

Satan and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-25-2003

Reported in : 2004CriLJ1552

Judge : Vishnu Sahai and ;R.C. Pandey, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149 and 304

Appeal No. : Criminal Appeal No. 94 of 1981

Appellant : Satan and ors.

Respondent : State of U.P.

Advocate for Def. : Janardan Singh, Addl. Public Prosecutor

Advocate for Pet/Ap. : S.P. Shukla, Adv.

Disposition : Appeal allowed

Judgement :

Vishnu Sahai, J.

1. Through this appeal, Satan, Mohan, Tulsi, Khelari alias Khelawan, Ram Sukh, Birju and Mohd. Omar challenge the judgment and order dated 7-2-1981 passed by Sessions Judge, Sultanpur, in Sessions Trial No. 117/1980, convicting and sentencing them in the manner stated hereinafter :--

(i) Under Section 304(i)/149 IPC to undergo imprisonment for life;

(ii) Under Section 307/149 IPC to undergo seven years' RI;

(iii) Under Section 324/149 IPC to undergo three years' RI;

and

(iv) Under Section 323/149 IPC to undergo one years' RI.

In addition, Satan, Mohan, Kheladi, Birju and Ram Sukh have been convicted Under Section 147 IPC and sentenced to undergo 1 1/2 years' RI and Tulsi and Mohd. Omar Under Section 148 IPC to 2 1/2 years RI.

2. Shortly stated, the prosecution case runs as under :--

The informant Ramdin is the brother of the deceased Maharajdin and Sitaram PW-2 and the son of victim Smt. Patti (not examined). At the time of the incident, the aforesaid persons and the seven appellants, namely, Satan, Mohan, Tulsi, Khelari alias Khelawan. Ram Sukh, Birju and Mohd. Omar were living in village Katsari within the limits of Police Station Kadipur, District Sultanpur.

On 8-11-1977 appellant Satan, who was the real uncle of the informant and between whom and the informant litigation was going on, had gone to Sultanpur because a date had been fixed in the case. On the way at the pond, situated north of village Lakhnipur, the deceased Maharajdin met him and a marpit took place between them. Thereafter at 8.00 A.M., the same day, when the informant Maharajdin and Sitaram were sitting at the door of their house and talking appellant Tulsi armed with a ballam appellant Mohd. Omar with a banka, along with appellants Satan, Mohan, Kheladi alias Khelawan, Ram Sukh and Birju armed with lathis, came and started assaulting Maharajdin and Sitaram. The informant raised cries, hearing which his mother Smt. Patti rushed to save Maharajdin and Sitaram. When she intervened, the aforesaid seven persons also assaulted her. Hearing the cries, Acchey Lal, Ram Asrey and Ram Niwas came to the place of the incident and reprimanded the appellants, who thereafter ran away. Thereafter, the informant, along with his brother Maharajdin, who was precariously injured, his

other brother Sitaram, and his mother Smt. Patti on an ikka proceeded for Police Station Kadipur. On the way, Maharajdin succumbed to his injuries. At Kadipur he got the FIR scribed by Virendra Bahadur Singh. He then lodged the said FIR (exhibit Ka-1) at Police Station Kadipur.

3. The evidence of Head Constable Ram Jee Yadav PW-4 shows that on 8-11-1977 at 10.00 a.m., while he was on duty at Police Station, Kadipur the informant Ramdin lodged his FIR (exhibit Ka-1), on the basis of which he prepared the chik FIR (exhibit Ka-3). It is significant to mention that a perusal of the chik FIR shows that the distance between the place of the incident and Police Station Kadipur is three miles. After preparing the chik FIR he sent Smt. Patti Devi and Sitaram, who were accompanying the informant, with a Police Constable for medical examination to Kadipur.

4. The injuries of Smt. Patti Devi and Sitaram were medically examined on 8-11-1977 at 11.00 a.m. and 11.30 a.m. respectively by Dr. Jitendra Bahadur Singh PVV-5, who found on the person of the former three lacerated wounds, one incised wound, one swelling and two contusions and on the person of the latter five lacerated wounds, four contusions and one abrasion.

In the opinion of Dr. Singh, excepting the incised wound suffered by Smt. Patti, which was attributable to a sharp-edged weapon, the remaining injuries of both the victims were attributable to a blunt weapon.

In his statement in the trial Court Dr. Singh stated that injuries of both the victims could be caused on 8-11-1977 at 8.00 a.m.

5. The evidence of Inspector K. P. Rai PW -6 shows thus :--

On 8-11-1977 he was posted as Incharge at Police Station Kadipur. The FIR was lodged in his presence. He thereafter recorded the statement of the informant; prepared the inquest on the corpse of the deceased; and sent it for autopsy. He then recorded the statement of Smt. Kailashi and prepared the site plan (exhibit Ka-16). From the place of the incident he seized plain and blood stained earth in separate containers, under recovery memos. On 9-11-1977 he interrogated

Sitaram and Rampati. After completing the investigation he submitted the chargesheet.

6. It is pertinent to mention that on 8-11-1977 at 5.45 p.m.. Dr. Jitendra Bahadur Singh also medically examined appellant Satan. Copy of Satan's injury report is exhibit Kha-1 and its perusal shows that he sustained the following injuries :--

(i) Contusion 2 cm x 1.5 cm on the outer part of left eyebrow.

(ii) Contusion 3 cm x 2 cm on the left shoulder joint on its outer surface.

(iii) Contusion 7 cm x 2 cm on the left back, oblique, 19 cm below laterally from 7th cervical vertebrae.

(iv) Contusion 4 cm x 2.5 cm on the dorso lateral surface of the left eyebrow joint. Advised x-ray.

(v) Contusion 5.5 cm x 2 cm on the dorso lateral surface of the left forearm, oblique, 13 cm above from wrist joint. Suspected fracture of the left forearm. Suspected fracture, swelling on the left forearm up to elbow joint. Advised x-ray.

(vi) Abrasion 1 cm x .5 cm on the dorsal surface of the left index finger just above from nail bed.

(vii) Abrasion 1 cm x .5 cm on the middle part of the left middle finger, 3 cm above from nail bed.

(viii) Traumatic swelling .2 cm x 2 cm on the right ring finger, 3.5 cm above from nail bed. Advised x-ray. Suspected fracture.

(ix) Abrasion 3 cm x .25 cm on the medical side of right lower leg, 2 cm below from knee joint.

In the opinion of Dr. Singh, the injuries Nos. 4, 5 and 8 were kept under observation (x-ray was advised in their respect) and the remaining injuries were simple in nature and all the injuries were attributable to a blunt weapon and were one day old. It is significant to point out that the x-ray report of Satan shows that

he sustained fracture of shaft of ulna bone with dislocation of head of radius bone.

6A. Going backward, the autopsy on the corpse of Maharajdin was conducted on 9-11-1977 at 12.30 p.m. by Dr. R. D. Tripathi PW-3, who found on it four lacerated wounds, three punctured wounds and six contusions.

On internal examination, Dr. Tripathi found fractures of frontal and temporal bone on the left side. The cause of death spelt out in the post mortem report is shock and haemorrhage due to head injury.

In his statement in the trial Court Dr. Tripathi stated that the deceased could have suffered his injuries on 8-11-1977 at 10.00 a.m.

7. The case was committed to the Court of Sessions in the usual manner, where the appellants were charged on a number of counts and then put up for trial.

During trial, in all, the prosecution examined six witnesses. Two of them, namely, Ramdin PW-1 and Sitaram PW-2 (real brothers of the deceased Maharajdin) were examined as eye-witnesses. During cross-examination they were suggested that the incident did not take place at their house, but took place the same morning at the pond and the deceased Maharajdin and Sitaram assaulted Satan and hearing the cries of Satan, Mohan, Tulshi and Kheladi came to his rescue and inflicted injuries on Maharajdin and Sitaram and Smt. Patti, who also rushed there. The said suggestion was denied by the eye-witnesses.

The learned trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellants in the manner stated in para -1.

Hence, this appeal.

8. We have heard learned counsel for the parties and perused the entire material on record. In our judgment, this appeal deserves to be allowed.

9. It would become manifest from the above that the moot point is whether the incident took place in two parts as deposed to by the informant Ramdin PW-1 and his brother Sitaram PW-2 (at 7.30 a.m. at the pond first and thereafter at the house of the informant) or it took place only at the pond as suggested by the defence to.

the eye-witnesses. In our Judgment, it would be difficult to hold in this case that the incident took place at the house of the informant. For holding this, we dare say we have only the evidence of the informant Ramdin and his brother Sitaram, both of whom are extremely interested witnesses of the incident being the brothers of the deceased Maharajdin. In our judgment, the place of the incident could have been clinched had the Investigating Officer Inspector K. P. Rai PW-6 sent the plain and blood stained earth, which he seized from the house of the informant, to the chemical analyst. However, in his cross-examination the Investigating Officer candidly admitted that he did not send the same to the chemical analyst. Neither he furnished any reason for not sending it. In other words, we only have the oral testimony of two highly interested witnesses in respect of the place of the incident, which we do not think would be safe to accept.

The Supreme Court in the oft-quoted case of Lakshmi Singh v. State of Bihar, reported in (1976 Cri LJ 1736) : AIR 1976 SC 2263, in paragraph-13 has observed thus :--

'To add to this another important circumstance is the omission on the part of the prosecution to send the bloodstained earth found at the place of the occurrence for chemical analysis which could have fixed the situs of the assault. In almost all criminal cases, the bloodstained earth found from the place of occurrence is invariably sent to the Chemical Examiner and his report along with the earth is produced in the Court, and yet this is one exceptional where this procedure was departed from for four reasons best known to the prosecution. This also, however, shows that the defence version may be true. It is well-settled that it is not necessary for the defence to prove its case with the same rigour as the prosecution is required to prove its case, and it is significant if the defence succeeds in throwing a reasonable doubt on the prosecution case which is sufficient to enable the Court to reject the prosecution version.'

10. There is another reason as to why we find it difficult to believe the prosecution case and i.e. the prosecution has failed to explain the injuries suffered by appellant Satan. It is pertinent to mention that the informant Ramdin has candidly admitted in his cross-examination (in para-14 of his statement) that they were empty

handed and no one assaulted appellant Satan. Earlier we have extracted the injuries suffered by appellant Satan and seen that they are substantial in nature and include two fractures, namely, fracture of shaft of ulna bone and dislocation of head of radius bone.

The Supreme Court in the oft-quoted of Lakshmi Singh's case (1976 Cri LJ 1736) : (AIR 1976 SC 2263) (supra) in paragraph-11 has held that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :--

'(i) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(ii) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(iii) That in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.'

In our view, the ratio laid down in Lakshmi Singh's case (AIR 1976 SC 2263) (supra) is wholly applicable to our case and all the three inferences referred to by their Lordships can be drawn against the prosecution.

10A. We are of the Judgment that since both the eye-witnesses, namely, Ramdin and Sitaram, who are highly interested being the brothers of the deceased, did not explain the injuries of appellant Satan their evidence cannot be relied upon.

11. It is well-settled that where the plea of right of private defence is taken it is not necessary to prove it to the hilt. The burden on the defence is not so onerous as that on the prosecution; whereas the former has to prove its case beyond all reasonable doubt, the latter discharges its burden if on a preponderance of probabilities it can be shown that the accused may have acted in the exercise of right of private defence.

12. In our view, the defence has discharged the said burden in the instant case on the basis of :--

(a) the substantial injuries sustained by Satan, which include two fractures; which injuries have not been explained by the prosecution;

(b) the suggestion given to the two eyewitnesses during their cross-examination in terms that the incident did not take place at their house but took place the same morning at the pond and the deceased Maharajdin and Sitaram assaulted Satan and hearing the cries of Satan, Mohan, Tulsi and Kheladi (appellants) came to his rescue and inflicted injuries on Maharajdin and Sitaram and Smt. Patti, who also rushed there; and

(c) the answer given by Satan to question No. 16 put to him in his statement Under Section 313 Cr. P.C. The said question was whether he wanted to say anything else and the answer furnished by him was on the same lines as suggested by defence to the two eye-witnesses during their cross-ex amination..

It is pertinent to mention that the defence suggestion given to the Investigating Officer Inspector K. P. Rai PW-6 is that the incident took place at the pond and when Satan and others went to lodge the FIR they were locked up.

We may also mention that in our view the probability of the suggestion made by the defence to the Investigating Officer in terms that Satan's FIR was not recorded and instead he was locked up appears to be true although the Investigating Officer denied such suggestion.

13. For the aforesaid reasons, in our view, this appeal deserves to be allowed.

14. In the result, we allow this appeal; set aside the convictions and sentences of the appellants for the offences punishable Under Sections 304(i)/149 IPC, 307/149 IPC, 324/149 IPC and 323/149 IPC. We further set aside the convictions and sentences of appellants Tulsi and Mohd. Omar for the offence punishable Under Section 148 IPC and that of appellants Satan, Mohan, Kheladi Birju and Ram Sukh for the offence punishable Under Section 147 IPC The aforesaid appellants are on bail. They need not surrender. Their bail bonds shall stand cancelled and

sureties discharged.

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