

Raj Kumar Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Mar-23-2009

Reported in : 2009(1)ShimLC435

Judge : Surjit Singh, J.

Appellant : Raj Kumar

Respondent : State of H.P.

Judgement :

Surjit Singh, J.

1. Appellant Raj Kumar has appealed against the judgment dated 14th June, 2002, of learned Additional Sessions Judge, Una, whereby he has been convicted of offences, punishable under Sections 452, 307 and 324 of the Indian Penal Code and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs. 1,000/- for offence, under Section 452 of the Indian Penal Code, to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2,000/-, in respect of offence, under Section 307 of the Indian Penal Code and to undergo rigorous imprisonment for a period of six months for offence, under Section 324 of the Indian Penal Code and all the sentences of substantive imprisonment have been made to run concurrently.

2. Prosecution case, which led to the charging, trial and ultimate conviction and sentencing of the appellant, may be summed up thus. On 13th July, 2000, when injured Pramod Singh (PW-2) was asleep in the verandah of his house, around 10.30 p.m., appellant allegedly went there and woke him (PW-2 Pramod Singh) up. PW-2 Pramod Singh switched on the light. Appellant asked him as to why he had humiliated him on 10th July, 2002, by saying that he had made telephonic calls to Puja, daughter of PW-2 Pramod Singh and why his wife Trishla (PW-3) had insulted him at the shop of his uncle Roshan Lal, on that very count. When PW-2 Pramod Singh told the appellant that Puja was like his (appellant's) sister and he should not be maligning her, he allegedly took out a knife and attacked PW-2 Pramod Singh. A blow of knife landed on the left backside of chest of Pramod Singh, resulting in 3 cm x 1 cm x 3 cm wound. PW-2 Pramod Singh raised alarm. His wife and children, who were asleep in a room behind the verandah, came out. When PW-2 Pramod Singh's wife PW-3 Trishla tried to rescue her husband, she too was assaulted. She was given knife blows, which caused three simple injuries. PW-2 Pramod Singh and his wife, PW-3 Trishla were rushed to the hospital. When they were at the hospital, someone informed the police. HC Nardev Singh (PW-11) reached the hospital. He recorded the statement of PW-2 Pramod Singh, under Section 154 of the Code of Criminal Procedure, Ex. PW-2/A. On the basis of that statement, case was formally registered against the appellant. Both Pramod Singh (PW-2) and his wife Trishla (PW-3) were got medically examined. One clean incised wound, measuring 3 cm x 1 cm x 3 cm over the left side of the chest lower side in the axillary line, was found which the doctor, initially, opined to be dangerous to life, but finally he gave the opinion that the injury was simple in nature. Three clean incised wounds were found on the person of Trishla (PW-3). One wound was on the left side of the 'chest, another over the left lumber region and the third over the left breast. Wound on the chest was 3 cm x 1 cm x 2 cm in size, while other two wounds were 2cm x 1cm x 1cm each. Both the wounds were opined to be simple in nature. Police recorded the statements of witnesses, including that of PW-3 Trishla, PW-7 Puja (daughter of Pramod Singh and Trishla) and PW-4 Balbir Singh, a neighbour of the injured. On completion of investigation, report under Section 173 of the Code of Criminal Procedure was filed.

3. Prosecution examined 12 witnesses to bring the charge home to the appellant. Trial Court found the appellant guilty and convicted and sentenced him, as aforesaid.

4. I have heard the learned Counsel for the appellant and gone through the record.

5. The first submission made by the learned Counsel for the appellant is that the evidence of the prosecution, with regard to the reporting of the matter to the police, is of doubtful nature, inasmuch as PW-11 HC Nardev Singh has stated that the police was telephonically informed by the doctor, who attended upon the injured, while the doctor, namely PW-1 Dr. BK Raizada denied having made any telephonic call to the police. This, in my considered view, does not create a doubt affecting the veracity of the prosecution version. PW-11 HC Nardev Singh, who reached the hospital, made an application Ex. PW-I/C to the doctor for conducting the medico legal examination of injured, PW-2 Pramod Singh and PW-

3 Trishla and in that application he stated that a telephonic call had been received from the District Hospital. He did not say that the call was made by the doctor. When in the witness-box also, PW-11 HC Nardev Singh made similar statement. He did not say that the call was made by the doctor himself. Otherwise also, the question whether any telephonic call was received at the police station or not or if the telephonic call was made, who made it, is of little significance or relevance, when there is testimony of the injured, duly corroborated by medico legal evidence substantiating the prosecution version that the appellant dealt knife blows to the two injured and caused them injuries.

6. Another submission made on behalf of the appellant is that the prosecution created evidence in the form of the alleged report of the appellant about the incident, to give the impression that the incident, as alleged by the injured, had taken place. This submission also does not carry any weight. The reason is that there is substantive evidence in the form of the testimony of the two injured, their daughter and a neighbour, which is corroborated by medical evidence.

7. However, from the perusal of the evidence, I do feel that the conviction of the appellant for offence, punishable under Section 307 of the Indian Penal Code is

not sustainable. The injury, for which the appellant has been held guilty of attempted murder, is a simple injury, as per opinion of the doctor, namely PW-1 Dr. B.K. Raizada, as also the medico legal certificate Ex. PW-1/A issued by him. No doubt, initially, the doctor reported that the injury was dangerous to life but after X-ray examination he gave the final opinion that the injury was simple in nature. If the injury were dangerous to life, it could not have been opined to be a simple injury, because as per clause eighthly of Section 320 of the Indian Penal Code, an injury dangerous to life is grievous in nature. Otherwise also, the site and the size of the Injury sustained by PW-2 Pramod Singh rule out the requisite mens rea for the offence, under Section 307 of the Indian Penal Code. The size of the injury was 3 cm x 1 cm x 3 cm only and it was caused on the back side of the chest. Had the appellant intended to cause the death of PW-2 Pramod Singh, he would have used a great deal of force, while giving the knife blow to Pramod Singh, but, as already noticed, he caused only a simple injury, measuring 3cm x 1 cm x 3 cm. This fact itself indicates that there was no intention to kill PW-2 Pramod Singh or even to cause a serious injury.

In view of the abovestated position, appeal is partly accepted. Conviction and sentence of the appellant for offence, punishable under Section 307 of the Indian Penal Code, are set aside. However, his conviction and sentence for the other two offences, i.e. offences punishable under Sections 452 and 324 of the Indian Penal Code are maintained and upheld. Sentences awarded by the trial Court shall run concurrently, in terms of the order of the trial Court.

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