

MobIn (In Jail) Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-22-2000

Reported in : 2001CriLJ2098

Judge : S.K. Agarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 24, 307 and 324; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Revn. No. 1430 of 1984

Appellant : MobIn (In Jail)

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : K.K. Misra,

Judgement :
ORDER

S.K. Agarwal, J.

1. Heard learned counsel for the applicant and learned A.G.A.
2. This revision arises out of judgment and order dated 13-7-1984 passed by Sri R.K. Saxena, Sessions Judge, Mirzapur, in Criminal Appeal No. 101 of 1983

upholding the judgment and order dated 30-6-1983 passed by Sri P.N. Rai, Assistant Sessions Judge, Mirzapur in S.T. No. 219 of 1981 convicting the applicant Under Section 307, I.P.C. and sentencing him to under go 5 years's R.I. with a fine of Rs. 500/-. In default of payment of fine the applicant was directed to under go further sentence of 3 months' R.I.

3. In this case the incident had taken place on 26-5-1981 at about 9.30p.m. The victim, Sattar, was taken by the applicant, Mobin on a pretext that there is a dinner in village Basahi at the house of friend of his. Mobin, applicant, is nephew of injured Sattar. Believing the applicant, Sattar accompanied him for the dinner. They boarded a Riskshaw and at the outskirts of Basant the Rickshaw was abandoned and they walked down on foot to some distance. When the two reached an isolated place, the applicant is said to have inflicted two knife blows in the abdomen of Sattar. He had attempted to give a third blow when Sattar claimed to have caught hold of his hands. In the process he sustained an injury in index finger. Thereafter he ran away and jumped into a Nala. It is father alleged that while he was in the Nala, some 3/4 shots are fired on him. Who fired those, shots is not known to the victim nor investigated and brought on record by police. Apart from these three injuries there is another lacerated wound on the sole (foot) of the victim.

4. The injury report in this case has not at all been proved. The Medical Officer, Dr. A.D Singh, was summoned to prove this in jury report, but his statement is that his injury report is not in his handwriting , nor he had examined the victim. In the result the injury report and the injuries remained wholly unproved. Apart from this circumstance no other circumstance has been brought on record from which it can be inferred that the injury report belongs to Sattar. However, the statement of PW 2 Sattar is that he was assaulted by the applicant with a knife. He had claimed that two injuries of knife were sustained by him and the third blow caused injuries on his index finger. So far as the fourth injury is concerne, it may be the result of his jump into the Nala. It is on the sole. Therefore, absence of any explanation with regard to the fourth injury , a lacerated wound, will not affect the veracity of his testimony. With regard to the third injury, which is also a lacerated wound, it is alleged by the learned counsel for the applicant that it cannot be caused by a

knife. It is not known which part of the knife. the blunt side or sharp-edged portion had caused this injury. However, the difficulty with regard to injuries of the victim and conviction Under Section 307, IPC still remain intact. There is absolutely no evidence to prove that these two injuries were sufficient in the ordinary course of nature to cause death of the victim. The length and width of the injury is available from the medical examination report, but this Court is in complete dark regarding the depth. No X-Ray examination report is brought on record by the prosecution. In the absence of any evidence regarding the internal damages underneath the injury it cannot be said that it was greivous. In the absence of these facts and circumstances, the conviction of the applicant Under Section 307, I.P.C. cannot be sustained.

5. P.W. 2 Sattar has stated that on the next day of his medical examination an operation was performed o find out the depth and internal damage. Since no bed head ticket is brought on record, the veracity of this part of his testimony cannot be tested. Non examination of the doctor, who examined and operated upon him, affects the prosecution case seriously. Even if the statement of PW 2 Sattar is accepted by this Court, the offence does not travel beyond the realm of Section 24, IPC for the reasons stated above.

6. Learned counsel for the applicant points out that the applicant had remained in jail for nearly 27 days in all as an undertrial prisoner as well as a convict. This incident had taken place in the year 1981. The first conviction was recorded in 1986. The appeal of the applicant was also dismissed that very year by the learned Sessions Judge. His revision was admitted by this Court 14 years ago. In all 19 long years have already elapsed since this incident had occurred. No useful purpose, in my opinion, will be served by sending the applicant to jail now. It will be sufficient if in lieu of the remission of sentence, which in my opinion Under Section 324, IPC is to be one year's R.I. 1 propose to impose a fine of Rs. 7,000/- upon the applicant. Out of this fine, Rs. 5,000/- shall be paid to the victim of the incident, viz. Sattar. The applicant is directed to deposit this fine within six weeks from the date of copy of this judgment is received by the trial Court. In the event of failure to deposit the fine, he will undergo a sentence of one year's R.I. Office is directed to send a copy of this judgment to the concerned Court within a week it is

received.

7. With the above modification , this revision is partly allowed. The conviction of the applicant is modified to Under Section 324, IPC. He is convicted Under Section 324, IPC and is sentenced to R.I. for one year but instead of sending him to jail, as earlier stated, his sentence is reduced to the period already undergone by him. A fine of Rs. 7,000/- in lieu of the remission on his sentence is imposed. If he fails to deposit this fine within the stipulated time, he shall be taken into custody to serve out his sentence as awarded above. Out of this fine a sum of Rs. 5000/- shall be paid to the appellant.

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