

Sri Prakash Vs. the State

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Court : Allahabad

Decided On : Sep-21-1988

Reported in : 1990CriLJ486

Judge : V.P. Mathur and ;Madan Mohan Lal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304, 323 and 325; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1069 and Cri. Revn. No. 959 of 1977

Appellant : Sri Prakash

Respondent : The State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : J.C. Gupta and ;Janardan Sahai, Adv.

Disposition : Revision dismissed

Judgement :

Madan Mohan Lal, J.

1. Criminal Appeal No. 1069 of 1977 has been filed against the judgment and order dt. 25-5-1977 passed by Sri Chaman Singh, the then Sessions Judge, Mathura by which he has convicted Sri Prakash appellant under Section 325, IPC

and has sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500/ - or in default thereof to further undergo rigorous imprisonment for three months.

2. Criminal Revision No. 959 of 1977 has been filed by Bissa informant with a prayer that the sentence imposed on the accused-appellant should be enhanced.

3. As both these appeal and revision arise from the same judgment, hence the same were heard together and are being taken up together for disposal in this judgment.

4. According to the case of the prosecution on 14-3-1976, i.e. one day prior to the festival of burning of 'Holika', at about 8 p.m. in village Tentigaon, P.S. Surir, district Mathura five boys, namely Bachu deceased, Mohan, Mahendra, Devendra and Ram Das P.W. 6, had removed thatch from the 'Bitaura' of the appellant. These boys were taking the said thatch to a nearby pond where it was intended to be burnt on the next day. Adjoining 'bitaura' belonged to Mangoo P.W. 3. When he saw the aforesaid boys removing and taking away the thatch of the appellant, he went to inform the appellant about the same. The appellant rushed to save his thatch. On seeing the appellant coming, the four boys namely Devendra, Mahendra, Mohan and Ram Das P.W. 6 concealed themselves in the nearby wheat field of Puniya. Bachu deceased remained at the spot. He was caught by the appellant. The appellant fell him on the ground and caused him injuries by fists, kicks and elbows, Nanga P.W. 1 and Devia alias Devi Ram P.W. 5 accompanied by Prasadi and Banne Singh, were passing by that side. On hearing the cries and shrieks of Bachu, they came to the place of occurrence and rescued him. Nanga P.W. 4 was sent to inform P.W. 1 Bissa, the father of the Bachu deceased. He came to the place of occurrence and took away his son.

5. On 16-3-1976 at 10-30 a.m. P.W.1 Bissa went to the police station and lodged a report of the incident, which was registered under Section 323, IPC. The said Bachu expired on 16-3-1976 at 7-30 p.m. On receipt of the information regarding the death of the child this case was converted into a case under Section 304, IPC.

6. On registration of the case Sri T.N. Sharma, S. I. started investigation of the case. He went to the village, where he found the dead body of Bachu lying in the courtyard of his house. He prepared the 'Panchayatnama' and other connected documents of the dead body, the I.O. inspected the place of occurrence and prepared the site plan thereof. He also recorded the statements of Bissa, Nanga and Ram Das etc. on the same day.

7. The post mortem examination of the dead body of Bachu was conducted by P.W. 2 Dr. M. Hussain, the then Medical Officer, District Hospital, Mathura on 17-2-1976 at 4 p.m. He did not find any visible injury on the dead body of Bachu. However, on internal examination the doctor found laceration of the liver in an area of 1 1/2' x 8 1/2' x 1/2'. He further observed that there was laceration on the anterior border in an area of 3/4' x 1/4' x 1/2'. On weighing he found the weight of spleen six ounces.

8. The doctor also found two ounces of clotted blood on the right side and 2 1/2 ounces of clotted blood on the left side of the abdominal cavity.

9. According to the doctor the death of Bachu had taken place due to shock and haemorrhage.

10. The prosecution in all has examined nine witnesses P. W. 1 Bissa is the father of the Bachu deceased. P.W. 2 Dr. M. Hussain had conducted the post mortem examination of the dead body of Bachu. P.W. 7 Dr. Trilok Chand is a private practitioner at Surir, where Bachu was taken for medical aid on 16-3-1976. The said doctor had simply given A.T.S. injection to him and had advised the boy to be taken to some hospital. P.W. 3 Mangoo is the witness who had informed the appellant about the taking away of his thatch by the boys. P.W. 4 Nanga, P.W. 5 Devia alia Devi Ram and P.W. 6 Ram Das are eye witnesses. P.W. 8 Pahathey Singh was the Head Moharrir at P. S. Surir. He had received the FIR of this case on 16-3-1976 at 10-30 a.m. and he had subsequently on the same night at 9.30 p.m. registered this case under Section 304 IPC.

11. The appellant in his statement recorded under Section 313 Cr. P.C. admitted that he had a 'Bitaura' in his village at the relevant time, and on that 14-3-76 at 8

p.m. the aforesaid five boys including Bachu deceased had removed his thatch from the said 'Bitaura'. He further admitted that when he gave a call to the said boys, they had run away and that he had followed the said boys. He further stated that on his enquiry Bachu deceased had told him that after removing the said thatch he was taking the same away. The appellant admitted that he had given two slaps to Bachu. Vide question No. 9 the appellant was asked as to whether it was a fact that due to the injuries caused by him to Bachu, he had expired on 16-3-1976 at 5 p.m. he replied in the affirmative. The appellant did not examine any witness in defence.

12. Learned trial court believing the case set up and the evidence produced by the prosecution found the appellant guilty. However after observing that because the spleen on Bachu was enlarged, i.e. a fact which was not known to the appellant, the learned trial court has found the appellant guilty under Section 325 IPC only and has accordingly sentenced him to two years' R.I. and to a fine of Rs. 500/- only under Section 325 IPC. Aggrieved by the same Sri Prakash appellant has filed this appeal. On the other hand, contending that a case under Section 304 IPC was made out against the appellant, Bissa informant has filed the aforesaid revision.

13. We have heard Sri Viresh Mishra, learned counsel for the revisionist and Sri Janardan Sahai, Counsel for the appellant, and learned counsel for the State in this appeal and revision and have perused the record carefully.

14. First of all we propose to deal with the revision. In this revision the learned counsel for the revisionist has urged before us that the view taken by the learned trial court that a case under Section 325 IPC and not under Section 304 IPC was made out is erroneous. In our view the said argument is without merit.

15. Relying upon the evidence given by P.W. 2 Dr. M. Hussain, learned Sessions Judge has observed that the spleen on Bachu deceased was enlarged. Learned counsel for the revisionist has challenged the same and has on the other hand urged that there was no material on the record which may show that the spleen of Bachu was enlarged. In this respect it may be observed that Dr. M. Hussain P.W. 2 has stated in his evidence that whereas normal weight of the spleen of a boy is

four ounces, the weight of the spleen in this case was six ounces. On the basis of the same the said doctor has stated that the spleen of Bachu was enlarged. The view expressed by P.W. 2 Dr. M. Hussain was not challenged by the prosecution before the trial court and with regard to the same not a single question was put to the doctor by the prosecution by way of clarification or otherwise in our view there are other circumstances as well which tend to show that probably spleen of Bachu was enlarged. As observed by Sri N. J. Modi in Modi's Text Book of Medical Jurisprudence and Toxicology in his twentieth edition (page 288) on account of its situation, rupture of a normal spleen is very rare unless caused by considerable crushing and grinding force such as the passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very great height; in such cases it is usually associated with injuries to other solid organs and to the ribs overlying the spleen. A normal spleen may sometimes be ruptured by the broken ends of a rib which may be fractured by a severe kick or by a blow from a blunt weapon. In our view the situation of a normal spleen in the body is so secure that normally it is not ruptured unless there is crushing of the body or there has been a fall from very great height etc. etc. In this case, on the other hand, we find that no serious injury was caused to Bachu so much so that I.O. at the time of preparing 'Photo Lash', and the doctor at the time of the post-mortem examination did not find any outward visible injury on the body. In our opinion had Bachu been given a severe beating either by kicks or elbows, he must have in normal course sustained some visible injury like contusion. The fact that Bachu had no visible injury on his body shows that he was not subjected to any severe beating. When this was so his spleen had the same been normal and not enlarged would not have been ruptured.

16. Learned counsel for the State, on the other hand, has referred to us the evidence of P.W. Dr. Triloki Chand, who tried to depose that when Bachu was brought to him on 16-3-1976 he had observed some visible injury on his body. In our view the said evidence, which doctor gave from his memory after a lapse of more than a year could not be believed, firstly, because he did not make any note of the same in his register and, secondly because both the I.O. at the time of the preparation of 'Photolash' and P.W. 2 Dr. M. Hussain, at the time of conducting post-mortem examination did not observe any visible injury on the dead body.

17. The fact remains that Bachu did not suffer any visible injury. This would have been possible only if he was not subjected to any severe beating by kicks and elbows as alleged by the prosecution in our view when in absence of any such visible injury the spleen of Bachu was ruptured, the same shows that his spleen was enlarged as deposed by Dr. M. Hussain P.W. 2.

18. It is not the case of the prosecution that the fact that the spleen of Bachu was enlarged was known to the appellant. When this is so the appellant could not be said guilty under Section 304, I.P.C. Therefore this is not a case in which enhancement of punishment of the appellant is warranted. The revision is liable to be dismissed.

19. Now coming to the appeal it may be stated that the appellant in his statement under Section 313, Cr. P.C. has admitted that he gave some beating to Bachu and also that (See reply to question No. 9 put to appellant) it was on account of the injuries which he inflicted to Bachu, that the latter died on 16-3-1976 in the evening. Anyway, the prosecution in this case has examined three eye-witnesses, namely P.W. 4 Nanga, P.W. 5 Devia alias Devi Ram and P.W. 6 Ram Das, who have stated that when at the time of the incident they were returning from their fields, they were attracted by the cries and shrieks of the boy and that when they rushed to the place of occurrence they found Sri Prakash appellant having fallen Bachu and beating him. We have gone through the evidence of these three witnesses. They have given material details of the incident and their evidence is consistent. We are, therefore, of the view that learned Sessions Judge has rightly believed them.

20. The learned counsel for the appellant has referred to us a few minor discrepancies in the evidence of the prosecution witnesses. In our view no importance can be attached to such minor discrepancies on trivial matters, which do not touch core of the case.

21. The learned counsel for the appellant has also urged before us that there was much delay in lodging FIR in this case. No doubt there was delay in making report of the incident at the police station yet the said delay is well explained in this case. Bissa informant is a labourer. It appears that when the condition of his son started

deteriorating the informant moved out of his house to seek medical aid for his son and to report the incident to the police.

22. It is proved beyond reasonable doubt that on 14-3-1976 at about. 8 p.m. the appellant having caught hold of Bachu had beaten him and caused injuries to him.

23. Learned counsel for the appellant has urged before us that even if the appellant had beaten Bachu and caused injuries to him then the case which was made out against him was not a case under Section 325, I.P.C. but was a case under Section 323, I.P.C. This argument has got substance. It may be observed that Bachu had not sustained any visible injury. From the internal injuries sustained by Bachu it is clear that he had not suffered any fracture etc. The injuries sustained by him were obviously simple. Therefore, the learned Sessions Judge has committed an error in holding that the appellant was guilty under Section 325, I.P.C. In our opinion the only offence which is made out against the appellant is the offence under Section 323, IPC.

24. Taking the facts and circumstances of the case into consideration we are of the opinion that the sentence of one year's R.I. and a fine of Rs. 500/- under Section 323, IPC shall meet the ends of justice in this case.

25. Accordingly, this appeal is partly allowed and the order under appeal is modified to this extent that instead of Section 325, IPC Sri Prakash appellant is convicted under Section 323, IPC and his sentence for two years' R.I. and a fine of Rs. 500/- is reduced to one year R.I. and a fine of Rs. 500/-. In default of payment of fine the appellant shall further undergo three months' R.I.

26. The appellant is on bail. He shall be taken into custody forthwith so that he may serve out the sentence of imprisonment imposed on him.

27. Criminal revision is dismissed.