

Ratan Lal Vs. State

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Court : Uttaranchal

Decided On : Apr-09-2002

Reported in : 2003CriLJ4402

Judge : Irshad Hussain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307

Appeal No. : Criminal (Jail) Appeal No. 55 of 2001

Appellant : Ratan Lal

Respondent : State

Disposition : Appeal dismissed

Judgement :

Irshad Hussain, J.

1. This is a jail appeal. Appellant was tried in the Court of Additional Sessions Judge/Special Judge (E.C. Act), Dehradun in S.T. No. 34 of 2000, Stale v. Ratan Lal for an offence punishable under Section 307 of the IPC on the allegation that on 6-12-1999 at about 11-45 p.m. near Machan Hotel-Body, situate in Old Mussoorie road within the Police Station of Rajpur. District Dehradun, he made an attempt to commit murder of Smt. Usha Devi and while making assault on her by a chopper-knife (Gandasa), a sharp edged weapon, caused her injuries.

2. In order to prove its case, the prosecution had examined eight witnesses including the victim-injured Smt. Usha Devi as P.W. 2. The FIR of the occurrence was lodged by her husband Om Prakash (P.W. 1) who had also witnessed the occurrence along with his son Umesh Kumar (P.W. 3). Injured Smt. Usha Devi was medically examined at Doon Hospital, Dehradun by Dr. A.K. Rastogi (P.W. 5), whereas the X-Ray of the effected part of the victim was done by Dr. B.C. Ramola (P.W. 4), a Radiologist in the said hospital. Head Constable Chandagi Ram (P.W. 6) has registered the FIR on the basis of the written report (Ext. Ka. 1) filed by P.W. 1 at the police station. Another witness Mukesh, a witness of recovery of the weapon of the assault at the instance of the appellant, was also examined as P.W. 7 and Investigating Officer of the case SSI Ganesh Prasad Baunthiyal was examined as P.W. 8 in the case. He has proved the various steps taken towards the investigation of the crime and ultimate filing of the charge-sheet against the accused-appellant on 20-1-2000.

3. Injuries sustained by Smt. Usha Devi proved by the evidence of Medical Officer are as below :

(1) Incised wound 7 cm. x 1 cm. x bone deep on the left side head. 5 cm. above left eye, fresh bleeding present.

(2) Incised wound 6 cm. x 1 cm. x bone deep on middle of head 0.5 cm. behind injury No. 1.

(3) Incised wound 3 cm. x 1 cm, x bone deep on 1 cm. behind injury No. 2.

(4) Incised injury on dorsum of left hand 6 cm. x 2 cm. on left ulna radius & muscles and vessels at the level of left wrist, of left hand. Fresh bleeding present.

(5) Incised wound on dorsum of left hand cutting tender and bone and neuro vascular at the level of Metacarpal bone size 7 cm. x 5 cm. Fresh bleeding present.

(6) Incised wound 6 cm. x 1 cm. x bone deep on right side head 13 cms. above right ear.

(7) Incised wound 5 cm. x 1 cm x bone deep, 2 cm. away from injury No. 6.

4. The medical examination was conducted on 6-12-1999, the date of the occurrence itself at about 12.40 p.m. and the injuries were found to be fresh in duration. The injury report (Ext. Ka. 5) had been proved by the Medical Officer Dr. A.K. Rastogi (P.W. 5). Radiologist Dr. B.C. Ramola (P.W. 4) testified that there was fracture of parieto-occipital bone of the skull and fracture of 2nd, 3rd, 4th and 5th metacarpal parietal shaft of ulna of left hand.

5. The trial Court believed the evidence of complainant-eye-witness Om Prakash (P.W. 1), injured Smt. Usha Devi (P.W. 2) and their son Umesh Kumar (P.W. 3) and held that their evidence proved beyond doubt that it was none other than the appellant who had assaulted the said victim at the scene of the occurrence at the time and date as mentioned above and further that the appellant had intended to commit the murder of the said victim and thereby held him guilty of committing the offence punishable under Section 307 of the IPC and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5,000,00/-.

6. I have heard Sri J.S. Virk, Amicus Curiae for the appellant and the learned A.G.A. and have carefully considered the evidence, the circumstances and the probabilities of the case.

7. Learned Amicus Curiae has submitted that the learned trial Court has not properly appreciated the evidence of the prosecution and also failed to take into account, the fact that the FIR of the case was ante timed and no implicit reliance could have therefore, been placed on the evidence of the eye-witnesses and the injured and that in the totality of circumstances of the case, appellant should have been extended the benefit of doubt and consequent acquittal of the charge levelled against him. On the other hand, the stress by the learned A.G.A, has been on the sufficiency of the prosecution evidence connecting the appellant with the offence alleged and also on the corroboration available to the oral evidence by the FIR as well as the medical evidence adduced in the case. Having considered the submissions, it need to be pointed out at the outset that the contentions of the learned Amicus Curiae have no force and this appeal deserves to be dismissed.

8. In regard to the oral evidence of the prosecution it is of significance that the injured Smt. Usha Devi (P.W. 2) is the most natural and reliable witness of the occurrence. She has categorically stated that she was pounded upon by the appellant who assaulted her by giving chopper knife blows on the back of the head near the neck and also on her hands when she made an attempt to defend herself from the assault. She has also stated that the occurrence took place at about 12 in the noon on 6-12-1999 while she reached near the hotel along with another lady of her village named as Sundariya. She had sustained injuries on her person. She has also claimed that the appellant was keeping a bad eye on her with indecent motives and when the appellant could not succeed in her attempts he felt aggrieved and assaulted her on the date of the occurrence. She was cross-examined at length, but nothing of vital importance as may discredit her testimony could be brought on record.

9. She had stated that the police had arrived at the scene of the occurrence on getting information from someone on the telephone and at the arrival of the police personnel, the appellant and one of his companion had fled away from the scene of the occurrence. Pointing out to this statement, it was submitted that the police had, in fact taken steps towards the probing of the offence even before registration of the FIR and the FIR relied upon by the prosecution, thus, clearly, appear to be ante-timed. The contention is not warranted from the circumstances and the material on record because as is evident from, the statement of complainant eye-witness Om Prakash (P.W. 1), the husband of the said victim, the FIR was lodged by him at the police station while the said victim was left behind in injured state at, the scene of the occurrence itself. This fact also finds place in the written FIR (Ext. Ka. 1) wherein it has been narrated in the end of the version that the victim is lying at the scene of the occurrence with bleeding injuries. When the FIR was lodged in this way the police personnel were bound to arrive at the scene of the occurrence and on account of the presence of the police personnel at the scene of the occurrence, the victim Smt. Usha Devi (P.W. 2) want to assert about the presence of, the police personnel. Her statement in this regard cannot be taken to argue that the FIR came into existence later on after the police had arrived at the scene of the occurrence and had started investigating the incident. Here it shall not be out of place to mention that Head Moharrir/Head Constable

Chandagi Ram (P.W. 6), the scribe of the check FIR gave a definite statement that the FIR was registered at 12.10 p.m. when the complainant came at the police station to lodge the FIR. There is nothing in his evidence as may in any way indicate that the FIR was registered later on and it was ante-timed.

10. On the above point, the learned Amicus Curiae has placed reliance on a decision of the Hon'ble Supreme Court in *Marudanal Augusti v. State of Kerala* 1980 SCC (Cri) 985 : (1980 Cri LJ 446) and contended that the entire prosecution case would collapse if it is found that the FIR was brought into existence long after the occurrence. Since the FIR was not ante-timed, this principle has no application to the facts of the instant case and it cannot be argued that the entire prosecution case becomes doubtful and the evidence of the prosecution is tainted.

11. It was next contended by the learned Amicus Curiae that there are material contradictions in the evidence of the witnesses which indicate that they are not truthful and, therefore, no implicit reliance should have been placed on their evidence. No doubt, the injured Smt. Usha Devi (P.W. 2) has not asserted that her husband Om Prakash (P.W. 1) and her son Umesh Kumar (P.W. 3) were following her at a distance when the occurrence took place contrary to the claim made by these two witnesses, but this infirmity cannot tell upon the credibility of the injured witness. The reason is that P.W. 1 and P.W. 3 came with an explanation that they were following the injured at a considerable distance while coming from their house to the market and this appears to be the reason that the injured Smt. Usha Devi (P.W. 2) failed to notice their presence on account of unexpected assault on her person by the appellant. In short, the infirmity has no bearing on the reliability of the evidence of the witnesses. Here it shall also be relevant to mention that P.W. 1 and P.W. 2 reached the scene of occurrence when the injured had already been assaulted, but this aspect could not desist from placing implicit reliance on the most natural witness of the occurrence, the injured Smt. Usha Devi (P.W. 2) who as stated above, has fully supported the prosecution version. In the face of this situation, the decision of Hon'ble Supreme Court in the matter of *Harcharand Singh v. State of Haryana* (1973 CAR 372) : (1974 Cri LJ 366) relied upon by the learned Amicus Curiae, has no application to the facts of the case and the evidence of the prosecution cannot be discarded on the basis of above minor

infirmity and contradiction.

12. It was lastly argued that the prosecution has not produced any independent witness of the occurrence and in the peculiar circumstances of the case, it was not safe for the trial Court to have placed reliance on the evidence of the prosecution towards the proof of the charge against the appellant. In this connection, attention was drawn to the version of the FIR and also to the statement of injured Smt. Usha Devi (P.W. 2) about the presence of one Smt. Sunita alias Sundariya at the scene of the occurrence and who had not been produced in evidence by the prosecution. No doubt, this lady accompanying the victim, has not been produced as a witness, but this can not be a ground of rejection of the credible evidence of the injured about the occurrence and the manner of the assault by the appellant. It need also to be pointed out that law does not require that more than one witness will be required to prove a fact and this is the reason that reliable evidence of a single witness is usually taken to be sufficient to prove the allegation of the prosecution. As stated above, the evidence of injured Smt. Usha Devi (P.W. 2) is fully credible, the non-examination of the above mentioned lady in evidence makes 110 difference so far as the proof of the allegations against the appellant are concerned. Consequently the decision of the Hon'ble Allahabad High Court in the matter of Dhanpat v. State of U.P. 1990 UP Cri R 101 and wherein it was held that conviction based on evidence of family members of the deceased to the exclusion of the independent witnesses is not safe, cannot be applied here and the appellant cannot get any benefit out of the said decision cited by the learned Amicus Curiae.

13. So far as the quantum of punishment is concerned, the same is not excessive because a house wife was assaulted in a daylight incident and serious injuries of sharp-edged weapon were caused on her person.

14. From above it is obvious that there is no, substance in any of the contentions raised on behalf of the appellant, the appeal is liable to be dismissed.

15. Learned Amicus Curiae will get Rs. 1500.00 as his fee.