Ram Rattan Vs. State

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Court : Jammu and Kashmir

Decided On : Dec-10-1958

Reported in : 1959CriLJ1316

Judge : M. Fazl Ali, J.

Appellant : Ram Rattan

Respondent : State

Advocate for Pet/Ap. : Mr. Sehgal

Judgement :

M. Fazl Ali, J.

1. The appellant has been convicted under Section 307, R. P. C. and sentenced to four years' rigorous imprisonment.

2. The prosecution case was that Order 24-10-1957 Rattan Chand had gone to the shop of Dina Nath to purchase cigarettes. The appellant and one Prakash (since acquitted) also went there and assaulted the complainant with a hockey stick. The appellant fried to fire at him. From that place Rattan Chand then ran towards the Bazar and when he reached near the shop of one Jagan Nath the appellant is alleged to have shot him by a gun inflicting an injury on his left thigh. Thereafter the complainant along with his father left for Samba Hospital and was examined by

the, doctor there.

The doctor referred the complainant to Jammu Hospital and then the complainant was taken to Jammu Hospital where he reached at about 3-30 P.M. on the same day. The first information report was, however, lodged Order 25-10-1957 at 3 P.M. at the Police Station, Samba although the written report which was filed at the Police Station is dated 24-10-1957.

3. The defence of the appellant was that he was falsely implicated due to enmity and that the complainant was really injured in Shikar.

4. I have gone through the judgments of the Courts below. Both the Courts below have fully considered the prosecution evidence against the appellant and have come to the conclusion that the assault on the complainant has been satisfactorily proved by the prosecution. The prosecution examined Jagan Nath, Rughnath Dass and Mool Raj as eye witnesses of the occurrence besides the complainant himself. No specific enmity has been alleged as against the eye witnesses in particular, It is, however, generally said that there was some sort of ill-feeling between the villagers as a whole and the accused over the building of a certain school.

5. Mr. Sehgal appearing for the appellant has raised three contentions before me. In the first place he has submitted that the medical evidence is completely inconsistent with the evidence given by the prosecution witnesses with respect to the manner of the occurrence alleged by them. He has referred to the evidence of three doctors examined in this case and has contended that according to the medical evidence the wound, which is injury (No. 1. had tattoo marks which could only be possible if the victim was fired at from a distance of not more than 6 feet.

The witnesses, however, in their evidence have consistently deposed that the appellant was at a distance Order 10 to 12 yards from the place from where the complainant was assaulted. It is, therefore, argued that on the evidence of the prosecution witnesses injury No. 1 could not possibly have been caused by the appellant. This point was also raised before the learned Additional Sessions Judge who, however, tried to persuade himself to believe that the medical evidence given

in the case was not correct.

I am, however, unable to agree with this line of reasoning given by the learned Additional Sessions Judge. A reference to Modi's Medical Jurisprudence at pages 218 to 220 would clearly show that if a bullet is fired from a gun at a distance of more than 6 to 7 feet it will not cause any blackening in the skin. The medical evidence given in this case is fully consistent with the view expressed by Doctor Modi. Under these circumstances it must be taken as established that the complainant was assaulted from a distance Order 0 to 10 feet at the maximum and the evidence of the witnesses on this point is not correct.

But I am unable to reject the entire evidence of the witnesses merely on this ground. The witnesses while deposing on the question of distance were doing so purely from memory. It was impossible for them to have measured the actual distance at the time when the occurrence took place. It is also not possible for any witness to be absolutely definite about the distance after such a lapse of time. The distance, therefore, given by the witnesses in their evidence is given merely by guess and even if their evidence on the point is not correct it is not sufficient to throw out the entire prosecution case. The contention of Mr. Sehgal on this point therefore is over-ruled,

6. In the second place Mr. Sehgal has argued that there was sufficient delay in lodging the first information report which throws a considerable doubt on the prosecution case. It is true that [here was some delay in filing the first information report at the Police Station and particularly when the complainant had gone to Samba for treatment where the Police Station is situate. It is also true that the complainant had a written report ready with him which he could have lodged before the Police Station, Samba.

The complainant, however, has given an explanation that as his first impulse was to save his life he never bothered to go to the Police Station. Both the Courts below have accepted this explanation and sitting in second appeal I would be reluctant to reverse the finding of the Courts below on this question of fact in absence of cogent reasons. It seems to me that when the complainant was taken to the Samba Hospital and the doctor there advised him. to go to Jammu.

This must have caused a great nervousness to him and in that moment he might have run to Jammu for treatment and could not have thought of doing any other work. Moreover, it appears that all the eye witnesses have been mentioned in the first information report and the first information report itself was countersigned by the Lambardar. The fact that the first information report had been countersigned by the Lambardar clearly shows that at least a written report was given in the first instance immediately after the occurrence and there was no time for deliberation.

Of course it would have been much better for the prosecution if it would have examined the Lambardar to throw some light on the question. Furthermore, it appears that the three eye witnesses have been mentioned in the first information report and Mr. Sehgal has not been able to point out any major discrepancies in their evidence which will make their evidence unreliable. In other words, there is no reason at all why these witnesses should not be believed on the question of assault.

7. The appellant has examined certain witnesses to prove that the complainant was injured in the course of a Shikar. Both the Courts below have considered the defence evidence and have given cogent reasons for rejecting that evidence. It seems to me on a consideration of the evidence adduced by the defence that it consists mostly of hearsay matters and is, therefore, not of much value. Moreover, as pointed out by the Courts below, the version given by these witnesses is clearly an afterthought because no such case was suggested either to the prosecution witnesses or even in the statement of the accused when he was examined under Section 342, Cr. P.C.

8. On a consideration therefore of the evidence and circumstances of the case I find myself in complete agreement with the Courts below that the prosecution has been able to prove its case of assault against the appellant.

9. The last contention put forth by Mr. Sehgal is that on the facts proved by the prosecution the conviction of the appellant under Section 307, R. P. C. is not sustainable. In my opinion this contention has a considerable amount of force in it. The learned trial court had disbelieved the first incident in which Prakash is said to have assaulted the complainant. Shorn of this incident the picture presented by

the prosecution now is that the appellant fired his gun at the complainant and the gun was aimed at his thigh.

The evidence also shows that the appellant had lowered the muzzle of his gun which clearly indicates that he had no intention of aiming at any vital part of the body of the complainant so as to cause his death. In order to convict an accused under Section 307 R. P. C. the prosecution must prove that the accused does an act with the intention or knowledge that death would be the normal result. In other words, Section 307, R. P. C. would apply only where the accused had the intention of causing murder and did all that was possible to do so but for some intervening factor death could not be caused although it would have been the normal result of the act of the accused.

The gist of the offence under Section 307 R. P. C. is the question of intention. It is manifest that the liability of the accused must be limited to the act which he has in fact caused and should not be extended so as to embrace the consequence of some act which he might have done but did not in fact intend to do. In order, therefore, to determine the intention of an accused the Court has to look to various factors, like the nature of the injury caused, severity of the blow or its persistence, circumstances in which it is caused and the immediate motive for the act etc, etc.

In this particular case we find that the prosecution has not given any clear evidence of motive for murder. The fact that the accused lowered down the muzzle and aimed only at the thigh is an important circumstance to indicate that he had no intention to murder the complainant. The nature of the injury in this case appears to be a very simple one and this also is indicative of the intention of the accused to some extent. There is no evidence to show that there was any persistence or repetition on the part of the accused to assault the complainant.

In fact learned Counsel appearing for the State has frankly conceded that if the previous incident is disbelieved then the elements for an offence under Section 307, R. P. C. are lacking. As I have pointed out the learned trial court has for very cogent reasons disbelieved the incident of assault on the complainant in the shop of Dina Nath by Prakash and in view of the finding and the reasons that he has given for disbelieving this incident even the part played by the appellant in the

incident has to be disbelieved.

10. For the reasons given above I think the appellant cannot be convicted for an offence under Section 307 R. P. C. I would, therefore, alter his conviction from one under Section 307 to that under Section 324 R. P. C. Having regard to the peculiar facts and circumstances of the case I would reduce the sentence of imprisonment to the period already undergone and I would also impose a fine of one hundred rupees only (Rs. 100/-) on the appellant, in default to two months' rigorous imprisonment under Section 324 R. P. C. The appellant is allowed two months time to pay the fine. The entire amount of fine, if realised, will be paid to the complainant as compensation.

11. The result is that the appeal is dismissed with the modifications indicated above. In view, however, of my order of reduction in the sentence of imprisonment the appellant will now be released forthwith