

Pradeep Kumar Alias Pinku Vs. State and ors.

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Court : Rajasthan

Decided On : Sep-05-2008

Reported in : 2009CriLJ302

Judge : Mohammad Rafiq, J.

Appellant : Pradeep Kumar Alias Pinku

Respondent : State and ors.

Advocate for Pet/Ap. : Shri. Vijayant Nirwan, Shri. Vijayant Nirwam

Disposition : Appeal dismissed

Judgement :

Mohammad Rafiq, J.

1. This appeal is directed against the judgment of the learned Additional Sessions Judge No. 2, Kota whereby the accused appellant was convicted for offence under Section 307 of the IPC and was sentenced to undergo rigorous imprisonment of eight years with a fine of Rs. 50/- and in default of payment of fine to further undergo rigorous imprisonment of one month.

2. Factual matrix of the case are that one Smt. Ayodhya Bai submitted a written report on 1-12-1982 to the Police Station Kaithooni Police inter alia alleging therein that at about 7.30 PM on that date she along with her sister's daughter Vimla and

son Kishan has gone to see the Dusshera Mela. When they reached near Shripura Bus Stand, Pradeep @ Pinku, the present petitioner, Chotya, Afzal and Assu approached them from behind. Chotya, Afzal and Assu caught hold of Kishan and accused appellant Pradeep caused to him injuries by knife which he had carried in his pocket. Kishan received three injuries on his person. It was alleged that Ismile and two other persons who were there, intervened and saved him. There was previous enmity between the parties because Kishan's sister was married to Pradeep's elder brother who had since left her. On receipt of the written complaint, a regular first information report was chalked out for offences under Sections 307, 34 and 304 IPC. Police upon investigation filed challan against three accused namely Pradeep Kumar, the present appellant, Chotya and Assu. Their prosecution ultimately led to conviction of only one of them, the other accused being acquitted. It is that conviction which is under challenge in the present appeal.

3. Shri Vijayant Nirwan, learned Counsel for the appellant has argued that the trial Court erred in law in convicting the accused appellant solely on the testimony of PW-4 Smt. Vimla Devi, PW-7 Smt. Ayodhya Bai and PW-8 Kishan. Their statement however do not inspire confidence and therefore they cannot be believed. The prosecution has changed its stand from the first information report when the statement of its witnesses were recorded in the Court. PW-4 Smt. Vimla Devi stated in the cross examination that when she saw accused persons running and found her brother Kishan lying unconscious on the ground and it was then that she raised hue and cry. This clearly implies that she was not the eye witness of the incident. Contradictions made in the statement further indicates that she was not at all present at the time of occurrence. Smt. Ayodhya Bai, was also not present because she has also in the same fashion made number of contradictions. The injured PW-8 Kishan has also not remained consistent in his statement and has made number of improvements from initially disclosed prosecution story. The learned trial Court has erred in law in drawing corroboration from the statement of PW-6 Babbu, who is not an eye witness.

Shri Vijayant Agarwal, learned Counsel further argued that even if what is stated by all these witnesses is accepted, the charge against the accused appellant

cannot be proved beyond Section 308, IPC. Learned Counsel in this connection referred to the statement of PW-13 Dr. Y. K. Sharma, the Medical Jurist and argued that this witness has clearly stated that he reserved his opinion about three injuries, two of which were stab wound and one was incised wound, until after operation and X-ray. X-ray indicated that there was no bone injury in the chest, skull and there was no air pocket even under the diaphragm. This witness though proved the injury report Exhibit P-12 but has stated that he merely opined the injuries to be dangerous to life. On this part of the statement, the learned Counsel sought to develop two arguments; firstly that the PW-13 Dr. Y. K. Sharma has stated that he opined about the injuries being dangerous to life on the basis of operation note and bed head ticket but he has admitted in the cross examination that the bed head ticket was not exhibited on record. Secondly, the opinion is only to the effect that injuries Nos. 1 and 2 were dangerous to life, but there was no categorical opinion that these injuries were sufficient in the ordinary course of nature to have caused death of the injured Kishan. Learned Counsel therefore submitted that in the circumstances, the maximum that should be taken as proved against the accused appellant would be offence under Section 308 and not 307. Reliance in this connection is placed on the judgments of this Court in *Sua Lal v. The State of Rajasthan* 2008 (2) WLC 614, *Munna v. State of Rajasthan* 1984 Cr. L.R. (Raj.) 529 and Division Bench judgment of this Court in *Jodh Singh v. State of Rajasthan* 1984 Cr. L. R. (Raj.) 730.

4. Shri Vijayant Nirwam, learned Counsel for the appellant has further argued that parties are closely related and as per own admission of the prosecution, the sister of the accused appellant is married to elder brother of the injured Kishan. During the pendency of the present appeal, the parties have arrived at a compromise and a compromise deed duly signed by the injured Kishan Lal was produced before this Court which was attested by Dy. Registrar (Judl.) of this Court in the presence of the advocate of the appellant Shri Sanjay Saxena who identified the injured Kishan. Learned Counsel in support of his contentions relied on the law laid down by this Court in Supreme Court in *Pappu and Ors. v. State of Punjab* : JT1999(10)SC353 and *State of U. P. v. Fazilur Rehman* : JT2002(10)SC137 . It is argued that the appellant has already remained in custody for four months and seven days and the incident had taken place in the year 1982 and more than 20

years have gone by since then. Even as per the statement of PW-4 Smt. Vimla Devi, it appears that before the quarrel, some heated words were exchanged between the parties and it was at the spur of the moment that the injuries in question were caused. It was therefore prayed that taking in view these factors, this Court may consider while altering the conviction from Section 307 into one under Section 308 also substituting the sentence by the period already undergone by the appellant.

5. Shri D. D. Sharma, learned Public Prosecutor opposed the appeal and argued that the offence under Section 307 IPC is proved against the accused appellant beyond reasonable doubt by evidence of eye witness PW4 Vimla Devi, PW-7 Ayodhya Bai and PW-8 Kishan. Their evidence has received corroboration from the statement of PW-6 Babbu as also by medical evidence. Reference in this connection was made to the statement of Dr. Y. K. Sharma, PW-13. Learned Public Prosecutor argued that injury report Ex. 12, X-ray, report Ex. 13 and operation note Ex. P14 have clearly proved the offence under Section 307 against accused appellant. Reference in particular was made to the opinion recorded by Dr. Y.K. Sharma in the operation note Ex. 14. He has proved in his statement that the injury Nos. 1 and 2 were dangerous to life. Mere non production of the bed head ticket could not be fatal to the prosecution case because the witness has by his oral statement proved what was recorded on the operation note that the injury Nos. 1 and 2 were dangerous to life. It was therefore prayed that the appeal be dismissed and conviction should be maintained.

6. I have given my thoughtful consideration to the arguments aforesaid and perused the material on record.

7. Consideration of the statement of eye witnesses PW-4, Vimla Devi, PW-7 Ayodhya Bai and the injured PW-8 Kishan leaves no manner of doubt that three injuries on the person of Kishan were caused by none other than the accused appellant Pradeep herein. Injury No. 1 was a stab wound in the dimension of 1/2 inch x 1/4 inch x cavity deep on left and injury No. 2 was also stab wound in the size of 1 inch x 4 inch x cavity deep on 1/2 inch below left nipple 5th inter costal space. Third injury was also an incise wound 1/2 inch x 1/4 x 1/4 on middle and

medial aspect of right upper arm.

8. It would be thus evident that while injuries Nos. 1 & 2 were stab wound, the third injury was incise wound. The question that arises for determination by this Court is whether on the basis of evidence that has been adduced by the prosecution, conviction of the accused appellant for offence under Section 307 can be justified. A Division Bench of this Court in Jodh Singh, supra had the occasion to consider a somewhat similar issue where the Doctor in his opinion with regard to cause of death merely stated that the death was caused as a result of multiple fractures caused by firearm. The Division Bench observed that the Doctor did not state a single word that the injury in question was sufficient in the ordinary course of nature to cause death. The conviction under Section 302, IPC was therefore set aside and the accused was instead convicted only for offence under Section 326, IPC. In Munna v. State, the coordinate bench of this Court dealt with a somewhat similar case from Kota wherein the very same medical jurist Dr. Y. K. Sharma, simply stated that the injury sustained by the injured was sufficient to cause death and did not state that the said injury was sufficient in the ordinary course of nature to cause death. The conviction of accused under Section 307, IPC was not held to be not justified and instead, he was convicted for offence under Section 308, IPC. A coordinate bench in a recently decided case of Sua Lal, supra also on analysis of the opinion given by the medical jurist, where he did not opine that the injury was sufficient in the ordinary course of nature to cause death, altered the conviction from Section 307 to Section 324. In that case, the Doctor opined that the injury is grievous in nature but in the statement before the Court, he stated that such injury will cause death if properly not treated in time and further stated that it may have cause death but he could not exactly indicate the width of the weapon used for injury No. 1. The medical jurist did not even specifically indicate that injury was sufficient in ordinary course of nature to cause death. In those facts, the injury No. 1 was not even found to be grievous and therefore the conviction under Section 307 was altered into one under Section 324, IPC. Similar view was taken in Bhiyam Ram v. State of Rajasthan 1980 Cr. L.R. (Raj.) 688.

9. In those proven circumstances, therefore, it cannot be said that had the injured Kishan died, the accused appellant would be guilty of offence of murder under

Section 302, IPC, the culpable homicide not amounting to murder. Such is the distinction between the offences under Section 307, attempt to murder and Section 308 attempt to culpable homicide. It is so because in the present case, the prosecution has not been able to prove that either of the two grievous injuries were sufficient in the ordinary course of nature to cause death of the injured Kishan.

10. The learned trial Court in my considered opinion therefore was not justified in convicting the accused appellant for offence under Section 307. However, at the same time, the accused appellant is liable to be convicted for offence under Section 308, IPC.

11. The Supreme Court in the aforecited cases of Pappu AIR 2000 SC 3633 and State of U.P. v. Fazilur Rehman supra, while taking note of the compromise between the parties reduced the originally awarded sentence to the period already undergone. The Supreme Court in Bankat and Anr. v. State of Maharashtra AIR 2005 SC 368 : 2005 Cri LJ 646 also taking note of the fact that ten years have elapsed from the date of incident and complainant and the accused have in the meantime compromised, reduced the originally awarded sentence to the period already undergone by the accused.

12. In view of the judgments of the Supreme Court referred in the preceding para and taking into consideration the fact that the parties have compromised the matter and that the incident in the present case took place as far back as 1-11-1982, and almost 26 years have gone since then and further that the accused appellant who was then only 20 years old, now after more than 20 years, he would be of 46 years and has already remained in confinement for four months and seven days, ends of justice would be met if the sentence in view of the alteration of the conviction and considering cumulatively all the aforesaid factors, is reduced to the period already undergone by him.

13. In the result, the appeal is allowed in part. The conviction of accused appellant Pradeep Kumar @ Pinku is altered from offence Under Section 307 IPC to offence Under Section 308 IPC. His sentence is reduced to the period already undergone by him. Record be transmitted to the Court below forthwith.

