

Thanwara Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-26-1990

Reported in : 1990(2)WLN150

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cri. Appeal No. 501 of 1979

Appellant : Thanwara

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

N.L. Tibrewal, J.

1. The appellant was convicted Under Section 459 IPC and sentenced to three years R I. and a fine of Rs. 50/- by Shri D.C. Hajela, learned Scissions Judge, Dungarpur, vide his judgment dated September 28,1979. Aggrieved against his conviction and sentences, the appellant has preferred this appeal.

2. The facts of the case are that a report was lodged at Police Station Dungarpur at 5.30 p.m. eon 17-5-1979. This report was made by Smt Durga P.W. 1. In the said report it was alleged by her that she was sleeping at the house of her 'Jethani' (wife of husbands elder brother), while she was sleeping, on a cot her 'Jeth' Soma

his wife Smt. Tulsi & Soma's son Gautam were also sleeping at the same place. It was further stated in the report that at 1.00 a.m., in the night of 16-5-1979, the appellant Thanwara came and inflicted a lathi blow on her face, on account of which one tooth was broken. It was also stated in the report that on her cry, Soma, Smt. Tulsi and Gautam woke up and the accused appellant ran away. In the report it was also admitted that there was an enmity between the appellant and her Jeth Soma.

3. It is not worthy that the aforesaid report was made after getting the injury report by the informant by privately getting examined from a doctor. It is further noteworthy that the report was made at 5.30 P.m. the next day though the incident has taken place the previous night.

4. However, the Police registered the case Under Sections 452 & 325, IPC. After usual investigation, police submitted charge sheet against the appellant and he was tried in the court of learned Sessions Judge, Dungarpur Under Section 459, IPC.

5. During the trial, the prosecution examined six witnesses. P.W. 1. Durga has given the same story in her examination-in-chief. In examination, she admitted that it was midnight. She also admitted that she, her 'Jethani' Smt. Tulsi and her Jeth Soma had taken soil from a field for preparing 'KELU'. She also admitted that her teeth had fallen on the ground and there was no blood on her cloth. She also stated that she was neither in the hospital nor she had gone to the doctor subsequently. P.W. 2 is Soma. He has tried to state that on hearing cry of P.W. 1 Durga Devi, he got up and he caught hold of the Lathi of the accused-appellant but he ran away leaving the Lathi there. He admitted that he was having a dispute with the appellant about taking soil. He also admitted that when the (sin) of Durga had taken place, his brother Khathu and Manna had gone to see her. P.W. 3, Smt. Tulsi is the wife of Soma and she also admitted about the quarrel with the accused-appellant. P.W. 4 is a formal witness. P.W. 5 Bhagwan has been declared hostile and P.W. 6 Jagganath is the Head Constable who was Incharge of Police Chouki, Abkari and who had investigated the case.

6. In defence Manna has been examined and he stated on oath that he is the nephew of Smt. Durga and the time of her betrothal he had gone to see her. He further testified on oath that at that time he found that one tooth of Smt. Durga had broken.

7. P.W. 2 is Heera. He has given the evidence about the enmity between the parties. The learned trial court, without making any critical analysis of the evidence, convicted the accused appellant as stated above. He observed that FIR was promptly lodged and that mst Durga had identified the appellant.

8. I have heard the learned Counsel for the appellant. Mr. Bishnoi has argued that the entire story about the incident is improbable and unnatural. According to him a false case has been foisted against the appellant on account of enmity and it was highly improbable that the accused appellant who was aged 55 years old at the time of the incident would have gone in the house of Soma for the purposes of beating Smt. Durga. He further argued that it was highly improbable that the accused appellant could have escaped from the place of incident even though all the family members, including Soma, had woken up, in spite of the fact that the distance between Soma and the appellant was hardly of 3-4 feet and Soma was a young man at the time of the incident. He also argued that neither the doctor has been seized by the police at the time of investigation. He further argued that the Investigating Officer did not find any blood at the place of the occurrence and the clothes of Smt. Durga were also not smeared with blood. According to him, if the teeth had been broken in this manner then sufficient blood must have come out from the mouth of Smt. Durga. He further argued that DW 1 Manna is a close relation of Smt. Durga and Soma and it has been admitted by Soma that Manna had gone to see Smt. Durga at the time of her betrothal ('Sagai') and this witness has stated on oath that the teeth of Smt. Durga were already broken at that time.

9. On the other hand, the learned Public Prosecutor has supported the judgment of the trial court.

10. I have given my thoughtful consideration. Some facts are not in dispute in the present case, namely, (1) that Soma and the appellant Thanwara were having enmity about taking soil from the field of the appellant; (2) neither the Doctor has

been examined nor the teeth has been seized or recovered by the police as the Investigating Officer has stated that he did not find the teeth,' (3) no blood was found at the place of the incident; (4) no cloth of Smt. Durga was said to have been smeared with blood; (5) the medical examination of Smt. Durga was got privately, before lodging the Report and the report came to be lodged at 5.30 P.M. though the incident is alleged to have taken place in the previous night.

11. Keeping in light the aforesaid facts, which are admitted or borne out from the record. I have considered the statements of the aforesaid witnesses. My view, the entire prosecution story and the manner in which the incident is said to have taken place appear to be highly improbable. It is not thinkable that the appellant should have assaulted Smt. Durga and he would have gone to the house to assault Smt. Durga, knowing well that Soma and other family members were also sleeping there and there was every possible chance of his being caught. It also appears to be improbable that the appellant could have succeeded to run away from the place of incident after Soma and other family members had got up and Soma had gone with a lathi. At the time of the incident, the appellant was said to be 55 years of age as given out in the statement Under Section 313 Cr. P.C., while, Soma was a young man aged 25 years. Had the incident taken place in the manner as stated by the prosecution witnesses, it is not believable that Soma could not have caught the appellant and allowed him to escape even though he was identified by him. The FIR has also been lodged after inordinate delay, for which no satisfactory explanation has come on the record. Further, the medical report was obtained by the information prior to the lodging of report, after getting her medically examined by the Doctor.

12. Further, DW 1 Manna who happened to be a close relation of Smt. Durga has stated on oath that the teeth of Smt. Durga were already broken and he has seen her broken teeth when he had gone to see her at the time of her betrothal ('Sagai').

13. It is note worthy that no independent witness has been examined by the prosecution. Looking to all the facts and circumstances narrated above. I am of the view that it is a fit case in which the accused appellant should be given benefit of

doubt.

14. Consequently I allow this appeal and set aside the conviction and sentences of the appellant Under Section 459 IPC, passed by the learned trial court. He is acquitted of the charge Under Section 459 IPC. He is on bail and need not surrender. His bail bonds are discharged.

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