

Dev Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-11-1983

Reported in : 1983WLN(UC)138

Judge : S.S. Vyas, J.

Appeal No. : S.B. Criminal Jail Appeal No. 75/1982

Appellant : Dev Ram

Respondent : State of Rajasthan

Judgement :

S.S. Vyas, J.

1. This is a jail appeal by the accused Dev Ram against the judgment dated January 29, 1982 of the learned Sessions Judge, Doongarpur convicting and sentencing the accused-appellant as under:

Sections Sentences Awarded

394 IPC 3 years' RI

324 IPC 1 year's RI

323 IPC 6 months' RI

All the sentences were made to run concurrently.

2. Briefly stated the prosecution case is that at about 10 a.m. on 13.8.81, PW 1 Smt. Basanti was working in her field in village Sabala District Doongarpur. PW 5 Smt. Devki and one Smt. Kunkubai Came there. The accused came there and helped PW.1 Smt. Basanti in putting the grass heap on her head (of PW 1 Smt. Basanti). He thereafter went away. Smt. Basanti left the field to go to her house. When she had hardly covered some distance, the accused came from behind and gave a push to PW 1 Smt. Basanti. The grass heap fell down. The accused also fell down Smt. Basanti on the ground. He thereafter inflicted a number of injuries on the person of Smt. Basanti (PW.1) with a scythe (darati). PW.1 Smt. Basanti was wearing silver payjeb. The accused relieved her of the said ornament. He then made good his escape. PW.1 Smt. Basanti raised cries, hearing which Smt. Devki Smt. Narbda and Smt. Kunkubai came to her. She narrated the incident to them. PW.1 Smt. Basanti reached the Bus-stand, where she met PW.2 Chhaganlal, PW.3 Narendrakumar and others. On being asked, she also told them what had taken place with her. PW.2 Chhaganlal went to police station, Aspur and lodged the written report Ex.P/2 at about 3 p.m. on the same day. The police registered a case under Section 394, IPC and proceeded with the investigation. The accused Devram was arrested on 13.8.81. In consequence of the information furnished by him, the stolen articles were recovered from a field situate nearby the place of occurrence. At about 7.10 p.m. on 18.8.81 the injuries of PW 1 Basanti were examined by PW.6 Dr. Banwarilal Mishra, Medical Officer, Sulambhar. He found as many as seven injuries on her person. All the injuries were designated as simple. The five injuries were stated to have been caused by sharp edged weapon and the two injuries by blunt weapon. After the investigation was over, the police submitted a challan against the accused in the court of the learned Chief Judicial Magistrate, Doongarpur, who in his turn committed him to the court of Sessions Judge, Doongarpur to take trial. The learned Sessions Judge framed charges under Sections 307, 324, 323 and 394, IPC, against the accused. The accused pleaded not guilty and demanded the trial. During the trial, the prosecution examined 11 witnesses and produced some documents along with stolen ornaments. In defence, the accused adduced no evidence. According to him, he owed some money to P.W.2 Chhaganlal. Since he could not pay the money, P W

2 Chhaganlal fabricated this case against him. On the conclusion, of the trial, the learned Sessions Judge found no case under Section 307, IPC. He, however, held that the charges under other sections were fully established against the accused. The accused was consequently convicted and sentenced as mentioned above. Aggrieved against his convictions and sentences, the accused has filed this appeal.

3. I have heard the learned Amicus Curiae and Mr. L.S. Udawat, learned Public Prosecutor for the State. I have also carefully gone through the case file of the court-below.

4. In assailing the conviction of the accused, the first contention raised by the learned Amicus Curiae is that there is no independent witness in this case. The entire prosecution case rests on the testimony of P.W.1 Smt. Basanti. The learned Sessions Judge was in error in placing implicit faith on her statement. It was argued that P.W.1 Smt. Basanti was not in a position to identify her assailant. In reply, it was argued by the learned Public Prosecutor that P.W.1 Smt. Basanti was an independent witness and there were no reasons to discredit her testimony. The accused was not known to her before the incident. As such, there was no possibility that she would falsely implicate him. It was argued that the accused had twice come to P.W.1 Smt. Basanti and she was, therefore, in a position to correctly identify her assailant. Moreover the accused was arrested on the same day of the occurrence. The accused was also seen running away from the place of occurrence by P.W.5 Smt. Devki.

5. I have given my thoughtful consideration to the contention raised before me. Admittedly, the accused was not known to P.W.1 Smt. Basanti before the occurrence. She, therefore, had no bias to falsely implicate him. She stated that when she was working in her field, the accused came to her and helped her in loading the grass heap on her head. She was, therefore, in a position to identify him. She further stated that when she was taking the grass heap, the accused came to her and felled her down. He thereafter struck a number of blows on her person with the scythe (darati). The medical evidence shows that she received as many as seven injuries. The infliction of the injuries must have taken sometime.

P.W.I Smt. Basanti did not become unconscious due to infliction of the injuries. She was, therefore, again in a position to identify the accused as her assailant. The learned Sessions Judge accepted his testimony as true and I see no cogent reasons to take a different view. PW.1 Smt. Basanti, is an independent witness. It is difficult to imagine that she will falsely implicate the accused for no rhyme and reason, PW,5 Smt. Devki stated that she saw the accused running away. PW. 1 Smt. Basanti, at the very time told her that it was the accused, who had inflicted the injuries to her. The testimony of PW.5 Smt. Devki affords a valuable corroboration to the prosecution story. No reason appears to discard the testimony of PW.5 Smt. Devki. There is, thus, no substance in the contention of the learned Amicus Curiae that PW.1 Smt. Basanti was not in a position to identify her assailant. It can be confidently said that it was the accused and the accused alone, who made an assault on PW.1 Smt. Basanti and caused injuries to her by his scythe(darati)

6. The next contention raised on behalf of the accused is that the whole story of recovery of the stolen ornament at his instance is false and fabricated. It was argued that the accused gave no information. The stolen articles were not recovered at his instance. This contention has no substance. The accused was arrested on 13.8.81. The arrest memo is Ex.P/10. While under police custody the accused gave information taken down in Ex.P/12 by the Investigating Officer Shri Sabir Ahmed (PW. 11). The Investigating Officer stated that the accused took him and motbirs to a field situated nearby the place of occurrence. He, there dug a place and took out the stolen silver ornament from beneath. The Investigating Officer was cross-examined and nothing would be elicited to discard what he testified. The testimony of a witness can not be disbelieved simply because he is a police employee, it, therefore, stands proved that the stolen articles were discovered in consequence of the information furnished by the accused, while he was in police custody. The stolen articles have been correctly identified by PW.1 Smt Basanti. She stated that she was wearing the stolen articles at the time of the incident and the accused had forcibly removed them from her feet. The accused has not laid any claim on the stolen ornament. The contention that the stolen ornament was not discovered in consequence of the information furnished by the accused or at his instance, has thus no substance and is repelled.

7. The last contention raised by the learned Amicus Curiae relates to the sentence. It was argued that he is a young man and the sentences awarded to him are heavy. Though, the sentence of 3 years' rigorous imprisonment in a robbery case in itself cannot be said to be excessive, in the instant case, looking to the young age of the accused, it appears to be somewhat harsh. The age of the accused in the arrest memo has been shown as 22 years. Looking to his young age, it would not be improper to reduce the sentences.

8. No other contention was raised before me. The accused has been rightly convicted for the various offences mentioned at the very outset.

9. In the result, the jail appeal of accused Devram is partly allowed. His convictions under Sections 394, 323 and 324, IPC are maintained, but the sentence of 3 years rigorous imprisonment awarded to him under Section 394, IPC is reduced to 2 years. The sentences awarded for the offences under Sections 323 and 324, IPC will remain un-altered. With this modification, the appeal of the accused Devram will stand dismissed. The accused is serving the sentences. He be informed of the result of the appeal.