

Radha Ballabh Vs. Rex

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Court : Rajasthan

Decided On : Jul-30-1949

Reported in : AIR1950Raj21; 1950CriLJ905

Judge : Atma Charan, J.C.

Appellant : Radha Ballabh

Respondent : Rex

Judgement :

Atma Charan, J.C.

1. This is an appeal by Radha Ballabh from the order of Raizada Gurcharan Dass, Sessions Judge, Ajmer Merwara, dated 10th January 1949, convicting him Under Section 324, Penal Code and sentencing him to undergo three years' rigorous imprisonment. There is also an appeal on behalf of the Crown that Radha Ballabh be convicted Under Section 302, Penal Code, or in the alternative under section 307 and 326, Penal Code and an appropriate sentence be passed on him. This is Criminal Appeal No. VII [7] of 1949.

2. Beni Prasad is the deceased, and was the son-in law of Pearey Lai of Ajmer, Jogeshwar is the brother of the deceased Radha Ballabh is the accused, and is married to the niece of the deceased. The case of the prosecution is that on 7th February 1913 at about 7-80 p. M. Beni Prasad, Jogeshwar and Pearey Lai were sitting. together on the third storey of the house of Pearey Lai at Ajmer, Radha

Ballabh came, and also at down there. He asked Jogeshwar and Pearey Lai to leave the room as he wanted to have some private talk with Beni Prasad. They left the room and came out. Soon thereafter Beni Prasad was heard shouting 'burnt burnt.' Jogeshwar and Pearey Lai rushed into the room and saw Radha Ballabh pouring some liquid from a bottle over the person of Beni Prasad. Jogeshwar caught hold of the hand of Radha Ballabh. This led to a scuffle, and therein some liquid fell also over the person of Jogeshwar. The bottle containing the liquid in the scuffle fell down on the floor. Radha Ballabh was caught hold of, and taken to the 'kotwali.' Beni Prasad was taken to the Civil Hospital. The medical examination revealed that Beni Prasad had been burnt with some strong corrosive acid. Beni Prasad remained an indoor-patient for some days, and died on 16th February 1948. The motive for the alleged assault is said to be that Radha Ballabh suspected Beni Prasad to be on terms of intimacy with his wife.

3. Radha Ballabh in his statement before the court below denied the allegations of the prosecution, and pleaded 'not guilty.' His case was that it was Beni Prasad, who had first poured out the liquid from a bottle over his person. He caught hold of his hand. This led to a scuffle, and therein some liquid fell also over the person of Beni Prasad. The motive for the alleged assault is said to be that he had blamed Beni Prasad to be on terms of intimacy with his wife.

4. There is no denying the fact that something did take place between Beni Prasad on the one hand and Radha Ballabh on the other at the house of Pearey Lai and that therein both got burnt with some acid. The question accordingly that arises for consideration before the Court is as to who had taken the aggression at the time. Jogeshwar and Pearey Lai are said to be the eye witnesses on behalf of the prosecution. Lachi Ram and Ladu Ram are said to have arrived at the scene soon after the occurrence in question. The evidence of Lachi Ram and Ladu Ram may be discarded straight off. Their names do not find place in the F.I.R. They were not even examined by the Police Under Section 161, Criminal P.C.

5. The prosecution then have produced the dying-declaration of Beni Prasad, Beni Prasad in his dying-declaration dearsly says that Radha Ballabh came to his father-in-law's house. Radha Ballabh caught hold of his hand, and poured liquid from a

bottle over him. Radha Ballabh then tried to pour the remaining liquid also over Jogeshwar. The dying-declaration is certainly admissible in evidence Under Section 162 (2), Criminal P.C . It has been argued on behalf of the appellant that the name of Pearey Lai as an eye-witness does not find place either in the F. I. R, or in the dying-declaration and that, as such, no reliance should be placed on his evidence. The P. I. R., and the dying.declaration certainly in no way mention the presence of Pearey Lai at the time in question, Had he been present at the time, there would have been some mention about it in the F. I. R , as well as the dying.declaration. No reliance, in the circumstances, could possibly be placed on the evidence of Pearey Lai.

6. The evidence of Jogeshwar goes to show that at the time the acid was first thrown he was outside the room. He heard Beni Prasad shouting 'burnt burnt.' This fact by itself clearly goes to show that the acid had been thrown first by Radha Ballabh and not by Beni Prasad. Beni Prasad belonged to Sambhar, and had come from there to Aimer just a day before to fetch his wife. It does not stand to reason that he would have kept a bottle of acid ready at the house of his father-in-law to be thrown.-in case he got an opportunity to do so, on the persuasion of Radha Ballabh It is an admitted fact before the Court that Radha Ballabh suspected Beni Prasad of carrying on with his wife This would have certainly given a good cause for grievance to Radha Ballabh. No doubt, the evidence on the record of the Court below goes to show that Beni Prasad was annoyed at being blamed that he was carrying on with his niece. This might have given him some cause for grievance but not to the same extent. The extent and the nature of the injuries on the person of Beni Prasad also go to show that it was Beni Prasad who had been taken unawares at the time by Radha Ballabh. The evidence of Jogeshwar together with the dying declaration of Beni Prasad coupled with the circumstantial evidence thus clearly go to show that the aggression at the time had been taken by Radha Ballabh and not by Beni Prasad.

7. Beni Prasad after sustaining the injuries was admitted as an indoor-patient and died on 16th February 1948. The contention, as such, on behalf of the prosecution before the Court is that Radha Ballabh at least intended to cause such injuries to Beni Prasad as he knew were likely to cause his death. The medical evidence on

the record of the Court below in no clear way goes to show that the death of Beni Prasad was due to a direct result of the injuries that had been inflicted on his person by Radha Ballabh. Dr. Dabi Lai had examined the injuries on the person of Beni Prasad on 7th February 1948. He was found to have had burns over left side of the forehead, face, neck, shoulder, dorsum of the arm, hand and wrist and over right lower limb. The injuries apparently were simple. Dr. Deedwania treated Beni Prasad from 8th February 1948 to 16th February 1948 and, in his opinion, the complications that grew subsequently could not have been directly caused by the burns. Dr. Maharaj Narain performed the postmortem examination on the body of the deceased and, in his opinion, the death was due to burns coupled with inflammatory changes in the lungs and pleura. Dr. Suraj Narain says that the deceased during the course of his illness might have suffered from exposure, that it is possible that between burns and pneumonia malnutrition might have intervened and that it is also possible that the exposure might have led to the congestion of the lungs and delirium. The sum total of the medical evidence thus points to the fact that the burns were simple in nature and could not have caused the death of the deceased. The death was due to complications that grew on account of pneumonia which developed later on during his illness. It is not possible, in view of the contradictory medical evidence forthcoming, to conclusively hold that the death of the deceased was directly due to burns. It could not, in the circumstances, be held that Radha Ballabh should have known that his throwing the acid on the person of the deceased was likely to cause his death.

8. There is yet another way how the contradictory medical evidence produced on behalf of the prosecution could have been further analysed by the Court. This was by analysing the acid contained in the bottle, if available. The evidence produced on behalf of the prosecution is that the bottle containing the acid was taken possession of by the police on 8th February 1948. The bottle was intact. It was sent for analysis to the Chemical Examiner at Agra, and was found to contain 78.4% strong sulphuric acid. The evidence produced in favour of the prosecution is clearly to the effect that during the scuffle that ensued at the time the bottle fell down on the 'pacca' floor. It is really surprising that the bottle should not have got broken. The evidence of the Police Officer is further to the effect that he recovered the bottle lying on the floor uncorked. It is really surprising that the bottle

should have been allowed to remain lying thus till next afternoon. Hanuman Prasad is said to be the witness in regard to the recovery of the bottle. His evidence on the contrary goes to show that the bottle was not recovered in his presence but was shown to him for the first time at the 'kotwali.' The bottle was then sealed before him in his presence. In view of the evidence forthcoming on behalf of the prosecution it could not possibly be held that the bottle is the one that had been taken by Radha Ballabh to the house of Pearey Lai and that it contains the same acid that was thrown over the person of Beni Prasad.- The report of the Chemical Examiner which would have been of great weight in coming to the conclusion one way or the other, in the circumstances, is of no value at all.

9. Considering, therefore, the papers on the record of the case the Court below has rightly convicted the appellant Under Section 324, Penal Code. The appellant has been sentenced to undergo three years' rigorous imprisonment. The various burnt clothes taken possession of at the time do not show any charring. Had the acid thrown been really strong, the clothes would have certainly got charred. The evidence on the record of the Court below goes to show that the appellant also got burns with some acid. He appeared before the Court, and no scars on his person were visible. This fact also goes to show that the acid was not really strong. There thus appears to be no reason as to why the maximum sentence awardable under the section should be allowed to stand. The appellant is a young boy studying in college and has been in jail in connection with this case for well over 15 months. It would, in my opinion, meet the ends of justice in view of the special circumstances of the case if the sentence of three years' rigorous imprisonment is reduced to the period already undergone.

10. The appeal accordingly is partly allowed, the conviction of the appellant is maintained and his sentence is reduced to the period already undergone. The appeal filed on behalf of the . Grown is dismissed.