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

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Court : Allahabad

Decided On : Apr-20-1999

Reported in : 1999CriLJ4660

Judge : B.K. Sharma, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 307 and 324

Appeal No. : Crl. Appeal No. 721 of 1983

Appellant : Jagdish and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Brijesh Sahai and ;Kamal Krishna, Advs.

Judgement :
ORDER

B.K. Sharma, J.

1. This is an appeal against the judgment and order dated 21st March, 1983 passed by Sri Gangu Ram, the then Xth Additional Sessions Judge, Agra in Sessions Trial No. 48 of 1981 whereby he convicted each of the accused-appellants for the offence under Sections 307/34, I.P.C. and sentenced each of

them to undergo rigorous imprisonment for a period of three and half years and to pay a fine of Rs. 1000/-each and in default of payment of fine, to suffer rigorous imprisonment for a further period of one month.

2. The prosecution story was that on 11-4-1979 at about 10.00 p.m. that when Damodar Prasad, the injured was returning from the Pyau of Heera Lal after realising the rent from the tenants of the shop to his house and reached near the Loothra Factory, the accused-appellants, Jagdish, Ram Prakash and Mahesh came there, that accused-appellant Jagdish was armed with a Pharsa accused-appellant Ram Prakash was empty handed while the accused-appellant Mahesh was armed with a knife, that he raised an alarm due to fear, that accused-appellant Ram Prakash had grappled him and felled him on the ground, whereupon accused-appellant Jagdish assaulted at his neck with his Pharsa while accused-appellant Mahesh gave him a knife blow on his ilac region due to which he was injured, Against the judgment and order passed by Sri Mangu Ram, Xth Addl. Dist. and Sessions Judge, Agra, D/-21-3-1983. that on hearing alarm, his father Sardar Singh and witnesses Pratap Chhotu and Ramji Lal came there and that at the time of occurrence, there was full moon light, being the Purnima. present and thereafter the accused-appellant ran away from the spot, Sardar Singh, the informant, took the injured to the hospital where he was medically examined by Dr. S.P. Misra (PW. 4) on 12-4-1979 at 3.00 a m. He found the following injuries on his person :-

(1) Incised wound 5' x 3/4' x 3/10' on the left side and adjacent back of neck, transverse 1 1/4 below left ear. Margins are clean cut. Both angles are acute fresh clotted blood, which bleeds on touch seen.

(2) Incised wound 7' x I' x depth could not be probed due to bleeding transverse, margins are clean cut. The injury is on the left and adjacent back side of left hip upper part 1' below the iliac crest bone, front angle is contused and back angle is acute fresh clotted blood which bleeds on touch seen.

(3) Abrasion 1 3/4 x 1 1/2 on the left side lower cheat, SW below the left axillary pit.

(4) Contusion 3' x 1/2' on the back of left scapula lower third.

(5) Multiple abrasions 2' x 1/2' on the right side back of scapula lower third.

(6) Multiple abrasions 4' x 3' on the front of left knee.

(7) Abrasion 4' x 1' on the back of left thigh just above bone of knee.

3. All the injuries were simple in nature except injury No. 2 which was kept under observation and X-ray was advised. In the opinion of the doctor abrasions were caused by friction; contusion was caused by hard blunt object whereas the incised wounds were caused by sharp cutting edged object. The duration of the injuries fresh. No X-ray was made and also there is no supplementary report.

4. Usual investigation followed resulting into the committal of the case to the Court of Session and then the trial by the Court of Session.

5. At the trial ocular testimony was given by the injured Damador Prasad (PW 3), Sardar Singh (PW 1), the informant, who reached the spot on hearing the alarm raised by the injured and said to have seen the occurrence. Ramji Lal (PW 2) testified that he was sitting with the informant and that after some time, an alarm came from the side of road whereupon both of them rushed there and saw that two persons were running from the road while Jagdish accused-appellant, who was carrying Pharsa, was grappling with Damodar Prasad injured and that accused-appellants ran away. He claimed that he could not identify the assailants but testify that the injured had told him at the spot that the assailants were Mahesh and Ram Prakash, accused-appellants. The learned Additional Sessions Judge believed the ocular testimony supported by the F.I.R. and the medical evidence and held that the offence under Sections 307/34, I.P.C. was fully established and consequently convicted and sentenced each of the three accused-appellants as aforesaid.

6. In the pending of this appeal, accused-appellants Jagdish and Ram Prakash have died and the appeal against them had already been abated by this Court vide its order dated 20-3-1997. So the appeal is now confined only to accused-appellant Mahesh.

7. The learned counsel for the accused-appellant Mahesh after arguing the appeal on merits for some time, submitted that the evidence on record consisting of the oral evidence led at the trial as well as the medical evidence, discloses only an offence under Sections 324/34, I.P.C. as against the accused-appellant Mahesh. He has also pointed out that no X-ray was made in respect of injury No. 2. He has also pointed out that the doctor, in his testimony, did not say that any of the injuries was dangerous to life. Thus from the evidence on record in this case, only the offence under Sections 324/34, I.P.C. has been established against the present-accused-appellant Mahesh. There is substance in the submissions made by the learned counsel for the accused-appellant. On the question of sentence the learned counsel for the accused-appellant pointed out that the accused-appellant surrendered in Court on 2-11-1979 after the registration of the case against him. His bail was rejected on 24-11-1979 by the Sessions Judge. His bail was granted on 19-12-1979 by the High Court and in pursuance thereof, he has furnished the bail bonds on 21-12-1979. He has also pointed out that after the conviction by the learned Additional Sessions Judge on 21-3-1983, his bail order was passed by this Court on 23-3-1983 and that it could have taken a few more days time for his actual release from jail as the case is related to Agra. He has thus pointed out that this accused-appellant Mahesh has already remained in jail custody for a period of about 55 days. Therefore his submission is that sending the accused-appellant Mahesh back to jail would do more harm than good as he is continuously on bail from the year 1983 i.e. for a period of 16 years and as such the ends of justice would be met if the sentence of imprisonment of this accused-appellant Mahesh is reduced to the period already undergone by him as an under trial and as a convict and in lieu thereof, sentence of fine may be suitably enhanced. He has also pointed out that this accused-appellant Mahesh is a Government servant and that the occurrence being of the year 1979 and there being no allegation of his involvement in any other case, an appropriate direction may be issued to protect his service career. In this regard, there is no objection from the side of the prosecution. Keeping in view the long gap of period from the date of occurrence till today when this appeal is coming up before this Court for hearing, the ends of justice would be met if the prayer to reduce the imprisonment to the period of detention in jail as an under-trial and as a convict so far is accepted and in lieu

thereof, the fine of amount is enhanced from Rs. 1000/- to Rs. 3000/- and in default of payment of the same there is made a direction for him to suffer simple imprisonment for twenty days.

8. For the reasons aforesaid, the appeal is partly allowed. The conviction of accused-appellant Mahesh for the offence under Sections 307/ 34, I.P.C. and his sentence thereunder is altered to one under Sections 324/34, I.P.C. and his sentence of imprisonment is reduced to the period of detention as an under-trial and as a convict and the amount of fine of Rs. 1000/- is enhanced to Rs. 3000/-. In default of payment of fine, he shall suffer simple imprisonment for a period of twenty days. The accused-appellant is allowed one month's time from today to deposit the amount of fine in the trial Court. If the amount of fine is not deposited within the time permitted by the accused-appellant Mahesh, he will be got arrested by the C.J.M. concerned and sent to District Jail concerned to serve out the sentence of imprisonment imposed in default of payment of fine.

9. Keeping in view the long period of time, that has passed since the date of occurrence in 1979, it is provided that the conviction of this accused-appellant for the offence under Sections 324/34, I.P.C. shall not adversely affect his service career.

10. The present accused-appellant was on bail from this Court during the pendency of this appeal. However, his bail was cancelled by this Court vide its order dated 26-3-1999 and non-bailable warrants of arrest were ordered to be issued. This order was later on kept in abeyance on the application of the above accused-appellant. Now in view of the judgment, the said order is revoked. The bail bonds of accused-appellant are discharged.

11. Let a copy of this judgment along with the complete record of the trial Court be sent to the Sessions Judge concerned at once for information and compliance. The compliance reported shall be submitted to this Court within two months from today. List this appeal for order along with the compliance report before this Court on 12-7-1999.

12. Let a certified copy of this judgment be issued to the learned cotinsel for the accused-appellant within a week from today on payment of requisite copying charges.

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