Virendra Singh Vs. State

Virendra Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/488242

Court : Allahabad

Decided On : Jan-21-2000

Reported in : 2000CriLJ2258

Judge : R.R.K. Trivedi and M.C. Jain, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 1275 of 1980

Appellant : Virendra Singh

Respondent : State

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : Virendra Saran, Sudhir Agarwal, V.B. Rai and Adhya Gupta, Advs.

Disposition : Appeal allowed

Judgement :

M.C. Jain, J.

1. Accused-appellant Virendra Singh has been convicted under Section 302, I.P.C. and sentenced to life imprisonment and to pay a fine of Rupees 1000/- by the

judgment dated 28-4-1980 passed by Sri Manphool Singh Premi the then VI Addl. Sessions Judge, Farrukhabad in Sessions Trial No. 418 of 1979. Aggrieved, he has preferred this appeal. Two others Jagdish son of Sumer Jatav and Jagdish son of Har Dayal were tried along with him who came to be acquitted.

2. The genesis of the prosecution case was the written first information report lodged at Police Station Kannauj, District Farrukhabad on 12-3-1979 at 3.20 p.m. by Abar Hussain PW-1 father of the deceased Riyaz Ahmad. The incident took place on that day at about 2.00 p.m. in village Sadkapur. The case of the prosecution was that on that day the deceased had taken his cows to the river to make them to drink water. The complainant Abrar Hussain was watching his Chak nearby. When Riyaz Ahmad was returning from the river along with cows and reached ahead of Aliapur in kachha pathway, an altercation took place between him and Jagdish Jatav son of Sumer Jatav. The present accused-appellant Virendra Singh and Jagdish (another co-accused) also appeared there and joined Jaddish Jatav in altercation with the deceased. Virendra Singh exhorted the other two, namely, Jagdish Jatav and Jagdish Katiyar who started assaulting Riyaz Ahmad with their lathis. Riyaz Ahmad fell down on receiving lathi blows and cried. Then the present accused-appellant Virendra Singh struck a Hansia blow on him. The complainant Abrar Hussain and the witnesses Moinuddln, Sajjad Husain and others rushed up shouting. By the time the complainant reached near Riyaz Ahmad, he had died. The accused-appellant with his two companions named above ran away. It was also mentioned in the FIR that the altercation between his son and the accused had taken place, a number of times earlier also. On the lodging of such FIR, a case was registered and investigation followed which was conducted by S.I. Ram Shiromani Upadhyay PW-4. After reaching the spot, he prepared Panchayatnama and other papers whereafter the dead body of the deceased was sent for post-mortem which was conducted on 13-3-1979 at 2 p.m. by Dr. H.P. Srivastava PW-5. As per the post-mortem report Ext. Ka-15, the deceased was aged about 16 years and about one day had passed since he died. The following ante-mortem injuries were found on his person:

1. Incised wound 3' x 1' x thoracic cavity deep right side chest 1' below nipple.

2. Abrasion 1' x 1' right side ankle front left aspect.

3. On internal examination, right side 5th rib was found cut; right lung. pericardium and heart on right side were also found cut. The death had occurred due to shock and haemorrhage as a result of antemortem injury No. 1. After conclusion of investigation, the chargesheet was laid against the present accused-appellant and his two companions.

4. At the trial, the prosecution examined five witnesses. One Abdul Saeed was examined as CW-1 also. Abrar Hussain PW-1 and Sajjad Hussain PW-2 were examined as eye witnesses out of whom Abrar Hussain is the father of the deceased and the informant. Head Constable Devi Deen PW-3 had scribed the chik and the G.D. concerning registration of the case. S.I. Ram Shiromahi Upadhyay PW-4 was the Investigating Officer whereas Dr. H.P. Srivastava PW-5 had conducted autopsy on the dead body of the deceased. Abdul Saeed CW-1 came to depose that he had given his field on Batai to Abrar Hussain PW-1.

5. The defence of the accused-appellant was of denial. His statement under Section 313, Cr.P.C. was that as the dead body of the deceased was found lying near his field, he was named simply on suspicion. He, however, did not adduce any evidence in his defence.

6. The learned Court below found the participation of the companions of the accused-appellant in this crime to be doubtful and acquitted them. However, the case of the prosecution found favour with the Court below regards the present accused-appellant Virendra Singh. He was accordingly convicted and sentenced mentioned in the earlier part of the judgment.

7. We have heard learned counsel for the accused-appellant and learned A.G.A. from the side of State. The evidence adduced at the trial has also been carefully gone through by us. The argument of the learned counsel for the accused-appellant is that there was conflict between the ocular testimony and the medical evidence. According to him, the two eye-witnesses were close relatives of the deceased and they were chance witnesses. It has been reasoned that no reliance could be placed on their tetimony in view of the apparent conflict surfacing

between their testimonial assertions and the medical evidence contained in the postmortem report of the deceased as also the testimony the concerned Dr. H.P. Srivastava PW-5. On the other hand, learned A.G.A. has tried to support the impugned judgment, urging that the ocular testimony is very well agrees with the medical evidence. His argument is that Abrar Hussain PW-1 and Sajjad Hussain PW-2 are the most natural witnesses of the incident.

8. On a careful consideration, we are of the opinion that the impugned judgment of conviction and setence passed by the Lower Court cannot be sustained. Solid reasons are lined up in support of our/this view which we wish to elaborate in the succeeding discussion.

9. It should first be pointed out that Abrar Hussain PW-1 (father of the deceased) mentioned in the FIR that at the time of incident he was watching his Chak. It was also clearly mentioned in the FIR that Jagdish Jatav and Jagdish Katiyar (co-accused of the present accused-appellant) had struck lathi blows on the deceased at the start of the incident whereafter he had fallen down and it was thereafter that the accused-appellant had struck Hansia blow on him. However, it came to be admitted by him that his own field was situated at the distance of 3 furlongs from the place of occurrence. Neither he nor Sajjad Hussain PW-2 owned any field nearby the place of occurrence. So, at the best, the two eye-witnesses could fall in the category of chance witnesses though the defence could not prove its contention that Sajjad Hussain PW-2 was the sister's son of Abrar Hussain PW-1. To overcome the difficulty and to show their presence at the spot, a marked improvement was made by the two eye-witnesses for the first time at the time of tendering evidence in Court. Abrar Hussain PW-1 stated that he had taken the field of Abdul Saeed on Batai which was nearby place of occurrence. Similarly, Sajjad Hussain PW-2 stated that he had taken on Batai the field of Amiruddin situated in the vicinity of the place of occurrence. It is pertinent to observe that these facts were not stated by any of them even to the S.I. Ram Shiromani Upadhyay PW-4 Investigating Officer. The nearest Abadi from the place of occurence was of Aliapur at a distance of 12 or 13 paces. No one of such nearest inhabitation was examined as eye witness who could be expected to be naturally present there at that hour of day time.

10. When the testimony of Abrar Hussain PW-1 and Sajjad Hussain PW-2 is subjected to test, conclusion is inescapable that they were not at all present at the scene of occurrence and have simply spoken on the basis of their imagination. We say so because there is irreconcilable conflict between their testimonial assertions and the medical evidence. The prosecution case from the beginning was that Jagdish Jatav and Jagdish Katiyar (co-accused of the accused-appellant) had struck lathi blows on Riyaz Ahmad and he had fallen down on receiving lathi' injuries whereafter accused-appellant had struck a Hansia blow on him. The truth of the matter is that the deceased sustained only one abrasion (1' x 1' on right side of ankle) besides sharp edged injury on the chest. Dr. H.P. Srivastava PW-5 clearly stated that abrasion found on the person of the deceased could not be sustained by lathi. According to him, it could be sustained only by friction with a lathi in case of the fall of lathi blow slippingly. When the factual position as to the alleged blunt object injury found on the person of the deceased could not be reconciled with the original prosecution case, the two eye-witnesses made another improvement while adducing evidence in Court that lathi wielded by Jagdish Jatav was prevented and saved by the deceased on his own lathi and then Jagdish Katiyar hit a lathi on his ankle. Nothing of the kind was stated even to the Investigating Officer by any of the two eye witnesses. Obviously, it was an afterthought and a desperate attempt on the part of the two eye-witnesses to explain the only abrasion found on the person of the deceased on right side of ankle.

11. So far as the present accused-appellant is concerned, he allegedly struck a Hansia blow on the deceased as per the testimony of the two eye witnesses. However, we find that their/this version cannot at all be reconciled with the injury found on the chest of the deceased as antemortem injury No. 1 regarding which Dr. H.P. Srivastava PW-5 has given evidence who has been subjected to searching cross-examination. Hansia is an instrument to cut grown-up crop or grass. It has a wooden grip and is usually curved or half rounded with sharp edge only on one side. The Doctor explained that ante-mortem injury No. 1 found on the person of the deceased was actually a punctured wound which he had mistakenly described as incised wound in the post-mortem report. There seems to be no doubt about it that the Doctor happened to misdescribe this injury as incised

wound instead of punctured wound. It is apparent by a bare look on the damge caused beneath this injury. Right 5th rib, right lung, pericardium and right side of head had also been cut. Such damage could be caused only when sharp edged weapon had been pierced into right side of chest. To say in other words, the injury sustained by the deceased was a punctured wound as correctly stated by the Doctor before Court, and not an incised wound. A Hansia which is a curved or half rounded with sharp edge only one side could not cause such an injury. Dr. H.P. Srivastava PW-5 was also emphatic in his cross-examination that ante-mortem injury No. 1 of the deceased could be caused by a weapon sharp edged on both sides. We also note from the statement of Sajjad Hussain PW-2 that Hansia had been struck by the accused-appellant raising his hand upwards over the head. So, according to him, the blow had not been struck by him in piercing way. It appears that Abrar Hussain PW-1 was tutored to overcome the difficulty when he stated that though Hansia is sharp edged on one side, but with constant use, its other side also developed edge. This is simply an unsuccessful attempt to harmonize the ocular version with the medical evidence. In point of fact, the conflict between the ocular version and medical evidence is so patent and glaring that every attempt to reconcile it has proved counter productive and abortive. If ocular version is believed that the accused-appellant struck Hansia blow on the deceased, then he could not at all have sustained ante-mortem injury No. 1 in the form he did with such internal damage as has been reported in the post-mortem report. The deceased seemingly sustained a punctured wound by a weapon which was sharp edged on both sides. On a judicial scrutiny of the evidence on record in its entirety, we are led to the irresistible conclusion that none of the so-called eye-witnesses, namely. Abrar Hussain PW-1 or Sajjad Hussain PW-2 actually witnessed the occurrence and both of them have simply deposed on the basis of imagination in an attempt to stand by the side of the prosecution. No doubt, the deceased was victim of violence, but it is not established that the assailant was the present accused-appellant. The case againt him seems to have been woven on the premise of suspicion. As the adage goes, the suspicion, however strong cannot be a substitute of the proof required to hold some one guilty.

12. In the ultimate conclusion and for the reasons contained in the foregoing discussion, we find that the conviction and sentnece recorded by the lower Court

against the accused-appellant Virendra Singh cannot be sustained. We accordingly allow this appeal and acquit the accusedappellant Virendra Singh. He is on bail. He need not surrender. His personal bond and bail bonds are cancelled and sureties discharged.

13. Let a copy of this judgment along with the record of the case be immediately sent to the Court below for necessary entries in the concerned registers under intimation to this Court within two months.