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Court : Supreme Court of India

Decided On : Sep-23-1970

Reported in : AIR1971SC1309; 1971CriLJ1090; (1970)3SCC232

Judge : K.S. Hegde and; S.M. Sikri, JJ.

Appellant : Shital Singh and ors.

Respondent : State of Bihar

Judgement :

S.M. Sikri, J.

1.This appeal by special leave is directed against the judgment of the High Court of Judicature at Patna dismissing the appeal of the appellants before us.

2. The relationship between the deceased and the appellants and some of the witnesses is shown in the following pedigree table:

RIHAL SINGH | Baldeo Singh | ---------- | | | Narihar Singh Mathura Singh Surajdeo Singh | | ---------- | | | | Sheo Singh (P.W. 3) Sheonandan Singh | (injured) (deceased) | | | | ---------- Shankar Singh | | | (deceased) | Gorakh Singh Bindeshwari Singh Rajeshwari Debi Shital Singh (P.W. 2) (Appellant No. 4) (P.W. 4) (Appellant No. 1) (injured) | ---------- | | Bachulal Singh Harbans Singh

(Appellant No. 3) (Appellant No. 2)

3. The case of the prosecution has been accepted by the High Court and the learned Additional Sessions Judge, and as there are concurrent findings we do not ordinarily interfere with such findings. The learned Counsel for the appellants, however, contends that certain circumstances were either not taken into consideration by the High Court or were not given due weight, and if those circumstances are taken into consideration the concurrent findings cannot be sustain ed.

4. Before we detail the circumstances we may give the prosecution case which has been accepted by the High Court. The case of the prosecution is as follows: At 4.30 P. M. on June 2, 1964, while Sheonandan Singh (deceased) was sitting at his darwaza in village Moberakpur, Police Station Marhaura, District Saran, along with his brother Sheo Singh (P.W. 3) and son Shankar Singh (deceased); and was talking with his cousin, appellant Shital Singh, regarding his share to the north of the well situated in the Saran, the talk took a serious turn and there was exchange of hot words. Then appellant Shital Singh went to his dalan and returned with the accused persons along with him. Appellant Shital Singh was armed with Bhala. appellants Bachulal Singh and Harbans Singh were armed with Pharsas and appellant Bindeshwari Singh was armed with a lathi. Shital Singh assaulted Sheonandan Singh with his Bhala in his abdomen, as a result of which his intestines came out. Appellant Bachulal Singh assaulted Sheonandan Singh with his Pharsa on his hands. Appellant Harbans Singh assaulted him with his pharsa on Ms right elbow. Appellant Bindeshwari Singh caught hold of Sheonandan Singh when appellant Harbans Singh again assaulted him with the Pas (socket) of his pharsa on his head. When Sheo Singh (P.W. 3) and Shankar Singh (deceased) and Gorakh Singh (P.W. 7) began to separate Sheonandan Singh appellant Harbans Singh inflicted a cut injury on Shankar Singh with his pharsa on the left side of his neck and also a cut injury on his chest. Appellant Shital Singh assaulted P.W. 3 with his bhala. Appellant Harbans Singh , assaulted him with his pharsa, appellant Bachulal Singh assaulted him with his pharsa and appellant Bindeshwari Singh assaulted him with his lathi. The appellant also assaulted P.W. 2 with their respective weapons On hearing hulla villagers including Kali Charan Singh (P.W.

5) and others came to the place of occurrence and saw the occurrence. Then the accused persons dragged Sheonandan Singh to the dalan of Shital Singh. Rajeshwari Debi (P.W. 4) also went to that dalan and asked the accused persons to spare the life of Sheonandan Singh. But they did not listen to her requests and all of them assaulted Sheonandan Singh again on the dalan. P.W. 4 was also assaulted by appellants Shital. Bachulal Singh. Harbans Singh and Bindeshwari Singh with their respective weapons.

5. The High Court relied on the oral evidence and the dying declaration of Sheonandan Singh, deceased.

6. We may now give the circumstances relied on by the learned Counsel. The learned Counsel first said that the High Court has not examined the question as to who were the aggressors or who were likely to be the aggressOrs. He said that the nature of the dispute between the parties showed that Shital Singh was in possession of the rooms which Sheonandan Singh and his party wanted him to vacate, and therefore, it was more likely that Sheonandan Singh would attack Shital Singh. We are unable to appreciate this argument. The previous history of the dispute is a neutral factor and cannot displace the oral evidence relied on by the High Court.

7. He then said that the High Court has not given due weight to the inference arising from the situation of the blood marks. According to the investigating officer, he inspected the place of occurrence in the presence of witnesses and found, inter alia as follows:

(14) The place of occurrence was in the ashan to the north of the well. The well is a pucca one with a pucca platform. The height of the well was 1 foot 10 inches. There were steps towards the south and the north of the platform of the well.

(16) 1 found sufficient quantity of blood at a distance of 9 feel 4 inches towards north of the eastern and of the northern steps. At a distance of 9 feet 8 inches to the east of this place there is the place for hoisting Mahabirja Ka Jhanda (flag).

(18) I found blood fallen on the sahan land to the north of this place having blood fallen on it. It was like sprinkles of blood. The said blood was found up to the dalan.

(22) I found blood sticking to the door leaves fitted to the south facing darwaza of the middle room.

(23) I found sufficient blood on the ground surface inside the room. I found sprinkles of blood on the southern wall and I found marks of blood stained palm and fingers also.

(24) On the place where blood had fallen, I found a janaw (sacred thread) with two keys bearing No. 44579. There I found two small pieces of bone also. I found blood on a pair of Kharson (sandals) also. I found one white kurta stained with blood, which contained a notice from the S. D. O's Court in a case: State v. Sheo Singh.

(27) I found marks of blood stained fingers at a height of 4 feet and 7 inches in the eastern and of the southern wall near the door leaves. I found marks of fingers with blood on the wall at a distance of 7 feet towards south-east of his darwaza. It was at a height of 4 feet and 5 inches from the surface where blood was found within the ghera (radius) of 13 inches with marks of fingers therein.

8. The learned Counsel urge that this supports the case of the defence that the assault took place in the dalan and no injuries were inflicted near about the well. He said that if the prosecution story were true there would have been two trails of blood, one coming to the dalan and one going back from the dalan, because, according to P.W. 3, Sheo Singh the deceased was placed on the bullock cart from a place at a distance of 5-7 steps to the north of the well.

9. We are unable to see any force in this contention. If the story urged by him is correct, we would not find so much blood near about the well, as deposed by the investigating officer. As regards the trails of blood the argument presupposes that blood also fell when the deceased was being carried out and that he was carried out on a different route. There is no evidence to substantiate these points.

10. The learned Counsel then urged that the fact that there were considerable blood stains and blood in the verandah of the dalan indicated that a fight took place there. There is no doubt - and this is so according to the prosecution too - the persons were injured in the dalan but we are unable to infer from the presence of blood marks that a fight took place there.

11. The learned Counsel next said that in the dalan a number of weapons were found, i. e., two blood stained bhalas, two lathis, and three blood-stained logs of wood. Another lathi was found in the husk of grain. We are unable to appreciate how this fact assists the defence. It equally fits the prosecution case because after having assaulted the complainant's side the accused left the weapons there. It has not been proved that these weapons belonged to the complainants' side.

12. The next point taken was that two pieces of bone were found in the dalan and medical evidence showed that a blade of the shoulder of Sheo Singh was missing. But there is no evidence that these pieces of bone were human because the doctor, when questioned, said that he could not say that these bones were human.

13. The next circumstance relied on by the learned Counsel is of neutral significance. He said that finger blood stains were found on the walls. There is no proof that these finger stains were the stains left by the complainants' side.

14. The learned Counsel further said that Shital Singh went to the police station to lodge a complaint but the police inspector was not there and, therefore, he went to the hospital and he was arrested there. This conduct, according to the learned Counsel supports the defence, we are unable to see any force in this contention.

15. The learned Counsel was asked to explain all the injuries on the P.Ws. and the deceased and the only thing he could point out was the statement of Shital Singh where he had stated as follows:

After that Sheo Singh Sheonandan Gorakh and Shankar came to my Dalan being armed with weapons. As soon as they came, they asked me whether I would vacate the house or not. I refused to vacate. After that they said 'Assault and take possession of the Dalan. I ran away from the Dalan Shankar hurled bhala at me.

Sheonandan hurled bhala. My hand was out. Shankar caught hold of waist (danr) and left the bhala there. Sheo Singh hurled Farsa whereupon I sat down and it (torn) (?) hit Shankar. Gorkah began to assault me with lathi. I fell down unconscious. I cannot say as to what happened thereafter. I went to the Police Station on a tyre cart.

It seems to us that this is no explanation whatsoever.

16. The learned Counsel finally said that the story of the dragging of Sheonandan Singh is not true. The medical evidence does not support it. We looked into the evidence and it seems to us that the word 'dragged' has been incorrectly used. What the witnesses meant to convey was 'catching and pushing', in other words he was caught hold of and forcibly taken into the dalan.

17. Accordingly we are of the opinion that nothing has been shown to us which will enable us to upset the concurrent findings of the High Court and the learned Sessions Judge.

18. The appeal fails and is dismissed.

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