

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

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Court : Allahabad

Decided On : Feb-10-1998

Reported in : 1998CriLJ4154

Judge : G.S.N. Tripathi, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 307

Appeal No. : Criminal Appeal No. 3387 of 1979

Appellant : Hingu and anr.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : G.S. Hajela and ;Mohd. Shabhir, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

G.S.N. Tripathi, J.

1. This appeal arises out of the Judgment and order dated 14-12-79 passed by the then IInd Addl. Sessions Judge, Shahjahanpur in S.T. No. 507 of 1978, State v.

Hingu. By virtue of this order, the learned trial Court has found the appellants Hingu and Ashfaq appellants guilty of the charge under Section 307 IPC, read with Section 34. IPC and convicted them accordingly under Section 307, IPC and sentenced them to undergo R. I. for 5 years. Co-accused Rashid and Firasat were extended the benefit of doubt and acquitted. The State has not filed any appeal against the order of acquittal granted to the two accused aforesaid. The present appellants have filed this appeal.

2. The prosecution case started on the basis of a FIR (Exhibit Kal), dated 11-2-77 filed by Mohd. Nazmi Khan at Post Kotwali, Shahjahanpur. He has alleged that on 11-2-77, his brother Mohd. Muin was seeing the Mela of Chhehlum. He was accompanied by Shakil, Mohd. Babu Jai and Kamil. Anjum's friend appellant No. 1, met him in the Mela. Hingu, accused asked Anjum to accompany him. They also asked Shakeel and Kamil, the companions of injured Anjum to accompany. They further asked his companions Shakeel and Kamil to go home and bring Rs. 50/- from the house of Anjum. which was due to them. They further said that Anjum would be returning home very soon. They also told Anjum that he was bent upon getting them arrested by the police. Therefore, they would teach a lesson to him. On that date, it was about 2.30 P.M. when accused Ashfaq, appellant No. 2, Rashid and Firasat (acquitted accused), Hingu, appellant No. 1 were armed with knives. Rashid had a hockey stick and Firasat had a lathi. They pounced upon Anjum, Ashfaq and Hingu caused injuries with their knives to the victims. Firasat and Rashid (acquitted) had lathies. They were declaring that they would finally kill Anjum. On the intervention of the witnesses, the accused escaped. The injured Anjum was brought to the hospital first, where, he was examined by Dr. Manavendra Singh on the same day at 3-3.15 P.M. The injured Parul Haq was examined on 11-2-77 at 3.00 P.M. The following injuries were found on his person :--

1. Bleeding incised wound on the back of Lt. chest 22 cm below the Lt. shoulder tip measuring 3 x 1 cm up to lungs.
2. Incised wound 2 x 0.5 cm x 8 cm below the Rt. shoulder into muscle.
3. Incised wound on the Rt. shoulder 2.5 x 0.5 x muscle deep.

Opinion--- injuries are caused by sharp-edged weapon. Injury No. 1 kept under observation. Duration fresh. Advised X ray Chest AP View. Patient admitted in Emergency Ward (Exts. 2).

3. The said Doctor also examined Mohd. Mum on 11 -2-77 at 3.15 P.M. lie found the following injuries on his person :-

1. Injury :--Bleeding incised wound on the back of RT side, 20 cm above the Rt. Iliac bone on the Back. Measuring 2 x .5 cm depth not probed.

Opinion :--Injury caused by Sharp-edged weapon. Duration Fresh kept under observation. Advised X-ray chest and abdomen AP view. Patient admitted in Emergency Ward.

4. At this very stage, it will be proper to refer to the statement of Dr. Siddha Gopal, P.W. 4. He has stated that Dr. Manavendra Singh was his colleague, He was acquainted with his writings. Dr. Manavendra Singh had gone to America. Therefore, he has not been examined to prove the documents prepared by him. He has further stated that he started the treatment of Iqbal Haq in the Distt. Hospital. From the injuries received by him, the membranes of the lung had been fractured. There was a deposit of blood therein on the person of Mohd. Muin. As noted above, there was a stitched injury. On account of this injury, his kidney/liver had been cut and after operating him, his kidney was removed. He remained hospitalized up to 20-4-77. The injuries of both these persons were likely to cause death unless proper and prompt treatment was made available to them promptly. The injuries of both these persons were dangerous to life and were grievous in nature.

5. After usual investigation, the I.O. submitted a charge sheet against the four accused.

6. The prosecution has examined the following witnesses to prove its case.

7. P.W. 1 is Mohd. Muin Khan. He is also an injured person. He has narrated the prosecution story as contained in the F.I.R.. He has further stated that Anjum was his brother-in-law and also a neighbour. He was on good terms with Hingu

accused. Although he always advised Anjum to avoid their company. On the date of occurrence, i.e. 11-2-77, Anjum had gone to see the fair. Shakil and Kamil had also accompanied him and demanded Rs. 50/-, which was, allegedly, due. On refusal, Hingu caught hold of Anjum and brought him on the Bhatta. Anjum asked Shakil to bring Rs. 50/- from his house. But this request was not conceded. Soon thereafter, at about 2.30 P.M., the four accused aforesaid, namely Hingu, Ashfaq, Firasat and Rashid came to the house of Anjum and they started abusing him. Hingu and Ashfaq, appellants had knives. Rashid had a hockey stick and Firasat had a lathi. Thereafter, he details the incident. He has received injuries. He became unconscious and remained hospitalized for about 21/2 months.

8. P.W. 2, is Ayatul Haq, another injured person. He has also supported the prosecution story as contained in the F.I.R.

9. P.W. 3 is the complainant Mohd. Nazmi. He has deposed in the same vein.

10. P.W. 4 is Dr. Siddha Gopal. He had examined both the persons and found the injuries as noted above.

11. P.W. 5 Karam Singh is the I.O. He has proved the investigation process in detail and has submitted the charge sheet. He has also proved the writings of the Head Constable and registered the case in the G.D. and prepared the Chik.

12. P.W. 6 Dr. V. P. Verma - X-Ray Techni-cian, Distt. Hospital, Shahjahanpur'has come to say that Dr. Manavendra Singh, who had exam-ined the injured persons had left for America and was not available in India.

13. The accused in their statements under Section 313 Cr.P.C. have denied the allegations made against them and have said that they have been falsely implicated on account of enmity. The accused have led no evidence in their defence.

14. After appreciation of the entire evidence on the record, the learned IInd Addl. Sessions Judge found the accused guilty on the charges under Sections 307 and 307/34 IPC and convicted and sentenced them and awarded 5 Years' R.I. as noted above. Accused Rashid and Firasat were extended the benefit of doubt and

let off accordingly.

15. Feeling aggrieved, the present appellants have filed this appeal.

16. I have heard learned counsel for the parties and gone through the record. I find that there is no force in this appeal and it deserves to be dismissed.

17. The injuries received by the injured persons have been noted above and the statement of Dr. Siddha Gopal, P.W. 4 has clearly proved that the injuries of both the injured persons were likely to be fatal unless prompt medical relief was extended to them. The injuries of both these persons could have been caused by knives at the time alleged by the prosecution. After operation, he had removed the kidney of Muin. He remained in the hospital up to 20-4-77. On this point, there is no cross-examination. So, it is established that both the injured persons had received knives injuries, which could be fatal unless prompt and suitable medical treatment provided to them.

18. The incident took place on 11-2-77 in broad-day-light, some times in between 2-2.30 P.M. The injuries received had been caused by knife. So the assailants must have come very close, may be about a feet away from the victims and caused injuries to them. The accused persons were known to the complainant for a very long time, as they belonged to the same village. So, there could be no difficulty that he had identified the culprits easily, without any difficulty.

19. They were examined between 3-3.15 A.M. The injuries were fresh. The victims were bleeding also.

20. The F.I.R. was lodged on the same day at about 3 P.M. The distance of the police station is about a mile from the place of occurrence. Thus, there was no delay in lodging the F.I.R.

21. The entire version of the prosecution is contained in synopsis in the F.I.R. and there has been no improvement or embellishment at any later state. In fact, there was no opportunity available to the complainant to think over the matter, take legal opinion and give an engineered version at the police station at the behest of the enemies of the accused. The another beauty of this F.I.R. is that it contains almost

everything upon which the prosecution has built up its case. Under these circumstances, such a F.I.R. becomes a veritable asset to the prosecution and can be safely relied upon as corroborative piece of evidence.

22. The fact that the injuries were grievous and the victims remained hospitalized for about 21/2 months, is established from the statement of Dr. Siddha Gopal, P.W. 4. On this point, he has not been cross-examined at all. It means that the injuries have not been denied by the accused as neither any suggestion was made nor any reason was assigned as to how and why the accused were implicated falsely. The law is that when a victim of an assault had an opportunity to identify the culprits, he would surely name him as such and he will not substitute the real culprits by some other persons on account of enmity. Before the Courts of law, such cases have come, wherein the names of the accused stands magnified and enlarged along with real culprits. But no such case has come to light so far that even after knowing the real culprits, the prosecution would have let them off (for no earthly reasons) and substitute by inimical witnesses.

23. Another beauty of the prosecution case is that the statements of Muin Khan, P.W. 1 and Ayatul Haq, P.W. 2 (both injured) are available on record. On the point of injuries, they have not been challenged on the date, time and place of injuries, weapons used and further they had not received any injury at all. In fact, no such suggestion was put to them. Therefore, the existence of injuries having been caused between 2-3.00 P.M. stands corroborated as it goes unchallenged. The result is that the prosecution case that the victims had received injuries in the same occurrence at 2-2.30 P.M. also stands proved and as the accused have not suggested any other way as to how the injured persons were injured some-where else and by somebody else. Then there remains no earthly reason as to why the victims of the assault would not implicate the real culprits.

24. This is not a case of the prosecution that there was a long-standing enmity. There might be petty feuds between the accused and the victims but they would not allow the prosecution witnesses to implicate totally unconcerned persons on account of petty disputes. Thus there could not be any motive for false implication nor there could be any reason to doubt that the victims had received the injuries at

the hands of the accused who were well-known to them and could be identified (sic) in the day light (sic). The learned trial Court has thread-bare examined the entire evidence and circumstances on the record and has come to a categorical conclusion that it was the accused alone, who caused the injuries to the victims. A half-hearted effort was made to suggest to P.W. 1 that he was misbehaving with girls in the Meals and they received the injuries in that process. But it was not extended in the statement under Section 313 Cr.P.C. Therefore, this half-hearted effort to challenge the veracity of the testimony of these two injured witnesses, should not be allowed to succeeded.

25. Thus I find that from the statements of these two injured persons coupled with the medical evidence, referred to above, the prosecution case is fully proved and it does not need any further corroboration. In fact, when these two statements are read along with the statement of P.W. 2, Ayatul Haq, I find that the prosecution case stands proved like an impregnable rock. I agree with the learned trial Court's view that these accused alone had participated in the Marpith, resulting in the injuries of P.W. 1 and P.W. 2 Mohd. Nazmi, P.W. 3, it seems that reached soon after the accused had completed their job. But he was immediately available at the spot and gathered prompt information from the P.W. 1 and P.W. 2 and other witnesses on the record. The victims had become unconscious. Therefore, they could provide the pictorial description of the case. In fact, it was (sic), which had afflicted the victims. Therefore, the prosecution case has been substantially (sic) proved. In this perspective, Mohd. Nazmi's statement can be used as a corroborative piece of evidence.

26. Thus the prosecution case is fully proved and for the reasons given by the learned trial Court as well as this Court, a very strong case is made out against the accused appellants.

27. The accused had said that merely because of enmity, they have been falsely implicated. But this is a half-hearted effort. But no such suggestion was made to the P.W. 1 and P.W. 2. Hence I agree with the learned trial Court's conclusion that the charge against the accused appellants stands fully proved. The acquitted accused, namely Rashid and Firasat had been extended the benefit of doubt after

taking a very cautious approach. Merely because no injury was shown to have been caused to the complainant with blunt object and, like lathis and hockey stick, his evidence cannot be discarded. Therefore, it was by way of extreme caution at the hands of the learned trial Court that benefit of doubt had been extended to them. But that do not apply to the present appellants, who had sharp-cutting weapon, like knife, which they used to achieve their objects i.e. the murders of the two victims. Therefore, it cannot be said that same principle can be extended to the appellants also.

28. Thus, I hold that the prosecution has fully proved the case against the accused beyond a shadow of reasonable doubt. The accused have not led any evidence in support of their defence.

29. Lastly, it was urged that the accused are in Jail for two years and the sentence should be moderated. I do not agree.

30. In a broad-day-light, the accused almost caused murders of the two victims with dangerous weapons, like knife, on the date, time and at a public place. This shows how dare-devils they are. They have caused injuries, which could not be treated by an ordinary Doctor. Hence the gravity of the crime increases.

31. In fact, I find that the only mistake committed by the learned trial Court is that he has given a very moderate sentence of 5 years R.I, only. In fact, such a soft approach of the learned trial Court cannot be appreciated. These days the criminals are running parallel government and the lives of the ordinary citizens are in danger. Hence further softening of the sentence by this Court will only be encouraging the Goondas and criminals of the society even in broad day-lights and in public places. In fact, it creates a situation at which the culprit remain rarely and yet very softly punished and the victimisers get a reward by soft sentence. In these days, the crimes are increasing mostly because the courts have taken a very lenient view of the crime. But the existence of a civilized society is in danger and the culprits are ruling the roost. A time has come for the courts to cry from the house top 'thus far and no further'. The prayer for further reducing the sentence, does not find favour with me. It is, accordingly rejected.

32. The appeal is dismissed accordingly. The Judgment and order passed by the learned trial Court dated 14-12-79 is made absolute and confirmed. The accused are in Jail. They shall serve out the sentence as awarded by the trial Court.

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