

Hamil Singh Vs. State

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Court : Delhi

Decided On : May-25-2009

Reported in : 2009CriLJ3671

Judge : Pradeep Nandrajog and; Indermeet Kaur, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. A. No. 183 of 2005

Appellant : Hamil Singh

Respondent : State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : S.M. Chopra, Adv

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. When examined under Section 313, Cr. P.C., responding to the question No. 20. Have you anything to say? The appellant answered:

I am innocent and falsely implicated in this case. My wife Rajesh d/o deceased Bhagwana eloped with me with her own will. We had three children Sagar, Samundar and Aarti and we all were living happily in Punjab. Bhagwana, Santosh, Jugnu, Kishan and Bir Singh were inimical towards me and Rajesh for having run away with Rajesh and living separately.

On 15.4.03 I had come to my village to meet my old mother, who used to walk with the help of stick/lathi. Bhagwana, Santosh, Mukesh, Bir Singh and Jugnu surrounded me and were armed with lathis. Bhagwana told me that I have brought disrespect to their family by taking his daughter Rajesh away and said that today they will finish me and then all of them started wielding lathi blows to me. I apprehended danger to my life and I wielded my old mother's lathi to save my life and in this commotion, some injuries might have been caused to the deceased and to Santosh Devi.

2. It is apparent that the appellant has not disputed the presence of the deceased Bhagwana, the daughter-in-law of the deceased namely Santosh (PW-2) as also the presence of Mukesh (PW-4) at the place where the incident took place.

3. The basis of the defence of the appellant, is' the MLC Ex.PW-5/A of the appellant, which was prepared on the day of the incident itself i.e. 15-4-2003 by Dr. S.A. Francis (PW-5) recording five injuries on the person of the appellant, being:

(i) C.L.W. over upper eye-brow.

(ii) Abrasion over right elbow.

(iii) C.L.W. on right leg.

(iv) C.L.W. over head.

4. Suspecting a fracture of the right elbow, the appellant was referred to an Orthopaedic Surgeon who in turn referred the appellant to X-ray Division. As noted in the MLC, the X-ray revealed a fracture of the right elbow.

5. Briefly noted, case of the prosecution is that the appellant had eloped with Rajesh, the daughter of the deceased, and on said account there was bad blood between the appellant and the family members of Rajesh. Though the elopement was an event of the past, but as deposed to by Mukesh PW-6, the deceased had brought back his daughter Rajesh, and had got her married elsewhere, which probably antagonized the appellant, who lethally assaulted the deceased with a stick having a metallic sharp edged piece attached on one side of the stick. The deceased was taking a siesta underneath the trees outside his house at around 1:15 p.m./ 1:30 p.m. on 15.4.2003.

6. Police received the information, when D.D. Entry No. 20-B Ex.PW-7/A, was recorded at the police station at 2 p.m. by ASI Gianbir PW-7 to the effect that a quarrel had taken place at House No. 190, Balmiki Basti, Village Dariyapur.

7. SI Satbir Malik accompanied by H.C. Gurprasad and Const. Manoj proceeded to the place where they found the dead body of the deceased on a cot. The appellant had been apprehended by the villagers and was injured. Const. Manoj was deputed to take the appellant to the hospital, where after examination, Dr. S.A. Francis PW-5 recorded MLC Ex. PW-5/A of the appellant; relevant contents whereof have been noted in para 3 above.

8. A photographer PW-8 was summoned who took photographs Ex.PW-8/A-I to Ex.PW-8/A-4. The same show that each and every injury inflicted upon the deceased is a horizontal injury; none being a vertical or a slanting injury. The photographs show the deceased to be a fairly built person. At the spot, rough site plan was prepared by the Investigating Officer. A Lathi stated to be the weapon of offence was seized, as noted in the memo Ex. PW-6/A. The cot on which the body of the deceased was found having blood-stains thereon, was also seized, as recorded in the same seizure memo.

9. The dead body of the deceased was sent to the mortuary. Statement Ex.PW-2/A of Santosh PW-2, who had met the Investigating Officer at the spot was recorded, as per which she informed that she was the daughter-in-law of the deceased and was present in the house when the appellant assaulted the deceased and that she had witnessed the crime. The Investigating Officer made

an endorsement Ex.PW- 15/A on the statement Ex.PW-2/A and forwarded the same through HC Gurprasad at 3.30 p.m. for registration of an FIR. At the Police Station ASI Gianbir PW-7 registered the FIR Ex.PW-7/C.

10. The post-mortem of the appellant was conducted and as per post-mortem report the undernoted injuries inflicted on the person of the deceased were noted:

1. C.L.W. on bridge of the nose, placed horizontally up to lateral end of eye-brow size 8 cm. x 1 cm into bone deep.

2. C.L.W. on left sides of nose, 4 cm. x 0.7 cm. into bone deep and nasal bone fractured.

3. C.L.W. on right side below eye 2 cm. below size 3 cm x 0.5 cm.

4. C.L.W. on left side of lower border mandible 3 cm. lateral to chin 4.2 cm x 1 cm left lower jaw is fractured.

5. C.L.W. on 1 cm. lateral to middle of chin on left side 3 cm. x 1 cm.

6. Paralle; rode pattern 2.5 cm. angle of lip left 6 cm x 2 cm.

7. C.D.W. on left ear lobes 2 cm. x 0.5 cm.

11. The deceased died at the spot. The cause of death opined to be is the cranio cerebral damage consequent and as a result of head injury sustained by the deceased.

12. Depositing against the appellant, Santosh Devi PW-2, stated that the appellant had kidnapped Rajesh, her sister-in-law about 15 years back and had fled. That on the day of the incident her father-in-law was sitting on cot in front of the house on Gram Sabha Land. The appellant came with a lathi to which some sharp object was attached at one end. He assaulted her father-in-law. She cried for help. The appellant inflicted a blow on her right hand. Her brother-in-law Krishan (PW-4) and her son Mukesh (PW-6) came to the spot/Villagers gathered. The appellant was apprehended. Police was informed. She gave the statement Ex.PW-2/A to the

police and the same bore her signatures at point A. Her father-in-law was removed to the hospital. From the spot, blood-stained earth, a lathi Ex.P-1 and a cot were seized as recorded in the seizure memo Ex.PW-6/A and Ex.PW-6/B.

13. On being cross-examined, she stated that she was illiterate and was employed in a private school. Sunday was weekly off and whenever she was absent from duty, her salary was deducted. She denied the suggestion that on the day of the occurrence, she was in the school. She stated that having gone to the school in the morning, but having fever, she returned to her house by 11 a.m. She denied the suggestion that the appellant had come to meet his old mother and on seeing him, she, Bhagwana, Mukesh, Bir Singh and Jugnu surrounded the accused and gave him severe beating.

14. Jugnu PW-3, deposed that he was present at the spot and heard the voice of her mother Santosh. He rushed out and saw appellant running and on alarm raised by him, people gathered and apprehended the appellant. He saw his grandfather Bhagwana lying on a cot and was bleeding from his ear, mouth, neck and eye. That when appellant was apprehended he was having lathi to which some sharp iron object was attached. Mukesh, their neighbour, informed the police. Police came and apprehended the appellant. His grandfather died.

15. Krishan PW-4 deposed that he had gone to work and at about 2 p.m., received information that his father was murdered. He returned to the house and by that time the appellant had already been apprehended.

16. Mukesh PW-6 deposed that he was present in his house. At around 1.15/1.30 p.m. on 15.04.2003 he heard Santosh shouting 'Bachao-Bachao'. He was standing on the roof of his house and looked into the street and saw the appellant. He was having a lathi in his hand and was giving lathi blows to Santosh. He came down. Bir Singh his brother-in-law, Santosh and her son Jugnu reached. On seeing them, the appellant started running. He, Jugnu and Bir Singh chased the appellant and apprehended him near a kikkar tree and brought him back where Bhagwana's body was lying on a cot. He informed the PCR from his house. The police reached and apprehended the appellant. The lathi used as the weapon of offence was seized as recorded in the memo Ex.PW-6/A. He went to depose that prior to the

Occurrence, the appellant had eloped with Rajesh, daughter of Bhagwana, and about a year and six months back, Rajesh was brought back to the village by her father and brothers and got married somewhere else. The appellant had apologised for his behaviour and was pardoned. That Rajesh returned to Bhagwana's house from her matrimonial house and the appellant again eloped with her.

17. We note that during cross-examination, a suggestion was given to the witness that he i.e. the witness, Bir Singh, Jugnu and Santosh had assaulted the appellant with lathis.

18. In view of the defence of the appellant, learned trial Judge has discussed whether it was possible for only one of the alleged assailants to have suffered the injuries as were noted in the post-mortem of the deceased, if indeed the appellant was assaulted as alleged by him.

19. The finding returned by the learned trial Judge is that in no manner could the deceased receive the injuries if the same were the result of the appellant exercising a right of private defence. Though, no witness of the prosecution explained the injuries on the person of the appellant, in para 59 of the decision, learned trial Judge has opined that it is apparent that the injuries suffered by the appellant were the consequences of his being thrashed after he was apprehended. Learned trial Judge has also noted that the eye-witnesses probably hid the truth, as they feared of possible punishment if they deposed that they had beaten the appellant after he was apprehended by them.

20. We concur with the view taken by the learned trial Judge that it is just not possible for the deceased to have received the injuries, if they were the result of the appellant taking defensive action and exercising a right of private defence.

21. The reason is obvious. The appellant claims to have used a lathi belonging to his mother to save himself. The lathi blows could not have resulted in the wounds which are cut wounds on the face of the deceased. It is apparent that the injuries were caused on the deceased when he was lying on the cot. The body was horizontally placed and this explains the horizontal wounds on the person of the

deceased. Besides, if five people had assaulted the appellant as claimed by him, and the appellant had yielded a lathi in retaliation to save himself, the assailants, if not all, at least two or three would have received random lathi blows. That all injuries on the deceased have been directed towards the face are indicative of a targeted assault on to the face and the skull of the deceased, which is just not possible if the appellant had swung at random the lathi of his mother.

22. The injuries on the person of the appellant are explainable as explained by the learned trial Judge, notwithstanding no witness of the prosecution having explained as to how the appellant received the injuries.

23. No other point has been argued.

24. We find no merit in the appeal. The appeal is dismissed.

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