

Darshan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-05-1980

Reported in : 1980WLN(UC)409

Judge : M.B. Sharma, J.

Appeal No. : S.B. Criminal Appeal No. 871 of 1975

Appellant : Darshan Singh

Respondent : State of Rajasthan

Judgement :

M.B. Sharma, J.

1. Accused Darshansingh has been convicted under Section 326 and 324 of the Indian Penal Code and sentenced to undergo three years' rigorous imprisonment and a fine of Rs. 100/-, in default of payment of fine to further suffer rigorous imprisonment for one month under the first count and to one year's rigorous imprisonment and to pay a fine of Rs. 100/- under Section 324, Indian Penal Code and in default to further suffer one month's rigorous imprisonment under the second count.

2 In brief, the case of the prosecution is that September 29, 1974, at the hotel of one Hasmatrai at Ganganagar, Ramkumar PW 1, Shivlehari PW 2 Jangsharkhan

PW 3 and Ramsingh PW 4 were taking their meals in the night at about 9.00 p.m. The accused appellant was also having his meals in the same hotel and was also consuming alcohol. The accused appellant enquired of Shivlehari PW 2 as to where Raghuvir, a driver of the roadways has gone and Shivlehari PW 2 replied that Raghuvir had gone to Jaipur. Shivlehari is also an employee in the Roadways and at the relevant time, was posted as Ganganagar. After having their meals, all the above named four persons left the hotel of Hasmatri and they proceeded towards Adarsh Talkies, Ganganagar. When they were near the garage of one Sadhusingh, which was allegedly open at the time, Ram Singh PW 4 and Jangsharkhan PW 3, in order to go to (sic) Purani Abadi, went towards the wooden bridge and Shivlehari PW 2 and Ramkumar PW 1 proceeded ahead. They had hardly travelled a few paces, it is alleged that the accused, appellant came from behind on a cycle with a dagger (Chhura) in his hand. He obstructed the path of Ram Kumar and Shivlehari and it is alleged that he assaulted Shivlehari and Ram Kumar with his dagger as a result of which, both of them received injuries. They raised an alarm. Jangsharkhan PW 3 and Ram Singh PW 4 had hardly gone a few yards away and returned to the scene of occurrence. It is alleged that the accused took to heels. The injured persons Ramkumar and Shivlehari were taken to the hospital and Ramsingh PW 4 lodged a report. Ex. P12 with the police station Kotwali Ganganagar at about 11.15 p.m., that is, hardly without any delay.

3. The accused appellant was arrested and on his information under Section 27 of the Evidence Act and at his instance a dagger was recovered and sealed. It was sent to the chemical examiner who on examination, found it to be stained with human blood. The clothes of the injured were also seized and they were also sent to the chemical examiner for examination. After investigation, a charge sheet was filed and the accused was tried under Section 307 of the Indian Penal Code and after trial, he was convicted and sentenced as aforesaid. It may be stated here that the plea of the accused in his statement under Section 313, Cr. P.C. was of bare denial. The accused also denied the recovery of the dagger. The accused examined DW 1 Khoobchand in defence.

4. It is contended by the learned advocate for the accused appellant that out of the two injured persons Ramkumar and Shivlehari, Ramkumar received grievous

injuries by sharp weapon but as he has not supported the prosecution, the liability cannot be fastened on the accused. He farther submits that there was darkness and there was no source of light and, therefore, the possibility of a mistaken identify of the assailant of Ramkumar and Shivlehari cannot be excluded. I shall presently show that none of these arguments of the learned Counsel for the appellant has any force.

5. It is not disputed that the occurrence took place and both Ram Kumar and Shivlehari received injures by sharp weapon The only dispute is with regard to the identity of the accused appellant. The case of the prosecution is that the assailant was none else thin the, accused appellant where as she case of the defence is that the assailant was somebody else. No doubt, Ramkumar PW I has not supported the prosecution so far as the indentity of toe accused appellant is concerned though he has supported the prosecution so far as the fact of his and Shivlehari having received injuries is concerned Bit merely because the inured does not sapport the prosecution for any reason, may be that he might have arrived at a compromise with the appellant, if there is other evidence on record which satisfactorily establishes the guirt of the accused, the accused can well beheld responsible for having caused Injuries to she injured who himself has not supported the prosecution It will depend on the facts of each case as to whether in the absence of the statement of the injured, the case of the prosecution, as far as the injuries to him are concerned, can be (sic)reled upon or not. Under the Evidence Act a fact is said to be proved if after considering the matters before it, the court either believes it to exist or considers its ex stence so probable that a prudent men thought, under the circumstances o a particular case to act upon the supposition that it exists. In the instant case, from the statement of Shivlehari PW 2, Jangsharkhan PW 3 and from the injury report, it is satis factorily established that is was the accused and accused alone who is the assailant of both Ramkumar and Shivlehari.

6. It may be stated here that the report of the incident was lodged hardly within an hour of the occurrence in which the accused was named as the assailant of both Ramkumar aid Shivlehari. It has come in the evidence of Jangsharkhan PWJ that there was sufficient source of light as the street light was there in which the

accused was identified. Though Jangsharkhan PW 3 that there was sufficient source of light as the street light was there in which the accused was identified. Trough Jangsharkhan PW 3 has not supported the prosecution completely, but he has clearly stated that when he reached the spot on hearing the alarm of Ramkumar and Shivlehari he saw that both were injured and there were injuries on their persons. The accused appellant was standing nearby with a dagger in his hand. Therefore the statement of Shivlehari is corroborated by the statement of Jangsharkhan PW 3 to the extent that the accused appellant was at the scene of occurrence with a dagger in his hand and there were injuries on the person of Ramkumar and Shivlehari. Shivlehari PW 2 is the injured himself and as such his evidence can hardly be doubted on the scene of occurrence. He received as many two injuries by sharp weapon, though simple in nature. He has stated that it was the accused alone who was armed with a dagger, came there, obstructed them and gave injuries to Ramkumar as well as to him. There is no enmity between the accused and Shivlehari and there appears to be no reason as to why his evidence. So far as the identity of the accused appellant and his participation in the crime is concerned, should not be relied upon. Therefore in the facts of this case, it can safely be concluded that the conclusions of the learned Sessions Judge Ganganagar, that it was the accused who caused injuries to Ramkumar PW 1 and Shivlehari PW 2 with a sharp weapon, are correct and merely because Ramkumar has not supported the prosecution so far as the identity of the accused is concerned, the case of the prosecution cannot be rendered doubtful.

7. It is not disputed after the statement of Dr S. S. Bhargava PW 4 that out of the five injuries of Ramkumar, all by sharp weapon fracture of the terminal phalanx of left right finger was grievous. Dr Bhargava himself took the x-ray of Ramkumar and has stated that he found the injury to be grievous. So also, two injuries of Shivlehari, both by sharp weapon, were simple in nature. No doubt, the injured persons Ramkumar and Shivlehari had consumed alcohol, as is apparent from the medical examination but Dr Bhargava has stated that they were not under intoxication. But on that ground, it cannot be said that they were not able to identify the accused appellant and it has not been stated by any of them that they were under intoxication and as such could not identify the accused appellant.

8. The trial court has convicted the accused Under Section 326 for injuries to Ramkumar and under Section 324 for injuries to Shivlehari. His conviction Under Section 324 cannot be sustained and is set aside because only a single charge Under Section 307 IPC was framed.

The result of the above disossion is that there is no force in this appeal so far as the conviction of the accused appellant under Section 326 IPC is concerned. Looking to the fact that the occurrences took place in the year 1974, a sentence of two years' rigorous imprisonment and a fine of Rs. 100/-in default of payment of which, one month's rigorous imprisonment will meet the ends of justice.

10. While maintaining; the conviction of the accused appellant, the sentence awarded to him is modified an stated earlier. The accused is on bail and he shall surrender to undergo the sentence awarded to him or any part remaining thereof. In case of failure of the accused to do no, the trial cours shall take steps to see that the accused undergoes the sentence awarded to him or remaining part thereof