lathe accused-appellant. Being relations it is not expected that they would omit the name of the real assailant of the victim and falsely implicate the appellant. On the contrary they would be the first person to name the correct assailant of' Srimati An.eoori and Srimati Darbo. The-incident in question is a day light incident and there can be no doubt with regard to the identity of the assailant.

Ram Swamp is a cousin of Mahendra Singh and Sher Singh, They have consistently deposed that they were sitting under the neem tree which lies iust in front of the house of the victim. On hearing the alarm raised by Srimati Angoori they immediately rushed in and witnessed the incident. The version which they have given completely corroborates the prosecution case in all particulars. We have carefully scrutinised their statements and we do not find any reason to doubt their reliability.

12. From a consideration of the evidence of these three witnesses, we are convinced that the prosecution has succeeded in proving the guilt of the accused-appellant conclusively and beyond any measure of doubt.

13. The only question which remains for consideration is as to what offence has been made out and what should be the appropriate sentence to be imposed upon the accused-appellant. In this connection reference may be made first to the injuries caused on Srimati Angoori. She was examined by Dr. H. P. Goel P.W. 3 on 19th June 1969. She received one incised wound on the left side of the neck and three punctured wounds on the left arm and the left back. These injuries were simple and had been caused by a weapon like a spear. Dr. Goel has deposed that these injuries were not sufficient in the ordinary course of nature to cause death:

14. 'In choton say maut honay ki sambhavna nahin thi.' As such even accepting the prosecution case that these injuries had actually been caused on Srimati Angoori by the appellant, it cannot be said that they were caused with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder. We, therefore, hold that no offence under Section 307, I.P.C. has been, made out against the appellant. Having regard to the nature of the injuries which were all simple caused by a spear the only offence which is made out against the appellant is one covered by Section 324, I.P.C.

15. In this very connection we feel it necessary to observe that the testimony of Dr. H. P. Goel P.W. 3 is far from satisfactory. He has strained every nerve to assist the defence. He has even gone to the extent of saying that the injuries caused to Srimati Angoori which include three punctured wounds and one Incised wound, could have been caused by a Karchhuli having a pointed and sharp edge.

Agar Karchhuli noak wa dhardar hoe toe aisi cheat aa sakti hai.

This statement of Dr. Goel is totally absurd, and dishonest. The four injuries that have been caused on Srimati Angoori could not have been caused by a Karchhuli. It is common knowledge that a Karchhuli does not possess a point. Therefore the opinion of Dr. Goel that a Karchhuli having a pointed and sharp edge is likely to cause the injuries in question, betrays a clear and dishonest intention on his part to assist the defence by offering a most preposterious and impossible explanation. Such a statement 9H Part of the ibpctor is highly reprehensible and deserves condemnation. It was the duty of the Doctor to have given a frank and true opinion as to the nature of the injuries and the probable weapon with which they could have been caused, irrespective of the consequences that might have followed.

16. So far as the injury of Srimati Darbo is concerned the prosecution evidence is to the effect that she bent herself on the body of Srimati Angoori when the accused was inflicting blows on her. Shiv Singh appellant could not possibly have intended to cause any injury on Srimati Darbo. The blow that was struck by the appellant was at random and in all probability was intended to be struck on Srimati Angoori. As Srimati Darbo flung herself on Srimati Angoori the blow accidentally struck the former on the right side back. In these circumstances, it cannot be said that the blow was intended to be struck on that part of the body of Srimati Darbo where the bodily injury had actually been caused. It may as well have struck on any other part of the body of Srimati Darbo. In our opinion, in these circumstances, the accused-appellant cannot be fastened with the intention of causing such bodily injury as was likely to cause the death of Srimati Darbo. But from the fact that the appellant struck the blow; on the right side back of the victim with such great force that it penetrated cavity deep and resulted in the rupture of the livei and the consequent death of Srimati Darbo, an inference can reasonably be drawn that the assailant had the knowledge that the injury caused to Srimati Drabo was likely to cause her death. As such we are of the opinion that the offence made out against the accused-appellant, in these circumstances, is one covered by Section 304, Part II, I P. C. and not under Section 302, I.P.C.

17. Counsel for the appellant ha:' brought to our notice a decision of the Supreme Court reported in : 1972 CriLJ590 Chand v. State and on its basis he has submitted that the provisions of the United Provinces First Offenders Probation Act are attracted and the appellant is entitled to its benefit. In that Supreme Court decision the appellant was convicted under Section 304, Part II, I. P. C, and was given the benefit of the Probation of the First Offenders Act on the ground of his young age which was 21 years. The present case stands on a still better footing. It is not disputed that the appellant was 17 years on the date of the commsision of the offence. It is also admitted that the appellant is not a previous convict. It is the admitted case of jthe parties that the accused as well as the victim are closely related to each other. It is the further case of the prosecution that the incident had its origin over a very trifling matter, namely, the repairing of a Chulha. Abuses were exchanged between the appellant and Sri-mati Angoori, which resulted in the incident in question. There is no previous enmity between the parties. There was actually no pre-existing motive for the commission of this assault. The fatal injury caused on Srimati Darbo was accidental. In these circumstances we are in agreement with the submission made by the learned counsel for the appellant that this is a fit case to which the provisions of Probation of First Offenders Act should be applied and the youngster should be given a chance to reform himself.

18, The old concept of punishment in Criminal Jurisprudence was that the infliction of a deterrent punishment tended to reform criminals by creating an awe or fear of repetition of the punishment. The late Edwin H. Sutherland in his book entitled 'Principles of Criminology', Sixth Edition while dealing with the concept of punishment as a means of reformation referred to a city attorney speaking in defence of punishment in the following terms:

You must inflict pain to get results. It was that way with me when I was a boy; I have been misbehaving and my father gave me an awful 'whacking' and had to do it only once. I had the same experience in dealing with my son. It is the same way with criminals. You must inflict pain to get results.

The modern concept of punishment in criminal law is, however, different. The essence of the present day trend is:

that criminality is an expression of the notional disorders or conflicts in the make up of the individual. The criminal may be considered as a person who is unable to canalise or sublimate his primitive, anti-social impulses or tendencies.' The object of punishment, therefore, should be to place the delinquent within the net work of such a social fabric where his anti social impulses or tenden-cies can be curbed in a congenial atmosphere created for self reformation. Crime is a symptom of social disorganisation and can be reduced appreciably by effecting suitable changes in the social organisation. Youthful offenders if incarcerated in jail are likely to have close association with hardened and habitual criminals, which would attract them 'towards a life of crime instead of reforming them.

19. Reference in this connection may also be made to a decision of the Supreme Court reported in AIR 1972 SC 2434 : (1972 Cri LJ 1517) Daulat Ram v. State in which their Lordships of the Supreme Court laid down the principles concerning the advisibility of sending youthful offenders to jail. With reference to Section 6 of the Probation of Offenders Act, their Lordships observed as follows:

The object of Section 6 of the Act, broadly speaking, is to see that young offenders are not sent to jail for the commission of less serious offences mentioned therein because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals, who may happen to be the inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly do them more harm than good, and for that reason it would perhaps also be to an extent prejudicial to the larger interest of the society as a whole.

We have already held above that the appellant is guilty of an offence under Section 324, I.P.C. for having caused injuries to Srimati Angoori. On this count a sentence of two years' rigorous imprisonment would meet the ends of justice. So far as the offence under Section 304, Part II for having caused death of Srimati Darbo is concerned we are further of the opinion, that the sentence of five years' rigorous imprisonment would meet the ends of justice. Both these sentences to run concurrently. But having regard to all the facts and the circumstances narrated above, we direct that instead of sending the appellant to jail, it is fit and proper that

the appellant should be given the benefit of the provisions of Section 4 of the U.P. First offenders Probation Act. The appellant shall be released .under Section 4 of the U.P. First Offenders Probation Act on his entering into a bond of Rs. 5000/- with two sureties of the like amount to appear and receive sentence when called upon during a period of three years from today to keep the peace and to be of good behaviour. In the event of his failure to execute the requisite bond or in the event of breach of the conditions imposed him he shall be taken into custody to serve out the sentence as modified by this Court. The bonds may be furnished within six weeks from today.

20. In the result, therefore, this appeal is partly allowed. The conviction of the accused-appellant for the offences under Sections 307 and 302, I P. C. are set aside. He is instead convicted under Sections 324 and 304, Part (II) I.P.C. and sentenced to two years and five years' rigorous imprisonment respectively. Both the sentences to run concurrently. But instead of being sent to Jail the appellant is given benefit of Section 4 of the First Offenders Probation Act and is directed to execute a personal bond with two sureties as mentioned above. The appellant is on bail. He need not surrender. His bail-bonds are hereby discharged, subject to the conditions noted above.

21. A copy of this judgment shall be sent to the Chief Secretary, Government of Uttar Pradesh, Lucknow for information and necessary action.

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