

Sonpal and anr. Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-24-1990

Reported in : 1991CriLJ1597

Judge : R.K. Saksena, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307, 323 and 324

Appeal No. : Criminal Appeal No. 748 of 1979

Appellant : Sonpal and anr.

Respondent : State of U.P.

Advocate for Def. : G.A. Raj Singh, Adv.

Advocate for Pet/Ap. : P.M. Gupta and ;J.N. Chaturvedi, Advs.

Disposition : Appeal allowed

Judgement :

R.K. Saksena, J.

1. Four persons, namely Ram Swarup, Mallan, Son Pal and Raj Pal were tried for committing the offence of attempted murder and 'voluntarily causing hurt' respectively punishable under Sections 307, 323 and 324 of the Indian Penal Code, each read with Section 34 thereof. The trial ended in acquittal of Ram

Swarup and Mallan of all the charges. Son Pal (appellant) was, however, convicted under Section 307 of the Indian Penal Code with the sentence of rigorous imprisonment for a period of 4 years and Raj Pal (appellant) was found guilty of committing offence punishable under Section 323 of the Indian Penal Code and has been awarded sentence of rigorous imprisonment for a period of 6 months. They were also acquitted on other charges, per judgment and order dated the 21st of February, 1979 passed by Shri H. P. Pathak, the then IV Additional Sessions Judge, Aligarh in Sessions Trial No. 287 of 1977.

2. After having heard the learned counsel for the parties, I am of the view that the decision under appeal suffers from serious infirmities and, therefore, it cannot stand. I do not think it necessary to refer to the prosecution and defence version. Suffice it to mention that it was a case of bilateral fight in which three persons of the prosecution side and two persons, namely, Son Pal (appellant) and Ram Swarup (who has been acquitted) of the other side suffered injuries. Son Pal had an incised wound on the left lumbar region near umbilicus and Ram Swarup had an incised wound on his cheek. Obviously the main question was as to how the event sparked off and who was the aggressor. There is no clear and categorical finding of the court below on this vital issue. After having referred to the injuries suffered by Son Pal (appellant), the learned trial court remarked that it has not been satisfactorily explained at all by the prosecution. It accordingly observed :

'No doubt there seems to be this improbability in the prosecution case and the evidence of the above witnesses.'

3. The court below then proceeded in the same continuation to point out the infirmities which appear in the defence version and remarked, 'thus the defence version also suffers from inherent improbability'. It further observed in the same continuation--

'Meaning thereby that both in the prosecution and defence versions something has been suppressed to make the story of such a nature which may afford ground for taking plea of self defence.'

4. Further from the judgment under appeal it appears that the trial Judge entertained a feeling that there were two incidents, one took place at 6 a.m. and the other at 6.30 p.m. This was entirely a new case propounded by the court below which has omitted to consider the matter from a correct angle of vision. There is statutory principle of criminal jurisprudence that in a case like this the prosecution has to first establish in regard to the manner in which the incident took place. Yet another cardinal principle is that if it is found from the material on record that the accused had suffered injuries in the incident, it is the bounden duty of the prosecution to explain those injuries. The relevant remarks and observations of the court below have been reproduced above and it is evident therefrom that the prosecution has miserably failed to show how the event sparked off and even the court below rightly realised that the prosecution has not laid true facts leading to the incident. In a situation like this the inevitable conclusion should have been recorded, namely, the acquittal of all the accused of the case. The trial court has erred in introducing a new story and in recording a conclusion that there was a free fight. Son Pal (appellant) clearly stated that he fired shot in self defence. If he and his close relations had suffered injuries, he was perfectly justified in firing shots. It was the user of the fire-arm which brought the fall of the instance and the incident ended. The learned trial court has, thus erred in sentencing the appellants for the offence stated above.

5. In the result, the appeal is allowed. The judgment and order under appeal convicting and sentencing the appellants are set aside. Both the appellants are found not guilty and are acquitted on the charge. Their sureties are discharged.