

Bherun Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-26-1975

Reported in : 1975WLN(UC)318

Judge : M.L. Shrimal, J.

Appeal No. : S. B. Criminal Revision No. 84 of 197(sic)

Appellant : Bherun

Respondent : State of Rajasthan

Judgement :

M.L. Shrimal, J.

1. Accused Bherun, son of Moti Jat was convicted by the learned Munsiff Magistrate, First Class, Gangapur under Section 324 IPC for causing injuries by an axe to Mst. Jamni & was sentenced to 2 months' rigorous imprisonment and fine of Rs. 300/-, in default of the payment of which to undergo imprisonment for further period of one month. It was also ordered that out of the fine, if realised Rs. 100/- will be paid to Mst. Jamni as compensation The convicted accused preferred an appeal to the Court of Sessions Judge, Bhilwara who by his judgment dated January 22, 1972 dismissed the same. Hence this revision.

2 The prosecution story in a nut shell is that PW. 1 Smt. Jamni, widow of Bakhtawar Jat had taken PW. 4 Gopi in adoption and as such the accused bore an ill will towards her. On October 25, 1970 at 7 p.m Mst. Jamni came from her fields to her house Accused Bherun intercepted her at the outer door of her 'Gawadi' and inflicted axe blows causing three injuries on her person. She raised a cry for help. PW 2 Cahoga, PW 3 Dalu and PW. 4 Gopi came to her rescue and saved her from further beating. A first information report of this occurrence was given at the Police Station Gangapur on 26-10-1970 at 9 p.m. The Police Station is situated at a distance of 8 miles from the scene of occurrence. The Police after investigation submitted a challan against the accused in the Court of Munsif-Magistrate, Gangapur. The accused pleaded not guilty to the charge. In support of their case the prosecution examined six witnesses, out of whom four witnesses were examined as eye witnesses. The learned Magistrate found the accused guilty of the charge punishable under Section 324 IPC and sentenced him as already mentioned above. The appeal filed by the accused was also dismissed.

3. Learned Counsel Shri M.R. Bhansali appearing on behalf of the accused has challenged the conviction of the accused on the ground that all he prosecution witnesses are interested witnesses. That the evidence adduced by the prosecution is not reliable and suffers from large number of infirmities. The learned Public Prosecutor has supported the decisions of both the courts. Toe learned Counsel for the accused has urged that there is discrepancy between the medical evidence and the statements of the eye-witnesses. PW. 5 Dr. Dev Narayan examined the injuries of PW 1 Mat. Jamni on October 26, 1970. He noticed three injuries on the lateral side of the head above the left ear. This statement of the doctor stands corroborated by Ex. P. 3, injury report, where as the injured and the eye-witnesses have stated that she sustained the injuries on her face above the right ear. The learned Counsel further urged that the first information report was lodged after 24 hours of the occurrence and this time was utilised in settling the prosecution story. All the eye-witnesses are got up witnesses. None of them was present at the scene of occurrence. I do not find any force in these contentions. There is over-whelming evidence on the record that the accused inflicted the injuries with an axe to Mst. Jamni on the region of the tight ear. The dimensions of the injuries and the place where the injuries were inflicted as mentioned by the eye-witnesses tally

with the medical report. The only difference is regarding the side of the region on which the injuries were inflicted. It appears that PW. 2 Dr. Dev Narayan Inadvertently made a mistake in mentioning the side of the region where the injuries were sustained by PW 1 Mst. Jamni, the earliest version of the prosecution is given in the first information report. It was given by the injured herself. In unequivocal words she stated in the first information report that the injuries were sustained by her at the hands of the accused in the region of her right ear. The evidence of the eye-witnesses cannot be brushed aside simply on the ground of unsatisfactory testimony of the doctor. The two courts below have considered the infirmities in the statements of the eye witnesses pointed out by the learned Counsel for the petitioner and after giving due weight they have held the eye witnesses and the injured Mst. Jamni reliable and trustworthy. The evidence of the above mentioned four witnesses including the injured has been believed and relied upon concurrently by the two courts below against the petitioner. In spite of lengthy cross-examination nothing could be brought out on the basis of which the veracity of the statements of the prosecution witnesses can be doubted. The learned Counsel for the petitioner has drawn my attention towards certain contradictions but they are of no avail. The substratum of their evidence has throughout been consistent. The learned Counsel has urged that due to enmity a false case has been foisted against the accused petitioner. Enmity is a double edged weapon which cuts both ways and the prosecution can very well rely on this circumstance in support of their case, and urged that it serves as a motive for commission of the crime by the accused. I have read the statements of the eye witnesses and I find that they have unfolded the entire prosecution story in detail. I do not have any reason to take a different view of the evidence from that taken by the two courts below. The powers of this Court under Section 439 Cr.P.C. are limited. Reference may be made to *Amar Ghaud Agarwala v. Shanti Bose* : 1973 CriLJ 577 .

4. Lastly, the learned Counsel urged that the accused has remained in jail for a considerable period. The occurrence took place in the year 1970 and the petitioner had been under agony for a long and protracted trial. He is a cultivator by profession and the ends of justice would be amply served if the accused is sentenced to the period of sentence already undergone. No useful purpose would be served in sending him back to jail for a few days, five years after the incident. It

is true that the lapse of a long period between the date of the commencement of the trial and the hearing of the appeal by the High Court is a factor which in the context of a particular case, may, in conjunction with the other circumstances, justify the reduction of sentence. Taking the conspectus of the various circumstances of the case some of which have been indicated above, I am satisfied that the ends of justice would be met by reducing the sentence.

5. The result is that the revision is partly accepted, the conviction of the accused under Section 324 I.P.C. is maintained, the substantive sentence of 2 months' imprisonment is reduced to the period already undergone, but the sentence of fine is maintained; in default of payment of which the accused will undergo simple imprisonment for a period of one month. Out of the amount of fine, if realised, an amount of Rs. 100/- would be paid to the injured Mst. Jamdi.

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