

Ganga Ram Vs. State

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Court : Rajasthan

Decided On : Mar-17-1966

Reported in : 1968CriLJ134

Judge : L.N. Chhangani, J.

Appellant : Ganga Ram

Respondent : State

Judgement :

L.N. Chhangani, J.

1. The appellant Gangaram has been convicted by the Additional Sessions Judge, Alwar, vide his order dated 19th October, 1965 of an offence under Section 307, Indian Penal Code, and has been sentenced to an imprisonment for five years and a fine of Rs. 500/-, in default, one year's further rigorous imprisonment. He has filed the present appeal.

2. The case against the appellant is that on 3.7.1963 at about 2 p.m. in the premises of Gram Panchayat, Samola, the appellant attacked Harla with a dagger in the right side of the back above right iliac crest. He then again tried to give a second blow to Harla P.W. 1, but Baneysingh PW/2 Sarpanch caught hold of the band of the accused. The accused then tried to attack Baneysingh Alamsingh DW/1 came from behind and snatched the dagger from the hand of the accused.

The accused tried to run away by jumping the wall of the Panchayat but Iqbalsingh and Shadi caught him. Baneysingh Sarpanch PW/2 sent a written report to the Police Station, Alwar. The injured Harla was taken to Alexander Hospital Alwar. Some Surgeon operated upon Harla and stiched the wound. Thereafter, Dr. G.P. Sharma Medical Jurist PW/5 examined the injuries and issued the injury report Ex. P. 5. In the injury report he merely gave the length of the injury as 5' long but not its breadth and depth. He did not also specify whether the injury was caused by blunt weapon or by a sharp edged weapon nor did he specify whether the injury was grievous or simple.

At a later stage he issued a supplementary report Ex P. 6 on 13.2.1963 stating that in view of the operation notes of the Surgeon who operated on the patient as soon as he was brought to the Hospital, injury No. 1 might be considered as grievous, caused by sharp weapon After investigation, the case was challaned for the offence under Section 307, Indian Penal Code in the court of First Class Magistrate, Alwar. After enquiry, the case was committed to the court of session, Alwar. The Additional Sessions Judge tried the case Eight witnesses were examined in support of the case PW/1 Harla is the injured: PW/2 Baneysingh ie the Sarpanch. of Gram Panchayat, Samola. The other witnesses PW/3 Sumer PW/4 Bhajja and PW/7 Murlidhar were produced as eye witnesses but they did not support the prosecution in material terms and were declared hostile, PW/5 is Dr. G.P. Sharma who issued the injury report Kanwarsingh PW/6 is the Station House Officer who conducted the investigation and PW/7 Ramavtar is the Head Constable who is alleged to have seized the weapon Article 1 when produced by Alamsingh DW/1.

3. The accused denied his guilt and produced Alamsingh DW/1. Alamsingh denied to have snatched the dagger from the accused or to have produced the same before the police.

4. The Additional Sessions Judge after discussing the evidence found the accused guilty under Section 307, Indian Penal Code, and convicted and sentenced him.

5. Now, so far as the infliction of the injury by the accused appellant to the injured Harla is concerned, the learned Counsel for the appellant could not raise any

serious controversy. There is sufficient evidence to show that the accused appellant inflicted a dagger blow in the right side of the back above right iliac crest, of the injured Harla. The learned Counsel, however, raised a very serious controversy as to the offence made out against the appellant. He contended that the injury caused by the appellant was not capable of causing death in the ordinary course of nature and that there is no satisfactory proof to show that the injuries were of a grievous nature. According to him, considering the nature of the injury and the facts and the circumstances of the case the appellant could be convicted only of an offence under Section 324, Indian Penal Code.

6. In holding the appellant guilty of the offence under Section 307, Penal Code, the learned Additional Sessions Judge emphasised the legal principles, approved in several cases that for the application of Section 307, Penal Code it is not necessary that the injury, capable of causing death should have been actually inflicted. He also observed that if injury is actually inflicted the nature of the injury may be of some consideration in arriving at the conclusion whether the accused had the intention of causing death. He further pointed out that the liability for the offence under Section 307, Penal Code will depend upon the circumstances of each case and the injury which the victim sustained in a particular case. It was also observed that in the case under Section 307, Penal Code, important consideration is intention or knowledge of the accused and the circumstances under which the offence was committed. Nature of injury is not necessarily guiding consideration. The intention of the assailant can also be gathered from the nature of the weapon used and the parts of the body where the injuries are inflicted.' Having stated the law in these terms, the learned Judge appears to have relied upon the following circumstances in holding the appellant guilty under Section 307, Penal Code.

- (i) That the weapon used by the appellant was dangerous and sharp.
- (ii) That the injury inflicted by the accused was on a vital part as the intestines had emerged out.
- (iii) That the injury was of a grievous nature.

(iv) That the accused made an attempt to give a second blow with the dagger.

7. Now, so far as the law on the subject is concerned the view taken by the Additional Sessions Judge appears to be legally sound and may be accepted. It may be stated in this connection that in some earlier cases, namely, *Reg. v. Cassidy* (1867) 4 Bom HCR (Cr) 17 and *Emperor v. Martu* (1913) 15 Bom LR 991 it was held that for a person to be convicted under Section 307, Penal Code, the act done must be an act done under such circumstances that death might be caused if the act took effect, that is to say, the act must be capable of causing death in the natural and ordinary course of things (1867) 4 Bom HCR (Cr) 17 was dissented by the Allahabad High Court in *Queen Empress v. Niddha* (1891) ILR 14 all 38. The Bombay High Court itself did not follow (1867) 4 Bom HCR (Cr) 17 In *Emperor v. Vasudeo B. Gogte*, ILR 56 Bom 434 : AIR 1932 Bom 279, the final conclusion of the learned Beaumont C.J. who delivered the judgment was that the act to fall under Section 307, Penal Code, must be such that but for the intervention of some circumstances it would, if completed, result in death. A number of decisions of the various High Courts adopted the view expressed by Beaumont C.J. in *Emperor v. Vasudeo B Gogte* ILR 56 Bom 434 : AIR 1932 Bom 279. In this Court also in *Ramla v. State* 1962 Raj LW 70 : 1963 (1) Cri LJ 387 Dave J. as he was then, expressed his agreement with the observations made by the learned Chief Justice of the Bombay High Court in ILR 56 Bom 434 : AIR 1932 Bom 279 and also emphasised the following observations made in *Jeetmal v. State* AIR 1950 Madh B 21:

For the purpose of Section 307, what is material is the intention or knowledge not the consequence of the actual act done for the purpose of carrying out the intention.

Whatever might have been the judicial conflict on the subject, it has been set at rest by the two decisions of the Supreme Court, namely.

1. *Sarju Prasad v. The State of Bihar*, Cri. Appeal No. 11 of 1963, D/-20.8.1964 : reported in : 1965 CriLJ766 .

2. *Om Prakash v. State of Punjab* : [1962]2SCR254 .

In both these oases the observations made by Beaumont C.J. were quoted in extenso and were approved. In these circumstances, it is not necessary for a conviction under Section 307, Penal Code, that the injury actually inflicted should be sufficient in the ordinary course of nature to cause death or that it should be on any vital organ. The difficulty, however, is always experienced in applying the principles of the law to the facts of the present case in this connection, it will be pertinent to reproduce the following observations made by the Supreme Court in Sarju Prasad's case Cri. Appeal No. 11 of 1963, D/-20.8.1964 : reported in : 1965 CriLJ766 (supra);

Having said all this we must point out that the burden is still upon the prosecution to establish that the intention of the appellant in causing the particular injury to Shankar Prasad was of any of the three kinds referred to in Section 300, Penal Code. For, unless the prosecution discharges the burden the offence under Section 307, Penal Code cannot possibly be brought home to the appellant. The State of the appellant's mind has to be deduced from the surrounding circumstances and as Mr. Kohli rightly says the existence of a motive to cause the death of Shanker Prasad would have been a relevant circumstance.

8. In the light of the principles stated above, the Crucial question emerging for determination is: whether the prosecution has succeeded in discharging the burden of proving the necessary intention or knowledge as specified in Section 300, Penal Code. As stated earlier, the learned Additional Sessions Judge referred to a few circumstances and came to the conclusion that the burden has been discharged by the prosecution. According to him, each of the alternative intentions specified in Clauses (i) and (iv) of Section 300, Penal Code, has been established. Let us proceed to examine whether the conclusions of the Additional Sessions Judge are sustainable.

9. The first circumstance relied upon by the Additional Sessions Judge is the nature of the weapon. The weapon was produced before me and after looking at it I have no hesitation in coming to the conclusion that the weapon is really a dangerous and a sharp one. The question, however, is whether it has been proved that this weapon was used. Although according to the prosecution the dagger was

stained with blood yet it was not sent to the Chemical Examiner and Imperial Serologist for examination. This usual mode of connecting the weapon with the crime was not adopted in this case for reasons beet known to the prosecution. The prosecution however relied upon two circumstances to connect the weapon with the crime

(1) The weapon was identified by Harla P.W./1.

(2) The weapon was snatched at the time of the incident by Alamsingh D.W./1 from the accused and Alamsingh produced the weapon before Ramavatar P.W./8.

10. Now, so far as the identification of the weapon by the witnesses is concerned, the evidence cannot be of much substance. Evidently, it is very difficult for witnesses to identify the weapon with which the victim was attacked in the absence of any special circumstance.

11. As regards the second circumstance, a-difficulty has been created Alamsing was not produced by the prosecution. He was examined as P.W. 1 by the accused he denies to have snatched the dagger from the accused and to have produced it before the police. The counsel for the State brought to my notice that Alamsingb had subscribed his signatures to the seizure memo of the dagger which recites the fact that the dagger was produced by Alamsingh at the trial. The counsel for the prosecution, however, did not think it proper to face the recovery memo to Alamsingh and his signatures thereon. This, in my opinion, does no credit to the officer who was in charge of the prosecution. The prosecution has not been diligent in this behalf; but all the same considering the facts and the circum. stances of the case I am not prepared to go to the extent of differing from the Additional Sessions Judge that the dagger produced in Court was actually used, However, the nature of the weapon by itself cannot be of much assistance. At any rate, it cannot be decisive.

12. The next circumstance relied upon by the Additional Sessions Judge is that the injury was inflicted on a vital part. The injury report shows that the injury was received on the right side of the back above right iliac crest. The public prosecutor did not put a question to the medical witness whether the particular part of the

body where the injury was inflicted was vital or not. No other materials have been placed before me from which one can come to the conclusion that injury was received on a vital part or organ of the injured. The Additional Sessions Judge based his conclusion on the fact that some of the witnesses stated in their deposition that intestines had emerged out. Even on this aspect of the case, the Doctor had nothing to say. The bald statement of one or two witnesses that the intestines had emerged out could not be considered sufficient for a conclusion that the injury was received on a vital part.

13. We may also consider in this connection whether the injury was of a grievous nature. It may be mentioned at this stage that the injured was first taken to a Surgeon who conducted the operation, and prepared some operational notes. The injured was then examined by Dr G.P. Sharma, the Medical Jurist, who issued the injury report Ex. P. 5. It is significant that in this injury report neither the nature of the injury was specified nor the nature of the weapon used for the infliction of the injury was specified even though the Medical Jurist must have had the operation notes of the Surgeon before him. At a later stage he sent a supplementary report to the police stating that on the basis of the operation notes the injury should be considered grievous one.

In examination-in-chief the Doctor stated that the injury may be considered grievous on the ground that it endangered the human life. How it endangered the human life has not been brought out in the statement of the Doctor. The Surgeon who conducted the operation and prepared the operation notes was not examined. Even the operation notes have not been brought on record. In these circumstances, the opinion expressed by Dr. G.P. Sharma that the injury may be considered grievous one, cannot carry conviction. In this connection, I may refer to a decision of mine in *Roopa v. State of Rajasthan* AIR 1966 Raj 68. In that case after quoting various abstracts from the book on Medical Jurisprudence the principles were summarised as follows:

(1) The danger to life from an injury should be imminent to constitute it as a grievous one. Haemorrhage, shock or injuries implicating important structures or organs are instances of injuries causing imminent danger. Extensiveness of the

injuries may also cause imminent danger. Injuries which only cause remote danger to life cannot be treated as dangerous to life.

(2) That the concept of an injury dangerous to life cannot in the very nature of things be very precise. While there may be cases which can be easily placed either in the category of injury dangerous to life or in the other category, there may be marginal and border line cases where it may be very difficult to categorise the injuries as dangerous to life or not and in such cases the medical experts may also differ.

(3) That the concept of injury dangerous to life being not very precise, it is necessary that the medical witness should not remain content with making bald statement that the injury in a particular case is dangerous to human life. He should place all relevant data namely, whether the injury caused haemorrhage or shook or implicated important structures or organs or was very extensive or otherwise caused imminent danger and should also state the various grounds on which he considers the injury to be a dangerous one.

(4) That in arriving at the finding whether an injury is dangerous to human life or not the court should apply its mind to all the relevant data brought on record and to the reasons given by the medical witness or witnesses and record its finding after an overall consideration of the materials on record, giving reasons for its conclusion.

I cannot help observing that the prosecution has bungled both in producing of medical testimony as also in the examination of Dr. G.P. Sharma who has been examined in the case and I find it difficult to record my agreement with the Additional Sessions Judge that the injury has been proved to be of grievous nature.

14. The next circumstance relied upon by the Additional Sessions Judge is that the accused attempted to repeat a blow with the dagger. I have very carefully scrutinised the prosecution evidence with the help of the counsel for the State. Excepting P.W. 1 Harla no other witness has stated at the trial that the accused made any attempt to repeat the blow with the dagger. The solitary testimony of

Harla cannot be considered sufficient to arrive at a conclusion that the accused attempted a second blow. In this connection, I may refer to the statement of the witness made before the Deputy Superintendent of Police Ex. p.1 as also the statement of the witness at the committal stage. In both these statements the witness did not state that the accused made any attempt to repeat the blow. It is true that the defence did not face the witness with these earlier statements but ignoring the technicalities of the law I have appraised Harla's statement in this connection in the light of these earlier statements and am not prepared to conclude that the accused made any attempt to repeat the blow.

15. From this it is clear that out of the four circumstances relied upon by the Additional Sessions Judge, three have not been satisfactorily proved. The first circumstance though held proved is not sufficient for inferring that the prosecution has discharged the burden of proving the necessary intention as required by Section 300, Penal Code. The injury having not been proved to be grievous one it will be hardly safe to maintain the conviction of the appellant under Section 307, Penal Code. He cannot also be convicted of an offence under Section 326, Penal Code. In my opinion, the only offence proved against the accused is one under Section 324, Penal Code. His conviction under Section 307, Penal Code, has, therefore, to be altered to one under Section 324, Penal Code.

16. The appeal is partially accepted. Conviction of the appellant is converted from Section 307 to Section 324, Penal Code. He is sentenced to one year's rigorous imprisonment and a fine of Rs. 200/. and in default, two months' rigorous imprisonment.