

Hari Ram Vs. the State

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Court : Rajasthan

Decided On : Sep-15-1999

Reported in : 2000CriLJ1027; 1998(2)WLC539; 2000WLC(Raj)UC141

Judge : S.C. Mital, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 323, 326, 341, 365, 448 and 504; Code of Criminal Procedure (CrPC) - Sections 156(3), 161 and 313

Appeal No. : Criminal Revn. No. 549 of 1999

Appellant : Hari Ram

Respondent : The State

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : M.K. Garg, Adv.

Judgement :

S.C. Mital, J.

1. The petitioner Hari Ram has been convicted for having committed offences Under Section 341, 323, 326, IPC and sentenced to Rs. 300/- fine, in default 7 days simple imprisonment, three months rigorous imprisonment and Rs. 500/- fine,

in default 15 days simple imprisonment and two years rigorous imprisonment and Rs. 1000/- fine in default three months simple imprisonment respectively vide judgment dated 31-3-99 passed by learned Judicial Magistrate, Sadulshahar in Crl. Case No. 398/97. It may be mentioned here that co-accused Arjun Ram and Hanuman Ram were convicted Under Section 341 and 323, IPC and sentence were passed against them also. The appeal preferred by the petitioner has been dismissed by learned Addl. Sessions Judge, No. 1 Sri Ganganagar by judgment dated 4-8-99 confirming the judgment of conviction and sentence passed by the trial Court as stated above. The conviction of Arjun Ram and Hanuman Ram were affirmed but they were released Under Section 4 of the [Probation of Offenders Act, 1958](#). They have not come up in revision. Now, this revision petition has been preferred by Hari Ram challenging the above referred conviction of the sentence.

2. The prosecution case, as stated in the statement of complainant Subhash recorded in Govt. Hospital, Sriganganagar on 25-8-97 at 4.00 p.m. is that there was long standing dispute between him and the neighbours Arjun Ram, Hari Ram and Hanuman Ram. Therefore they kept inimical terms with him. The incident took place on 24-8-97 at about 8.00 p.m., when he was returning to his house after giving water to his cows. When he approached in front of the house of one Prithvi at a distance of 450 steps from his house, all three persons Arjun Ram, Hari Ram and Hanuman Ram met him on the way. Hari Ram was wielding gandasi and Arjun Ram, Hanuman Ram were holding lathis. Hari Ram gave a gandasi blow on his left shoulder near the neck. His hue and cry attracted his father and brother's attendance at the place of occurrence. Hanuman Ram and Arujn Ram gave lathi blows to his brother Krishan. Prithvi and Jetha Ram came to their rescue, on this 'parcha bayan' offences were registered under Sections 341, 323 and 326 read with 34, IPC and after usual investigation charge-sheet was submitted against Hari Ram, Arjun Ram and Hanuman Ram and the trial took place.

3. The prosecution examined injured complainant Subhash PW. 1, injured Krishan Lal brother of Subhash PW. 2, Daya Ram PW. 3 and Dr. Shashi Kumar Sharma PW. 4 who proved the injury report of Krishan Lal Ex. P3, Dr. 13. M.' Sharma who proved the injuries on the person of Subhash giving the opinion that the injury on the shoulder near the neck was of grievous nature as it sustained cut of C5 and

C6, Dr. Purshottam Vyas PW. 8 Senior Specialist, Orthopaedics department, Govt. Hospital, Sriganganagar who opined that the injury on the shoulder involved Brochial Plexus of celvical root of 5 and 6. It was a very serious injury. He proved his opinion Ex. P10. He opined that such injury is likely to cause permanent physical deficiency and incapacity. The other two witnesses are Mool Chand, Motbir to the documents prepared during investigation and Prithvi PW. 7, an eye-witness who did not support the prosecution and therefore he was declared hostile and cross-examined by confronting his statements Ex. P9 recorded Under Section 161, Cr. P.C. The appelland and other co-accused persons denied the allegations in the statement Under Section 313, Cr. P.C. saying that they have been falsely implicated. However, no specific defence was taken by them. But Hari Ram petitioner got himself examined as defence witneSections The learned trial Court and the learned appellate Court have given concurrent finding after discussing the prosecution evidence that offence Under Sections, 341, 323, 326 stood proved beyond reasonable doubt against the petitioner.

4. The learned counsel for the petitioner has contended that Hari Ram went to the police station to lodge the report of the incident happened accordingly to his version, but the report was not recorded therefore he filed a complaint in the Court which was sent for investigation Under Section 156(3), Cr. P.C. The police submitted the final report but the Court after inquiry took cognizance against the complainant on 2-4-99. The defence case was that Subhash, Krishan, Ram Kumar and Om Prakash forcibly abducted Hanuman Ram for not giving Rs. 200 and gave beating to him. On hearing cries of Hanuman Ram, the petitioner and other persons reached there. The complainant party caused injuries to them. The copies of FIR, order of taking cognizance by the learned Judicial Magistrate, Sudulshahar on 2-4-99 and other documents were submitted before the appellate Court but the learned appellate Court did not consider the documents observing that these could not be considered in appeal. It is submitted that the view taken by the learned appellate Court is incorrect and illegal. In order to do substantial justice, the learned appellate Court could have considered the documents and the case could have been remanded to the Judicial Magistrate for retrial. It is further contended that the witnesses are not reliable because the independent witness Prithvi has not supported the prosecution version. The learned Courts below have not also

properly considered the fact of delay in FIR and the medical evidence. The injuries sustained by Subhash is not proved of grievous nature.

5. The learned Public Prosecutor has vehemently argued that the statements of Subhash, Krishan and Daya Ram are wholly reliable which are duly supported by medical evidence. There is crystal clear opinion by doctors that the injury sustained by Subhash on the shoulder near the neck was grievous because it resulted in the cut of root of Brochial Plexus cervical Nos. 5 and 6. The injured Subhash was admitted in the hospital and he was referred to Senior Specialist, Orthopaedics who clearly opined the nature of the injury being grievous. He further contended that the judgment against the petitioner was pronounced on 31-3-99. On this date, no cross case was pending. The cognizance was taken on 2-4-99. The petitioner did not produce documents including the injury report if any and also did not lead evidence in defence. He has not spelt out any specific defence or so called version of the incident in his statement Under Section 313, Cr. P.C. which clearly demonstrate that the defence version is an afterthought. The police submitted the final report after investigation on the complaint received Under Section 156(3), Cr. P.C. The learned appellate Court rightly did not consider the documents produced in the appeal by the petitioner. The learned Public Prosecutor therefore contended that the offences have been proved against the petitioner beyond reasonable doubt. There is no error on fact or law in the concurrent finding of the two Courts below. Therefore the judgment and the sentence deserves to be maintained.

6. I have given my thoughtful consideration to the rival pleas advanced by both the parties. I have also carefully gone through the oral and documentary evidence on the record. P.W. 1 Subhash has deposed that when he was returning to his house at about 7-30 p.m., Hari Ram, Arjun Ram and Hariuman Ram who were standing at a distance of 100 foot from his house attacked him by gandasi and lathis. Hari Ram gave a gandasi blow on the left side of the neck. On his raising cries, his father and brother Krishan came there. The neighbours Prithvi, Brijlal, Ram Kumar reached at the place of occurrence. The accused persons also inflicted injuries to his brother Krishan by lathis. He has proved the parcha-bayan taken by police Ex. P1. Subhash was supported by Krishan Lal PW. 2 and his father Daya Ram PW.

3.1 have scrutinised their testimony on the basis of the cross-examination made to the witnesses and I find that they have remained unshaken. I do not find any infirmity in the statement to render their testimony doubtful or unreliable. Their statements cannot be discarded merely because Krishan Lal is the brother and Daya Ram is the father of the injured Subhash. In this incident, Krishan Lal PW. 2 has also received the injuries. The presence of Krishan Lal and Daya Ram at the time of the occurrence is established. Of course, Prithvi, the neighbour has not supported the prosecution, but he is suppressing the true facts which is evident by the fact of confronting him by the statement Under Section 161, Cr. P.C. He denied to have given the statement but his explanation is not acceptable. Therefore, the testimony of Subhash, Krishan Lal and Daya Ram remains intact and it is not adversely effected in the absence of support by Prithvi PW. 8. Moreover, the statements of Krishan and Subhash are supported by the medical evidence. The injury reports Ex. P8, Ex. P9, Ex. P10 and Ex. P3 which have been proved by Dr. Shashi Kumar Sharma PW. 4, Dr. B. M. Sharma PW. 6 and Dr. Purshottam Vyas PW. 8. Ex. P3 indicates that Krishan PW. 2 suffered two lacerated wound on the left shoulder near the neck and left tempo parital region, one contusion on dorsum of right foot and two abrasions also. All these injuries were simple in nature caused by blunt weapon. Subhash suffered incised wound on left side of neck by sharp edged weapon, X-Ray of the neck was advised and he was referred to the Orthopaedician who determined the nature of the injury. By Ex. P9, medical jurist has given opinion categorically that the said injury No. 1 is grievous in nature. Dr. Vyas PW. 8 a Senior Specialist, Orthopaedics department found cut of the root of cervical 5 and 6 of brochial plexus. In view of the above evidence regarding nature of the injury, I do not find any cogent reason to differ the opinion of the medical jurist. Therefore, I am unable to agree with the contention of the learned counsel for the petitioner that the injuries sustained by Subhash could not be classified as grievous. In view of the above discussion, I hold that the prosecution has proved beyond reasonable doubt that the petitioner gave a gandas blow on the neck of Subhash and caused grievous injury to him by sharp edged weapon.

7. Hari Ram DW/1, the petitioner has deposed that Subhash, Krishan, Om Prakash and Ram Kumar had forcibly taken away. When Hanuman Ram, Banwari,

Arjun Ram and he himself tried to rescue him, the complainant party inflicted injuries to them. He went to police station, but his report was not taken. Therefore, he filed a complaint in the Court. It was suggested to him in the cross-examination that he filed the complaint as a counter move only but he has denied the suggestion. The defence has not produced any other evidence. Neither Hanuman Ram has been examined nor any injury report has been filed. The complaint was also not filed in the trial Court. Subhash, Krishan, Daya Ram have emphatically denied in the cross-examination about defence version. The learned trial Court as well as the appellate Court have considered the defence evidence and after considering the evidence on record in detail, both the Courts have come to the concurrent finding regarding the guilt of the petitioner which do not require any interference.

8. It is true that in the appeal the petitioner filed order dated 2-4-99 for taking cognizance against Subhash, Krishan Lal, Ram Kumar and Om Prakash for the offences Under Section 448, 365, 323 and 504, IPC, the complaint by Hari Ram sent Under Section 156(3), Cr. P.C. and one prescription slip of Gupta Nursing Home, Heart and Chest Diseases Section which is not a injury report at all. The learned trial Court observed that the documents should have been produced before the trial Court so that the prosecution could have filed proper reply and evidence and no conclusion can be drawn from the documents by itself whereas the testimony of the Hari Ram DW/1 stands unreliable. It has not been explained on behalf of the petitioner that why the documents except order dated 2-4-99 which came in existence lateron were not filed before the trial Court. The complaint filed by the petitioner is dated 29-8-97. The judgment was pronounced by the trial Court on 31-3-99. The injury reports if any could also have been filed before the trial Court. In the above facts and circumstances of the case, if the learned trial Court did not consider the documents and also did not think it proper to order for retrial, this view also do not require any interference. In view of the foregoing discussion, I come to the conclusion that prosecution has succeeded in proving the case beyond reasonable doubt against the petitioner Under Section 341, 323 & 326, IPC which deserves to be maintained.

9. It was next argued about the severity of the sentence imposed on the petitioner that in the overall facts and circumstances of the case, the sentence of imprisonment may be reduced to the period already undergone which is about two months and eighteen days. The learned counsel for the appellant relied upon 1989 Raj Cri C, 219 (Khatanmal v. State of Rajasthan) in which the period in jail was treated sufficient and fine was enhanced to meet the ends of justice in view of the fact that the incident took place before 10 years. The appellant was found guilty under Section 326, IPC for causing injury, by knife on the abdomen. In the next case 1999 (1) Raj Cri C 504 (Mota Ram v. State of Rajasthan) also sentence was reduced to the period already undergone having regard to the fact that the case was 10 years old. In another case reported in 1986 Raj Cri C 453, (Thana Singh v. State) lenient view was taken by reducing the substantive sentence to the period of custody and fine was enhanced to award compensation of Rs. 1150/- to the injured Gurbachan Singh. In the above matter, there were cross cases and one of the accused was given the benefit of Probation.

10. On the other hand, the learned Public Prosecutor opposed the alteration of the sentence on the ground that the instant case is not an old one and grievous injury has been inflicted on the shoulder near the neck. He relied upon the decision dated 16-3-1999 in S.B. Cri. Appeal No. 605/81 Chimna Ram v. State where the sentence of imprisonment of two years was maintained even when the incident had taken place on 18-5-79. In another decision dated 28-4-99 in S.B. Cri. Appeal No. 496/81 Juspender Singh v. State, the sentence of imprisonment was reduced from three years to one year and compensation of Rs. 2,500/- was granted to each of the injured Kamal Kishore and Heeralal. Learned Public Prosecutor also cited 1998 Cri LR (SC) 202 : 1998 Cri LJ 93 (Bhagwan Singh v. State of Bihar) wherein the Hon'ble Supreme Court maintained the sentence passed Under Section 326 read with 34, IPC. The conviction of the accused was altered from Section 302 read with 34, IPC to 326 read with 34, IPC. I have given my careful consideration to the arguments on the point of sentence. Each case has its own peculiar facts and circumstances which are relevant for consideration to determine the quantum of sentence. It is true that the incident took place on 24 8-97 and the injury has been suffered on the shoulder near the neck. However, it is also a relevant fact that on the complaint of the petitioner, now the cross case is

pending against Subhash, Krishan, Ram Kumar and Om Prakash by taking cognizance on 2-4-99 after the decision of the case against the petitioner by the trial Court on 31-3-99. Other co-accused persons Arjun Ram and Hanuman Ram convicted Under Section 323 and 341, IPC have been released Under Section 4 at the [Probation of Offenders Act, 1958](#) by the appellate Court with an order to pay a compensation of Rs. 1000/- by each to the injured Krishan. The petitioner has remained in jail for about two months and 18 days. In view of the overall facts and circumstances of the case, I am of the view that the sentence should be reduced to the period already undergone and the fine must be enhanced for awarding adequate compensation to the injured Subhash.

11. In the result, the petition is partly allowed. The impugned judgment is maintained to the extent of the conviction of the petitioner Under Section 326, 323 & 341, IPC. However the sentence of imprisonment on both the counts Under Section 326 & 323, IPC is reduced to the period already undergone. The sentence of fine and in default the imprisonment imposed for the offences Under Section 323 and 341, IPC is hereby maintained The fine of Rs. 1000/- for the offence Under Section 326, IPC is enhanced to Rs. 12,000/- and in default the petitioner shall undergo simple imprisonment for one year. A sum of Rs. 12,500/- shall be paid as compensation to the injured Subhash out of the amount of fine deposited by the petitioner.