

Jasso Vs. State

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Court : Delhi

Decided On : Mar-01-1996

Reported in : 1996IIAD(Delhi)437; 1996(37)DRJ119

Judge : Jaspal Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 326

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 367 of 1976

Appellant : Jasso

Respondent : State

Advocate for Pet/Ap. : R.P. Luthra and; P.K. Behl, Advs

Judgement :

Jaspal Singh, J.

(1) Jasso, Ratto and Moti were convicted by the learned Additional Sessions Judge under Section 326 read with Section 34 of the Indian Penal Code and each one of them was sentenced to undergo rigorous imprisonment for three years. Aggrieved by the said judgment of conviction and order of sentence they filed this appeal. However, Jasso and Moti are already dead.

(2) Balraj (Public Witness 2) is the injured. PW1 Ram Prashad is his father while Sita Devi (PW4) is his mother. This is how the prosecution version unfolds itself from the evidence given by the said three persons.

(3) While Ram Prashad was in his house, the appellants came there and made a demand for Rs.500.00 and threatened to stab him in case their demand was not met. They were all armed. When Ram Prashad expressed his inability to meet the demand the appellants grappled with him and fell him on the ground. Soon thereupon Balraj and Sita Devi also came there and when Balraj and Sita Devi tried to intervene Jasso who was armed with a chhuri stabbed Balraj in the stomach while Moti, who was armed with a sua also struck him and caused injury on his leg and Rato caused injury on the person of Sita Devi with a Sua. Soon thereafter the appellants took to their heels. Later Balraj was removed to the hospital where he was admitted and later on operated upon. As per Dr. S. Mehra (Public Witness 7). injuries on his person were grievous in nature.

(4) Besides Ram Prashad, Balraj and Sita Devi we have also on the record the statements of two other alleged eye witnesses namely, Bhane Ram (Public Witness 3) and Ashok Kumar (Public Witness II). While Ashok Kumar has not lent any support to the prosecution version despite his having been cross-examined by the learned Additional Public Prosecutor, PW3 Bhane Ram has lent some support. He says that on May 16, 1973 at about 1.30 P.M. he found Jasso, armed with a sua and the other two appellants armed with knives and that after they had overpowered Ram Prashad, Balraj had intervened on which he was caught hold by Moti, and was stabbed twice by Jasso.

(5) The appellants, had taken the plea that they had been falsely implicated on account of inimical relations between their father and Ram Prashad. They also led evidence to show that Balraj was facing trial in two criminal matters.

(6) During arguments it was Contended by Mr. R.P. Luthra on behalf of Rato that all the eye witnesses happened to be closely related to each other and thus being interred witnesses, were unworthy of reliance. It was also argued that Balraj was also unworthy of reliance for the reason.that be was an accused in a case of decoity. Of course, my attention was also drawn to certain discrepancies in the

prosecution version. It was argued that the prosecution evidence deserved to be thrown out on that score as well.

(7) Undoubtedly, and as already noticed by me above, while Ram Prashad happens to be the father of Balraj, Sita Devi happens to be his mother. There is no denial of the fact that Public Witness Bhane Ram is also closely related to the family. Should I throw out their evidence only on account of their being so closely related to each other? - We must not lose sight of the fact that the occurrence took place in the house of Ram Prashad. therefore, his wife was expected to be there. True, Balraj was not in the house when the appellants had threatened Ram Prashad but, then, it is in his statement that he was attracted by the noise while he was having tea at a shop near to his house. Bhane Ram also explains his presence at the scene of occurrence by telling us that he too was attracted to the house of Ram Prashad by the noise emanating from that house. It may not be out of place to mention here that he lives very near to the place where the entire incident had taken place. The presence of Sita Devi finds further support and corroboration from the fact that she too was stabbed while trying to save her husband and this finds support and corroboration from the statement of Dr. S. Chaudhary (Public Witness 8) who had examined her on May 17, 1973 at 6.40 P.M. and had found one abrasion and a bruise over her left upper arm. Even, otherwise, their evidence cannot be thrown out merely on account of their relationship with each other, more so, when there is nothing on the record which may cast any doubt on their veracity.

(8) Of course, there is evidence on the record to show that Balraj is an accused in two cases. But then this in itself is also no ground to make me ignore his otherwise cogent and convincing statement.

(9) It is true that the appellants had alleged that they had been falsely roped in on account of enmity between their father and Ram Prashad but then no evidence has been led in support. Much cannot be allowed to be made out of it for the further reason that no such suggestion was put to Ram Prashad in his cross-examination. And, while I am on it, it may also be mentioned that the appellants had not examined their father in support of the stand taken by them.

(10) As already noticed by me above, my attention was also drawn to some contradictions appearing in the prosecution evidence. For example, whereas Ram Prashad has stated that the occurrence had taken place at about 11.00 A.M. the other witnesses had given the time of occurrence as 1.30 P.M. I feel much cannot be allowed to be made out of it as Ram Prashad was examined almost 2 1/2 years after the occurrence and human memory being proverbially short one is likely to forget such details. My attention was also drawn to the fact that sometimes Jasso is stated to be armed with a knife and sometimes with a chhuri. I am not inclined to make much out of it-as it has rightly been deserved by the learned Additional Sessions Judge that people do use the expression 'chhuri' even for a knife. I may mention that my attention has not been drawn to any other contradiction.

(11) The learned Additional Sessions Judge has critically analysed and appreciated the evidence on the record. I find no reason to differ with his conclusion that the prosecution has fully established its case. Though initially the charge was framed under Section 307 read with Section 34 of the Indian Penal Code, to my mind, the learned Addl. Sessions Judge has rightly convicted the appellants under Section 326 read with Section 34 of the Indian Penal Code.

(12) However, this does not finish the matter here. The occurrence is of May, 1973. Charge was framed on January 2, 1976. The trial concluded on September 30, 1976 and the appeal was admitted on October 15, 1976. Thus the ordeal has lasted almost 23 years. As already noticed this long wait has already eaten away two of the appellants. The third has already been in jail for some time. Under the circumstances, while the appeal of Jasso and Moti abates, the appeal of Ratto is dismissed subject to the modification that the period of sentence is reduced to the period already undergone. Let him be set free forthwith if not wanted in any other case.

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