

Pratap Singh Vs. State of Uttaranchal

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Court : Uttaranchal

Decided On : May-14-2001

Reported in : 2001CriLJ3154

Judge : P.C. Verma and; M.C. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307 and 324; Code of Criminal Procedure (CrPC) , 1974 - Sections 428

Appeal No. : Cri. Jail Appeal No. 2 of 2000

Appellant : Pratap Singh

Respondent : State of Uttaranchal

Judgement :

M.C. Jain, J.

1. Accused-appellant Pratap Singh has preferred this appeal from jail against the judgment and order dated 31-8-2000 passed by Sri Lekha Singh, Sessions Judge, Pithoragarh, in S.T. No. 27 of 1999, whereby he has been convicted under Section 307, I.P.C. and sentenced to rigorous imprisonment of ten years.

2. The prosecution case as emerging from the F.I.R. and the evidence adduced in the Court may be set forth briefly. The incident occurred on 17-5-1999 at about 9 p.m. in village Jumma, P.S. Dharchula, district, Pithoragrah and the written F.I.R.

of the incident was lodged by Janaki Devi on 18-5-1999 at 7.50 a.m. at the concerned police station. The injured and the victim of the incident was her husband Bir Singh. The appellant is his neighbour. On 16-5-1999, in the absence of Bir Singh, the appellant reached his house and hurled filthy abuses on his wife and mother under the influence of liquor. Bir Singh returned his house on 17-5-1999 in the evening from Dharchula and was informed by his wife about the incident of the previous day that the appellant had come over there and hurled abuses. The appellant also happened to reach there again and repented before Bir Singh that while intoxicated he had abused the womenfolk of his family the previous day. He requested Bir Singh to accompany him to his house to sink their differences and to bury the old hatchet. As a gesture of good-will, Bir Singh accompanied the appellant to his house at the latter's asking. His mother Govindi Devi, wife Janaki Devi and brother's wife Birma Devi followed him to the house of the appellant. It was night time of about 9 p.m. As soon as Bir Singh sat down at the house of the appellant, he (appellant) struck an axe blow on his head from back side. Receiving injury, he became unconscious, which he regained the following day in the hospital. The mother, wife and brother's wife of Bir Singh raised shouts, which attracted a number of persons, but the appellant ran away. Owing to night time, Bir Singh could only be kept at his house and was taken to Dharchula hospital in the morning, where from he was referred to District Hospital, Pithoragarh after medical examination,

3. The medical examination of the victim was conducted by P.W.2 Dr. Kharak Singh on 18-5-1999 at about 7 a.m. at P.H.C. Dharchula. As per the injury report-Ex. Ka.1, bleeding head injury 6' x 2 cm, in length was found on back side; whitish matter was coming out from the wound, margins were sharp; the injury had been caused by some sharp object and was dangerous in nature. It had been caused within 24 hours preceding the time of examination.

4. On the lodging of the F.I.R. the case was registered against the accused-appellant under Section 307, I.P.C. and the police started investigation which was conducted by Har Narain Sharma, S.I. The accused appellant was arrested by him and weapon of offence (axe) was also recovered at the instance of the accused-appellant. After the conclusion of the investigation, the police submitted charge-

sheet against the accused-appellant under Section 307, I.P.C.

5. At the trial, the prosecution examined five witnesses, besides relying on documentary evidence. P.W. 1 Bhupendra Singh was examined as an eye-witness and as a witness of recovery of axe by the Investigating Officer at the pointing of the accused-appellant. P.W. 3 Govindi Devi, mother of the victim, P.W. 4 Bir Singh, injured himself and P.W. 5 Janaki Devi, wife of the injured, were examined as other eye-witnesses. As stated earlier, P.W.2 Dr. Kharak Singh had examined the injury of the injured.

6. The defence of the accused was that actually the injured had reached his house and had made him to open his door. He pounced upon him with Lathi. He (accused appellant) tried to defend himself and in this process Bir Singh fell down and sustained injury in his head. According to him, the background was that he had asked Govindi Devi (mother of the injured) not to spread her clothes on his trees for drying.

7. The learned Sessions Judge believed the prosecution case and evidence and found the case of the prosecution proved to the hilt. He accordingly convicted the accused appellant as stated in the opening part of the judgment. Being aggrieved, the accused appellant is in appeal.

8. We have heard learned amicus curiae appointed for the accused-appellant and the learned Government Advocate, in opposition of the appeal from the side of the State. We have also carefully gone through the evidence and record of the case.

9. The first submission from the side of the accused-appellant is that there was delay in lodging of the F.I.R. The incident took place at about 9 p.m. in hilly region, not having regular transport facilities round the clock. The victim was badly injured. The distance of the police station from the place of occurrence was about 10 kms. There is nothing unusual if the report could only be lodged by the wife of the deceased on the break of the day at about 7.50 a.m. There-fore, we reject the argument that the first information report was lodged with delay. Indeed, the question of delay in the lodging of the F.I.R. cannot be decided by the rule of thumb. The question has to be decided having regard to the facts and

circumstances of a particular case. As we have observed, in the instant case, there was no delay in lodging of the F.I.R. Moreover, it is a case of single accused and single injured. Not only this, the accused-appellant has admitted his presence and that of the injured at his house at the given time. The only difference is that, according to him, in the process of grappling the victim fell down and sustained injury in his head. Therefore, judged from any angle, the alleged delay in the lodging of the F.I.R. is wholly immaterial.

10. It has next been argued for the accused-appellant that in the medical examination report, the Doctor described the wound of the deceased as lacerated wound' which could not have been caused by an axe which is sharp edged weapon. On going through the testimony of the Doctor, we form the opinion that it was a bona fide mistake on his part that he wrote the wound in question as 'lacerated wound'. It is to be taken note of that the margins of the wound were clear cut. It is also mentioned in the injury report that it had been caused by some sharp object. To the same effect is the statement of the Doctor before the Court. He had not measured the depth of the wound as it was bleeding with whitish material. Having regard to the entire description of the injury as mentioned in the injury report as also the statement of the Doctor, it admits of no doubt that it was a sharp edged weapon injury which could have been caused by an axe as deposed by eye-witnesses. We may also observe that a wound is described as the possible solution of continuity by mechanical force of any of the tissues of the body including the skin, mucous membrane, or cornea. The force may be supplied by the movement of the body itself or any moving object or instrument. The wound so caused results from complex mechanisms such as compression, traction, bleeding, shearing, torsion, etc. The edges of the wound made by heavy cutting weapon such as axe may not be as smooth as those of a wound caused by a light cutting weapon such as knife, razor, etc.

11. We are also of the opinion that the defence theory was rightly jettisoned by the trial Court. It is significant to point out that the accused-appellant did not lead any oral or documentary evidence in support of his defence version that the victim pounced upon him with a Lathi and when he tried to defend himself, he (victim) fell down and sustained head injury. The accused-appellant did not sustain any injury

at all. There is no oral evidence either to back his this bald assertion. The dimension of the injury sustained by the victim is also indicative of the fact that the same could not have possibly been sustained by his fall on the ground.

12. Learned amicus curiae also levelled criticism against the eye-witnesses. He pointed out that P.W.1 Bhupendra Singh did not support the prosecution case insofar as it relates to the recovery of the weapon of offence (axe) at the pointing of the accused-appellant and that he was declared hostile by the prosecution. Be that as it may, but the point of the matter is that he did speak that it was the accused who had struck axe blow on the victim Bir Singh. We find that there was no serious challenge to this part of his testimony in his cross-examination. The name of this witness finds place in the F.I.R. Even on ignoring the alleged recovery of the axe at the instance of the accused-appellant, the prosecution case remains intact that it was he who had struck axe blow on the head of the victim on the given date, time and place. The learned amicus curiae also submitted that the mother, wife and brother's wife of the victim had no reason to follow him (victim) to the house of the accused-appellant. We do not find any merit in this argument too. The root cause of the incident was the hurling of abuses by the accused-appellant on the women-folk of the family of the victim the previous day. It was quite natural that they followed the male head of the family to the house of the accused-appellant for arriving at a compromise so as to avert any chance of quarrel in future.

13. It was further argued for the accused-appellant that the offence did not travel beyond the scope of Section 324, I.P.C. The argument does not convince us. The blow had been struck by the accused-appellant by a dangerous sharp edged weapon (axe) on the head of the victim which is vital part. The injury was grievous, short of death. The victim was rendered unconscious at the spot itself. It is just by providence that the worst did not happen and the victim survived. We are in agreement with the learned Sessions Judge that the offence committed by the accused appellant clearly fell within the ambit of Section 307, I.P.C.

14. To terminate the discussion, on analysing the evidence and attending circumstances in an adjudicatory manner, we are in judgment that the accused-

appellant committed offence punishable under Section 307, I.P.C. and he has rightly been convicted by the learned Sessions Judge for the said offence. However, we feel that the sentence of 10 years R. I. awarded by the learned Sessions Judge to him is on higher side. The ends of justice would be met if the sentence of imprisonment is reduced to 4 yrs. R.I.

We, therefore, partly allow this appeal and modify the sentence of the accused-appellant Pratap Singh from ten years' R.I. to four years' R.I. for the offence punishable under Section 307, I.P.C. committed by him. He is already in jail. As provided by Section 428, Cr.P.C. the period of detention hitherto undergone by him shall be set off against Section 4 years' R.I. awarded to him under Section 307, I.P.C. and he shall serve out the remaining sentence of rigorous imprisonment.

Let a copy of this judgment with record of the case be immediately sent to the Court below for needful compliance under intimation to this Court within fifteen days from the receipt of the same.

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