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Court : Allahabad

Decided On : Apr-02-1984

Reported in : 1984CriLJ1164

Judge : I.P. Singh, J.

Appellant : Rajendra Singh

Respondent : State of U.P.

Judgement :

I.P. Singh, J.

1. Rajendra Singh appellant has preferred this appeal against the judgment and order of Sri R.K. Saxena, II Addl. Sessions Judge, Shajhanahpur in S.T. No. A.33 of 1975, State v. Rajendra Singh and Three Ors. convicting and sentencing him alone Under Section 307 IPC to years' R.I.

2. The prosecution case is that one Durvijay Singh is the nephew of compLalnant Lakhan Singh (PW 2) Smt. Maina Devi is the wife of Druvijay Singh. They live in a house adjoining the house of Lakhan Singh in village Dibiapur, P.S. Kant, district Shahjahanpur.

3. Rejendra Singh appellant, Balram Singh and Raghuvir singh are related to each other and are the residents of village Hathaila situate about 3 or 4 furlongs away

from village Dibiapur. The daughter of Rajendra Singh appellant is married to Sarvesh, son of Durvijay Singh.

4. The prosecution case is that on 20.12.1973 at about dusk time Smt. Maina Devi called Poot Singh alias Dharm Pal son of Lakhan Singh (P.W. 2) and told him that they should compromise the case Under Section 107/117, Cr.P.C. pending between them i.e. Smt. Maina devi and Poot Singh alias Dharm Pal. It is further alleged that on the invitation of Maina Devi, Poot Singh alias Dharm Pal went to her house. CompLalnant Lakhan Singh (PW 2) accompanied by his wife Smt. Sudama, Harnam Singh (PW 3), Dhoompal and Badshah Singh went after Poot Singh to the house of Smt. Maina Devi. He even called out his son Poot Singh. Just them, Rajendra Singh appellant holding a Tamancha in his hand, and Balram Singh and Raghuvir Singh holding Kanta came out of the Kothari. Smt. Maina Devi instigated them that it was a good opportunity to kill Poot Singh alias Dharm Pal. At this Rajendra Singh appellant fired his Tamacha at Poot Singh which hit him at his neck and he fell down in the angan. They raised alarm at which the assailants ran away.

5. Oral F.I.R. of this incident was lodged by Lakhan Singh compLalnant (PW 2) at P.S. Kant, 6 miles away, at 7 A.M., the next day. It is mentioned in the F.I.R. that he did not dare to move out to the police station in the night on account of fear.

6. Poot Singh alias Dharm Pal was medically examined by Dr. K.C. Raijada (PW 1) Medical Officer, in charge, district Hospital, Shahjahanpur on 21.12.73 at 9.30 A.M. He found one lacerated wound 6 cm 4.5 cm going inside (can be easily probed up to 1.5 cm) on the left side of neck lower portion. There was charring present on the margin of the wound. Said injury was caused by some fire arm and was about half a day old. The patient could not speak. The doctor (PW 1) has stated that the said injury was dangerous and could be sustained on 20.12.73 at dusk time. The fire-arm would have been fired at the injured from a distance of 3 or 4 feet.

7. Rajendra Singh appellant in his statement Under Section 313 Cr.P.C. pleaded that on the date of occurrence he had gone to the house of Durvijay Singh to reach his own daughter (who is married to Sarvesh, son of Durvijay Singh). He

reached there by dusk time. Just then compLalnant Lakhan Singh (PW 2) Harnam Singh (PW 3) Poot Singh and Naresh Singh holding Kantas entered the house of Smt. Maina Devi and started abusing him. They bet him with Kantas and caused him 11-12-injuries. He further expLalned that Durvijay Singh suffers from some mental ailment and is not in a position to look after and manage his land. Accordingly Smt. Maina Devi gets the land managed through him (Rajendra Singh appellant). The other relations of Durvijay Singh (Meaning thereby Lakhan Singh (PW 2) and others) were inimical to him. He further stated that when these persons were beating him with kantas then his son-in-law Sarvesh came to his rescue and happened to fire at them which hit Poot Singh. He also lodged report of this incident at the same police station and was also medically examined.

8. Dr. K.C. Raijada, Medical Officer in charge, District Hospital Shahajahanpur examined him on 21.12.73 at 9.55 A.M. He had suffered 7 incised wounds of various dimentions, 2 abrasions, one contusion and one swelling on different parts of his body. The incised wounds were caused by sharp cutting weapons while the contusions and swelling were caused by blunt weapon.

9. On behalf of the accused, including the appellant, one Ajay Pal (DW 1) was examined who deposed the defence version of the occurrence. He stated that Rajendra Singh appellant was looking after the agriculture of Smt. Maina Devi and that Rajendra Singh appellant was beaten by Lakhan Singh (PW 2) and others in the angan of the house of Smt. Maina Devi at a place 6 or 7. pacers away from the western door of the angan.

10. The prosecution in order to establish their case examined in all three witnesses including Lakhan Singh (PW 2) and Harnam Singh (PW 3) as eye witnesses of the occurrence. The learned Sessions Judge after assessing the evidence on record, convicted and sentenced the appellant as above.

11. In this appeal the learned Counsel for the appellant has taken two initial points, firstly that according to the FIR it was Poot Singh (son of Lakhan Singh) who was injured whereas the medical report Ex Ka-1 pertains to one Dharma Pal son of Lakhan Singh. The argument is that this discrepancy by itself shows that perhaps Poot Singh was never injured and that would nullify the prosecution case. But, I do

not find any force in this contention because Lakhan Singh (PW 2) in the very opening sentence of his statement has stated that his son Poot Singh is alias Dharm Pal. There is no reason why this statement should not be believed.

12. The second point raised is that Poot Singh, injured, was never examined in the Court below and for this omission the injuries said to have been caused to Poot Singh are not to be taken as proved. But, I do not find any force in this argument also because Lakhan Singh (PW 2) has stated in reply to a court question that Poot Singh had died about 6 months' after the happening of the present occurrence. This means that he had died somewhere in the middle of 1974. The evidence in the sessions trial came to be recorded in May 1978. Evidently then Poot Singh was not available for examination. In this background the other evidence on record coupled with doctor's evidence leaves no doubt about the identity of injured Poot Singh that it was he who had suffered injuries recorded by Dr. K.C. Raijada (PW 1) Medical officer in charge, District Hospital, Shahjahanpur.

13. Looking to the respective cases of the prosecution and defence one thing stands out that whatever incident took place it happened inside the house of Smt. Maina Devi. Again in this incident two persons namely, Poot Singh and Rajendra Singh appellant had suffered injuries. The time of incident also remains the same. It is admitted by Lakhan Singh (PW 2) that Rajendra Singh appellant had also filed a report of the incident with the allegations that he was assaulted by lathis and Kantas by Lakhan Singh. (PW 2) Harnam Singh (PW 3) Naresh and Poot Singh. He further, stated that since Poot Singh had died the case in the trial court ended with conviction against him, Harnam Singh and Naresh. Their appeal was dismissed. The defence in the course of sessions trial had filed a certified copy of the judgment of the court of Munsif Magistrate I class in case No. 34 of 1976 dt. 10.6.76 which shows that on the FIR lodged by Rajendra Singh the said three persons were convicted by the court below. The point stressed is that in this way, according to defence case, Lakhan Singh (PW 2) & Harnam Singh (PW 3) were present on the spot.

14. It was pointed out that Lakhan Singh Harnam Singh and Naresh have been acquitted by the High Court in their appeal. This fact was not* disputed from the

other side. I must make myself clear that factum of this acquittal would not be taken to mean that the case of the prosecution in the present appeal should be taken as correct. The merits of the present case would be judged on the basis of the evidence on record. However, reference to the above proceedings in the cross-case started by Rajendra Singh appellant has been made simply to stress that the presence of Lakhan Singh (PW 2) and Harnam Singh (PW 3) on the spot could not be denied by the appellant. In the same strain I may also refer to another aspect of the case. According to the appellant when he was bring assaulted by Kantas and lathis by Lakhan Singh (PW 2) and others, his son-in-law Sarvesh came forward and fired his tamancha in defence of the appellant and that fire had hit Poot Singh. But, strangely enough in the report of the incident which Rajendra Singh appellant had lodged, nothing was brought on record by way of explanation of the injuries of Poot Singh. It was never disclosed that Poot Singh had suffered injuries at the hand of Sarvesh. I am drawing this inference from the judgment Ex. Kha 2 on the record. Of course, that judgment would not be relevant for any purpose except to show the conviction or acquittal of the accused but when the appellant has taken a defence case in the present prosecution and has introduced certain role on the part of Sarvesh then it becomes within the scope of enquiry whether this aspect was disclosed by him at the earliest stage or not. It is in that background that help has been taken from the contents of that judgment Ex. Kha 2. The effect is that the present stand of the appellant regarding the role of Sarvesh in causing hurts to Poot Singh appears to be an afterthought, No doubt, the appellant in his defence has examined Ajai Pal (DW 1), who comes from village Hathail to which place Rajendra Singh appellant belongs, who deposed the occurrence having taken place in terms of the defence version. But, apart from the above observation that role assigned to Sarvesh in the defence version of the case is nothing but an afterthought. I have to add that this role does not seem to fit in with the circumstances of the incident taking place on the spot. According to the statement of DW 1 four persons happened to assault Rajendra Singh appellant with Kantas. It was then that Sarvesh is said to have fired Tamancha which hit Poot Singh. His injury report indicates that the single injury suffered by him had charring around the margins of the wound. It follows that the said shot was fired at Poot Singh from a very close range. It would mean that Sarvesh had, so to say,

jumped into the Marpit already going on and fired Tamancha at Poot Singh. The report of Tamancha fire would have drawn the attention of the so-called assailants of Rejendra Singh appellant, who also included his (Poot Singh) father Lakhan Singh (PW 2). It is difficult to believe that Lakhan Singh and others would have spared Sarvesh if he had really caused Tamancha injuries to Poot Singh from close range. It is not the defence case tilht Sarvesh suffered any injury at that time. That is why I take it that the role assigned to Sarvesh does not appear to be convincing and that the defence case does not even seem to be reasonable enough. But that by itself would not mean that the prosecution case must be taken as correct, because it must succeed on the strength and merits of its own evidence.

15. As concluded above, presence of Lakhan Singh (PW 2) and Harnam Singh (PW 3) on the spot becomes an established fact. The question would arise as to why their statements should not be believed. But at the same time, the factum of their presence would not entitle them to unqualified credence. It is to be remembered that they were accused in the cross-case started against them by Rajendra Singh appellant. Lakhan Singh (PW 2) has admitted in his cross-examination that when he reached the police station to lodge his report he came to know there that the report of Rajendra Singh appellant had already been recorded at the P.S. and he had already been sent to hospital for medical examination. He further stated that after he lodged his report he was arrested immediately. This also indicates that the report of Rajendra Singh appellant against him had already been recorded at the P.S. and he was arrested in pursuance of that report. The learned Counsel for the appellant has argued that although the incident is said to have occurred by sunset of 20.12.73 yet Lakhan Singh had lodged his report at the P.S. 6 miles away the next morning at 7. It is argued that the distance of 6 miles even on foot could have been covered within, two hours and in the circumstances the said report should have been lodged much earlier. So, the said F.I.R. is a delayed one. It is true that in the FIR the explanation has been incorporated that he could not leave for the police station that night on account of fear but the learned Counsel for the appellant has argued that this explanation does not appear to be satisfactory because there was none from whom they could entertain fear, Rajendra Singh appellant had been injured severely and had

already proceeded to the police station and there could be no other companion of his from whom Lakhan Singh (PW 2) could have entertained any fear. It is argued that since Lakhan Singh (PW 2) had come to know at the police station that Rajendra Singh had already lodged his report, he had by way of caution, introduced this lame excuse in the FIR. It is argued that he and his companions had enough time throughout the night to have deliberations and consultations to give shape to the FIR and as such it could not be regarded a prompt report unsullied by deliberations and consultations. Moreover, when he had already come to know at the police station that report had been lodged against him by Rajendra Singh appellant then at least at that time he would have resorted to deep thinking how to give shape to his FIR. It is argued that in this background it cannot be said that the FIR of Lakhan Singh (PW 2) represents a true picture of the events. At any rate, a strong doubt persists.

16. All this calls for a higher degree of caution and scrutiny in assessing the statements of Lakhan Singh (PW 2) and Harnam Singh (PW 3). The prosecution case is that proceedings under Sections 107/117, Cr.P.C. were pending between Smt. Maina Devi and Poot Singh. Exs. C-1 and C-2 are the cross challani reports Under Section 107/117, Cr.P.C. They show that in this proceeding Rajendra Singh appellant was also arrayed with Smt. Maina Devi and on the other side Harnam Singh (PW 3) was also arrayed with Poot Singh. In this way Lakhan Singh (PW 2) and Harnam Singh (PW 3) could not be said to be independent witnesses rather they are inimical against Rajendra Singh appellant. That would also be an additional circumstance to be looked while accepting their statement against the appellant.

17. According to the prosecution it was Smt. Maina Devi who had invited Poot Singh to her house for compromise. The evidence indicates that perhaps a few persons by way of panchayat were called there to negotiate the matter between the two sides. It has already been noted that the appellant was a party to those proceedings in the array of Smt. Maina Devi, so he was also there. Lakhan Singh (PW 2) has stated that when he returned from Bazar he came to know that his son Poot Singh had been called by Smt. Maina Devi to her house. He, therefore, followed him to her house. He added that the moment he reached there he heard

Smt. Maina Devi telling Rajendra Singh appellant to fire at Poot Singh and immediately then Rajendra Singh appellant fired at Poot Singh. The point to be stressed is that according to him his son Poot Singh had already reached the house of Smt. Maina Devi and he had gone there subsequently and had called out Poot Singh (per his examination in chief) when Smt. Maina Devi had exhorted the appellant to fire at him. However, Harnam Singh (PW 3) has stated that people were in process of assembling in the house of Smt. Mainadevi to hold a Panchayat. In para 1 of his examination-in-chief he stated that he too had gone there. In para 3 of his cross-examination he further stated that Lakhan Singh (PW 2) had arrived there almost simultaneously with his own arrival there and Poot Singh too had gone with them i.e. accompanied them. Thus there is a material discrepancy amounting to contradiction regarding the time of Poot Singh going to the house of Smt. Maina Devi vis-a-vis the arrival of Lakhan Singh and Harnam Singh there. Harnam Singh (PW 3) then stated that when Poot Singh arrived there then Smt. Maina Devi exhorted the appellant that it was a good opportunity to kill Poot Singh and it was then that the appellant fired at Poot Singh.

18. The above discrepancy or contradiction appearing in the statements of Lakhan Singh (PW 2) and Harnam Singh (PW 3) in the background of their being inimical to the appellant strikes a note of warning that they are not such witnesses on whom implicit reliance should be placed.

19. Coupled with the above is another circumstance that when the appellant happened to suffer injuries consisting of 7 incised wounds, 2 abrasions, one contusion and one swelling, yet the prosecution version of the incident is completely silent about those injuries. No mention of them was made in the FIR or in the statements of the witnesses. If those injuries were suffered in the course of the same transaction then it was for the prosecution to expLaln those injuries. This aspect was pressed before the learned sessions Judge. A perusal of his judgment shows that after discussing the respective cases of the two sides he observed as under:

On a careful conspectus of all the facts and circumstances of the case, I am of the opinion that there has been some time gap between the firing of the shot and the

assault on Rajendra Singh. It appears that shortly after Rajendra Singh had fired shot at Poot Singh he was assaulted. I am convinced that the assault on Rajendra Singh was preceded by the firing of shot and he was probably assaulted because he, had caused a fire-arm injury on the person of Poot Singh...

I have held above that Poot Singh and Rajendra Singh had not suffered injuries at one time. There was some time gap. Therefore, if the witnesses Lakhan Singh and Harnam Singh did not make a clear statement in that respect (i.e. expLalning the injuries sustained by Rajendra Singh) the case of the prosecution cannot be thrown. Lakhan Singh has stated that Rajendra Singh was assaulted by Gaonwalas after the incident.

20. Thus in the opinion of the learned Sessions Judge the injuries suffered by the appellant were not caused to him in the same transaction but there was a time gap separating the two incidents, one in which Poot Singh was injured and the other in which the appellant got injuries. It was in this background that in the opinion of the learned Sessions Judge the prosecution was not required to expLaln the injuries sustained by the appellant.

21. I fail to appreciate the above approach of the sessions Judge. It is not the case of any party that Poot Singh and the appellant had suffered injuries at two different times. Rather each side had in their respective FIR's concealed the injuries suffered by other side. However the evidence coupled with medical evidence shows that both the injured got injuries at the same time in the same transaction and that demands satisfactory explanation of the injuries on the accused from the prosecution. This lacuna in the prosecution evidence is fatal to their case. In other words the prosecution has concealed the genesis of the occurrence, and it shrouds the whole case of the prosecution with strong doubt as to how the incident started. Thus, the manner in which the occurrence took place, as put forward by the prosecution, is not convincing and that entitles the appellant to have the benefit of doubt.

22. For the above reasons, the appeal succeeds and is allowed. The conviction and sentence awarded by the learned Sessions Judge to the appellant is set aside. The appellant is on bail. He need not surrender. His bail bonds and sureties

are discharged.

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