

Bhudeo Singh Vs. State

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Court : Allahabad

Decided On : Jul-21-2004

Reported in : 2004CriLJ4544

Judge : Mukteshwar Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324 and 326

Appeal No. : Criminal Appeal No. 377 of 1981

Appellant : Bhudeo Singh

Respondent : State

Disposition : Appeal allowed

Judgement :

ORDER

Mukteshwar Prasad, J.

1. Sri V. V. Singh, the then Additional Sessions Judge, Aligarh convicted accused Bhudeo Singh under Section 326 and 324 of Penal Code and sentenced him to suffer rigorous imprisonment for a period of two years and nine months respectively thereunder vide his judgment and order dated 28-1-1981. Both the sentences were directed to run concurrently. Accused Bhudeo Singh has challenged his conviction and sentence through his appeal in this Court.

2. In brief necessary facts of the case for disposal of this appeal are as under :--

P.W. 2 Karan Singh son of Panna Lal is husband of Smt. Nathiya and is informant. He handed over a written report at Police Station Hathras on 6-10-1979 at 5.50 a.m. and local police registered a case at Crime 862 under Section 307, IPC against the appellant and his brother Hari Singh.

3. It was alleged by the informant that his wife Smt. Nathiya, went to provide straw etc. to her cattle in cattle shed (Gher) at about 4.30 a.m. on 6-10-1979. Both Hari Singh and his brother Bhudeo Singh co-villager of informant, were hidden there. Hari Singh caught hold Smt. Nathiya and Bhudeo Singh stabbed her with a knife with a view to kill her. She sustained a number of injuries on her face and forehead. On alarm raised by her, Biri Singh, Laxmi Narain and others. arrived there and intervened. Bhudeo Singh gave knife blow to Biri Singh also and he too sustained injuries. Both the assailants after causing injuries to Smt. Nathiya and Biri Singh ran away.

4. Smt. Nathiya was taken to Bagala Civil Hospital at Hathras, where Dr. R. K. Gupta examined her injuries at 5 a.m. on 6-10-1979 and he found as many as six incised wounds of different dimensions on different parts of body including lip, nose, forehead lower eye lid and right ear. Besides incised wounds, there was one contusion on left shoulder joint and abrasion. All the injuries except injury Nos. 5 and 6 were caused by sharp edged weapon.

5. Dr. R. K. Gupta further examined Biri Singh on the same day at 5.40 a.m. and found one incised wound on left side of head and one abrasion on right middle finger. The injury No. 1 was caused by sharp edged weapon and both the injuries were six hours old at the time of examination.

6. On X-ray, the injury No. 3 of Smt. Nathiya was found to be grievous.

7. Karan Singh got a report of incident prepared by Biri Singh and lodged an FIR at Police Station Hathras on the same day at 5.50 a.m. The case was investigated as usual by S.I. Sita Ram. He interrogated both the injured, informant and other witnesses during investigation and after completing the investigation submitted a

charge-sheet against Bhudeo Singh only.

8. Accused Bhudeo Singh was charged under Sections 307 and 324, IPC on 17-10-1980. He pleaded not guilty and claimed to be tried.

9. The prosecution in support of its case examined P.W. 1 Smt. Nathiya, injured. P.W. 2 Laxmi Narain who was said to be a eyewitness P.W. 3 Karan Singh informant P.W. 4 Dr. R. K. Gupta who examined the injuries of Smt. Nathiya and Biri Singh P.W. 5 A.S.I. Ram Charan Singh who prepared chik report and made entries in the G. D. and P.W. 6 Sita Ram Investigating Officer of the case.

10. Accused Bhudeo Singh in his statement under Section 313, Cr. P.C. Totally denied all the accusations leviable against him and pleaded his false implication in the case on account of enmity. According to him, litigation took place between Karan Singh and his grand-father Ramzan Singh and witnesses are related to Karan Singh. No oral evidence was led in defence but certified copy of the judgment dated 30-11-1959 passed by Additional Sessions Judge in Cri Appeal No. 341 of 1959 Ram Prasad v. State of U. P. was filed.

11. After having heard learned counsel for the parties and scrutinizing the evidence on record learned trial Judge found the accused guilty and convicted and sentenced him, as mentioned above.

12. I have heard learned counsel for that appellant at length learned A.G.A. and perused the record carefully learned counsel for the appellant has assailed the impugned judgment and entire grounds that the informant falsely implicated both the brothers thereafter in investigation only the appellant was charge-sheeted. The case was not properly investigated and learned Judge found a number of witnesses and lacuna in the investigation of the case. It was urged that out of two injured. Smt. Nathiya was examined but Biri Singh injured was not in the witness box and learned Judge failed to evaluate the evidence properly. Lastly it was submitted that the alleged offence was committed by the accused on 6-10-1979 and since then 25 years have passed and as such the appellant should be sentenced to the period already undergone by him in case the appeal is dismissed.

13. Reliance has been placed by learned counsel for the appellant on a decision of Supreme Court in Ramesh v. State of U. P., 1992 All Cri R 37 : (1992 All LJ 226) and decisions of this Court in Jaswant Singh v. State of U. P., (1996) 20 All Cri R 772 and Pappu v. State of U. P., (1997) 21 All Cri R 823 : (1997 All LJ 2003).

14. On the other hand learned A.G.A. has submitted that the appellant being a co-villager caused grievous hurt to a lady by a knife and he further caused injuries by giving repeated knife blows and disfigured her forehead and face forever. Therefore he deserves no leniency from this Court and appeal is liable to be dismissed.

15. I have considered the submissions made on behalf of the parties and have scrutinized the evidence cautiously. I fully agree with the observation of the trial Judge that there was no motive on the part of the appellant to commit murder of lady on the impugned date and in my opinion, he rightly found the appellant guilty for committing the offence punishable under Sections 326 and 324 of Penal Code and conviction of the appellant has to be confirmed.

16. In the instant case P.W. 1 Smt. Nathiya is the star witness of the prosecution. The lady supported the prosecution whole-heartedly and testified that on the impugned date at about 4.30 a.m. she went to provide straw etc. to her cattle in the cattle shed when she opened lock she found that appellant and his brother Hari Singh were standing there. The appellant slapped her and assaulted her own fist. In the meantime Laxmi Narain and Biri Singh reached there. She added that Hari Singh ran away and Bhudeo gave knife blows on her face and forehead causing several injuries. She further gave out that Biri Singh was also given knife blow by the appellant. The lady disclosed in clear words that Biri Singh was the uncle of the appellant (not real) and was wonover. According to her the appellant demanded Rs. 50/- as a loan from her for gambling 2-3 days prior to the occurrence and she did not advance him loan and it caused annoyance. She remained hospitalised for about 15 days. In cross-examination, lady testified that her husband had lodged a report and she was admitted in the hospital. She added that in house of Laxmi Narain (P.W. 2) was at a distance of one furlong she asserted that at the time of incident there was no darkness. She sic torch but she

did not flash her torch at the time of attempt she was no such necessity. Smt. Nathiya further gave out by the sic that appellant had not muffled his face. The lady denied these suggestion of defence that she was assaulted in darkness by unknown assailants and she deposed at the behest of her husband.

17. As noted above. Biri Singh was not prepared to support the prosecution story and as such he was not examined.

18. P.W. 2 Laxmi Narain claimed that he was providing straw etc. to the cattle at about 4.30 a.m. on the date of incident in question and reached the scene of incident on hearing alarm raised by Smt. Nathiya. According to him, distance was not more than 20 steps from his cattle shed. He further found the appellant as well as Biri Singh there and appellant gave knife blows to Smt. Nathiya. He found that blood was oozing out from the injuries of Smt. Nathiya and saw the appellant there from a distance of four steps only. He testified in cross-examination that appellant gave 2-3 knife blows to lady in his presence.

19. P.W. 3 Karan Singh, admittedly not an eye-witness came to know about the incident by his wife, Biri Singh and Laxmi narain and then he lodged FIR. He gave out in cross-examination that his wife was not unconscious and disclosed to him the details of the incident. She was taken to the hospital first with a view to provide her medical aid to save her life.

20. The case was investigated by S.I. Sita Ram. It is obvious from his testimony that it was not a fair and impartial investigation. The investigation was found to be defective by the trial Court also.

21. After scanning the testimony of injured Smt: Nathiya and Laxmi Narain coupled with the medical evidence on record. I find that prosecution succeeded in proving the offence committed by the appellant by direct and reliable evidence. The lady supported her version in toto and got success in the test of cross-examination. It is noteworthy that the appellant gave her several knife blows and he being a co-villager of the lady, there was no question of committing any mistake in recognizing the real assailant. Similarly P.W. 2 Laxmi Narain knew the appellant since long being co-villager. Moreover I am not inclined to accept this contention

that there was complete darkness at the time of alleged incident and it was not possible for the lady to identify the appellant. Had there been darkness at the relevant time the lady must have been flashing her torch.

22. The Apex Court in a recent decision in *Dhanaj Singh v. State of Punjab*, (2004) 48 All Cri C 940 : (AIR 2004 SC 1920 : 2004 Cri LJ 1807) has held that in the case of defective investigation the Court has to be circumspect evaluating the evidence. But it would not be right in acquitting accused person solely on account of the defect to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective.

23. As noted above, the injuries of Smt. Nathiya and Biri Singh were examined at the Government Hospital within an hour of the incident and no delay took place. Similarly the incident was reported to the local police at 5.50 a.m. at Police Station Hathras at a distance of 4 kms. It is, therefore, obvious that there was no time at all at the disposal of informant to have consultation with any body for fabricating a false case.

24. In view of what has been said and disclosed above. I hold that learned trial Judge rightly found the appellant guilty for the offence punishable under Sections 326 and 324 Penal Code and his conviction on both the counts is confirmed.

25. Learned counsel for the appellant has urged with vehemence that appellant should not be sent to Jail again after 5 years and in case the appeal is dismissed, he may be sentenced to the period already undergone. I find from perusal of record that appellant has been in Jail for about six months. He was aged about 28 years in the month of January 1981. Now, he is about 52 years old and therefore I am inclined to accept the contention of learned counsel for the appellant.

26. In the result, appeal succeeds and allowed in part. The conviction of appellant under Sections 326 and 324 is confirmed. He is sentenced to the period already undergone by him and to pay a fine of Rs. 8,000/- under Section 326 of Penal Code. He is further sentenced to pay a sum of Rs. 2,000/- under Section 324 of Penal Code. The appellant shall deposit a total sum of Rs. 10,000/ - as fine within four months from today. In default in payment of fine, he shall serve the entire

sentence, as ordered by the Court below.

27. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.

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