

Suresh Kumar and ors. Vs. the State

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Court : Delhi

Decided On : Jan-04-2005

Reported in : 116(2005)DLT344; 2005(79)DRJ257

Judge : R.C. Chopra, J.

Acts : Indian Penal Code (IPC) - Sections 34, 302, 307, 324 and 325; [Probation of Offenders Act, 1958](#) - Sections 4

Appeal No. : CrIA 497/2000

Appellant : Suresh Kumar and ors.

Respondent : The State

Advocate for Def. : Sunil K. Kapoor, Adv.

Advocate for Pet/Ap. : K.P. Punia, Adv. for Appellant Nos. 1, 2 and

Judgement :

R.C. Chopra, J.

1. This appeal is directed against a judgment dated 16.8.2000 by which the appellants were convicted under Section 307/34 IPC and the order on sentence dated 19.8.2000 by which they were sentenced to undergo RI for 3 years each and pay a fine of Rs. 2,000/-each. In default of payment of fine, the defaulter was

directed to undergo further SI for three months. Learned counsel for the appellants has not pressed this appeal on merits but has confined his prayer to convert the offence from Section 307/34 IPC to Section 324/34 IPC and thereafter grant benefit of Section 4 of the Probation of Offenders Act to the appellants inasmuch as appellants No. 1 and 2 are Government servants and appellant No. 4 is more than 70 years of age. Appellant No. 3 Jai Kishan has expired during the pendency of the appeal. I have heard learned counsel for the appellants and learned counsel for the State. I have gone through the records. The facts relevant for the disposal of this appeal, briefly stated, are that the appellants and the accused are close relatives having dispute over the possession of a plot of land in Village Khera. The injured PW-2 Rajdev and the appellant No. 4 Shri Raare real brothers. PW-4 is the son of PW-2 Rajdev whereas the appellants No. 1 and 2 are the sons of appellant No. 4. According to prosecution, on 4.5.1991 at about 7.15 a.m. when PWs 2 and 4 were returning after seeing the disputed plot, they were assaulted by the appellants, who were armed with knives, kasolas and lathis. According to prosecution, appellant No. 1 Suresh gave a knife blow on the head of PW-2 and a knife blow on the hand of PW-4. The remaining accused gave beatings to PWs 2 and 4 with kasolas and lathis. Both PW-2 and 4 were taken to Deen Dayal Upadhyay Hospital. On the basis of statement of PW-4, FIR Exhibit PW-1/B was registered. The appellants were arrested and after necessary investigations, a challan under Section 307/34 IPC was filed against them. The appellants pleaded not guilty to the charge. The prosecution in support of its case examined 12 witnesses. PW-2 Rajdev and PW-4 Ram Sewak are the injured. PW-3 Dr.K.K.Kumra is the Doctor, who examined PW-4 and proved nature of injuries vide MLC Exhibit PW-3/A. PW-10 Dr.Umed Singh had examined injured PW-2 Rajdev and gave his report vide MLC Exhibit PW-10/A. PW-11, ASI Sukhbir Singh is the Investigating Officer. The appellants pleaded that the case against them was false. They also tried to show that PW-2 Rajdev was a bad character and was having criminal antecedents. According to them, the prosecution case was supported only by PW-4, PW-2 Rajdev and his son PW-8 Vijay Singh. PW-9 Surjit Singh did not support the prosecution case. Learned Trial Judge found that PWs 2 and 4 were having criminal antecedents and bad character but was of the view that their testimonies could not be discarded only on this ground for the reason

that they had suffered injuries and had attributed those injuries to the appellants on account of a dispute between them regard to the possession of land. After perusing the testimonies of PWs 2 and 4, this Court has no hesitation in concluding that the prosecution has succeeded in proving on record that on 4.5.1991, on account of some land dispute between the parties, there was a fight between them in the course of which the appellants had caused injuries to PWs 2 and 4. Both the PWs were taken to the Hospital, MLCs were prepared and an FIR was lodged in which also, the appellants were named as the assailants. The incident was at about 7.15 a.m. The Rukkk from the Hospital was sent at about 10.45 a.m. and the FIR was registered at about 12.00 in the noon. In view of testimonies of PWs-2 and 4, there remains no doubt about the fact that the appellants had assaulted Pws2 and 4 and had caused them injuries. he appellants have failed to point out as to who else had caused injuries to PWs 2 and 4. Mere fact that PWs 2 and 4 were having criminal antecedents cannot be a ground for rejecting their testimonies in view of the fact that they had suffered injuries for which they were blaming the appellants and had lodged FIR also giving the details of incident without undue delay. The findings of the learned Trial Judge, therefore, that the appellants had caused injuries to PWs 2 and 4 in furtherance of their common intentions are fully justified and warranted. This Court has no reasons for taking a different view. The most vital question to be considered in this appeal is as to whether the conviction of the appellants under Section 307/34 IPC can be sustained or not. For convicting an accused under Section 307 IPC, the prosecution has to establish that the injuries caused by the accused were with such intention or knowledge and under such circumstances that if by that act death had been caused, he would have been guilty of murder. A person can be held guilty of murder under Section 302 IPC when it is shown that the death is caused by an act with the intention of causing death or a bodily injury is caused which offender knows to be likely to cause death or is sufficient in the ordinary course of nature to cause death or it is so imminently dangerous that it must not all probability cause death. The testimonies of two Doctors examined as PW-3 and PW-10 are material for determining as to whether the prosecution has succeeded or not in establishing the ingredients of Section 307 IPC. PW-3 Dr.K.K.Kumra had examined PW-4 Ram Sewak. He had found that his general condition was stable.

On local examination, he found that PW-4 had one CLW 1+ on occipital region of the scalp, right hand PIP joint dislocation of middle finger, left arm clean incised wound 1.5 c.m., 2" above the elbow, fracture of the 2nd and 3rd metacarpal of left hand, CLW 1 c.m. over right leg and fracture of the head of the fibula left side. According to him, only injury No. 3 on the left arm was with a sharp edged weapon. Even injury on head was with blunt object. While opining that the injuries were grievous in nature, he did not disclose as to which injury was grievous and which was simple in nature. Injury No. 3 only on the left arm, which was above the elbow, cannot be taken as an injury which could have been caused with the intention of causing death or likely to cause death or sufficient in the ordinary course of nature to cause death or so imminently dangerous that in all probability, it could cause death. This injury was not grievous as it was a clean incised wound of 1.5 cm., two inches above the elbow and was not covered within the definition of "grievous injury". PW-10 Dr. Umed Singh, who had examined PW-2 Rajdev proved the report Exhibit PW-10/A and stated that injuries No. 1 and 2 were by sharp object and injuries No. 3 and 4 were by blunt object. He did not depose in regard to the nature of the injuries but in Exhibit PW-10/A he had given the nature of injuries as grievous. Injuries No. 1 and 2 were on the scalp and thigh of the injured and were with a sharp object. This Doctor also did not state as to how and in regard to which particular injury he had given his opinion "grievous". Therefore, mere ipse dixit in Exhibit PW-10/A that the injuries were grievous cannot be accepted as all the injuries suffered by PW-2 were got grievous in nature. It is, therefore, held that neither PW-3 nor PW-10 have properly proved on record as to which injury on the person of PW-2 or PW-4 was dangerous or grievous in nature. Not only that the medical evidence is vague and lacking in material particulars in regard to the nature of the injuries, this Court finds that the facts and circumstances on record also do not establish that the appellants had intention to cause death of PW-2 or PW-4 or the injuries were caused or having knowledge that those injuries were sufficient in ordinary course of nature to cause death. The most important factor which goes against the prosecution case of attempt to murder is that the appellants spite of possessing weapons like knife, kasola, lathi etc., did not inflict any sharp edged injury on the chest or stomach or any vital part of body of PW-2 or 4. Most of the injuries on the persons of PWs-2 and 4 were

simple and caused with blunt objects. Injured were discharged from the Hospital on the same day. therefore, in view of the vague statements of PWs 3 and 10 and the nature of the injuries found on the persons of PWs 2 and 4, this Court has no hesitation in concluding that the conviction of the appellants under Sections 307/34 IPC was neither justified nor warranted. They could be convicted under Sections 324/325/34 IPC only. In the result, the conviction of the appellants under Section 307/34 IPC is set aside and they are convicted under Sections 324/325/34 IPC. Considering the fact that the appellants No. 1 and 2 are Government servants and the appellant No. 1 is 71 years of the, parties are close relatives, the fight was sudden over some land dispute, the appellants have no criminal antecedents, whereas PW-2 was having criminal antecedents and even externment orders were passed against him twice, this Court is of the view that it is a fit case in which the appellants No. 1, 2 and 4 can be given the benefit of Section 4 of [Probation of Offenders Act, 1958](#). Accordingly, while ordering the conviction of the appellants under Sections 324/325/34 IPC, the appellants No. 1, 2 and 4 are directed to be released on probation for a period of two years each upon their executing personal bonds in the sum of Rs. 20,000/- each for keeping peace, good behavior and good conduct during the said period. In case of breach of the terms of bond, the defaulting appellant shall be liable to undergo sentences of RI for one year and a fine of Rs. 2,000/- in default of payment of which, further SI for three months separately under Sections 324/34 IPC and 325/34 IPC respectively, which shall run concurrently. The appeal stands disposed of.