

Mamchand, Vs. the State

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Court : Uttaranchal

Decided On : Apr-12-2010

Judge : Dharam Veer, J.

Appellant : Mamchand, ;mahendra, ;ladu and Bhoota

Respondent : The State

Disposition : Appeal dismissed

Judgement :

Dharam Veer, J.

1. This criminal appeal, preferred under Section 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 18.4.1996 passed by the Additional Sessions Judge, Roorkee in Sessions Trial No. 174 of 1993, State v. Mam Chand and Ors., whereby the learned Additional Sessions Judge has convicted each of the appellants/accused Under Section 307/34 of The Indian Penal Code, 1860 (hereinafter to be referred as I.P.C.) and sentenced each of them to five years' rigorous imprisonment with fine of Rs. 500/- each and in case of default, six months' further R.I. was awarded.

2. I have heard learned Counsel for the parties and perused the entire material available on record.

3. In brief, the prosecution case is that complainant (P.W.1) Amar Singh lodged an FIR stating therein that on 4.3.1992 at about 4 PM, his son Babu Ram was coming at his house along with his earned money of Rs. 4,000/- towards wages. As soon as he reached near the shop of appellant-accused Mam Chand, then the appellants-accused Mam Chand, Mahendra, Ladu and Bhuta came out and surrounded him and the appellant-accused Mam Chand exhorted the other accused to kill Babu Ram, on which all of them started beating him. Appellant-accused Mam Chand gave dagger to appellant-accused Bhuta and exhorted to kill Babu Ram on which he (Bhuta) gave blow of dagger in the stomach of Babu Ram. This incident was witnessed by Darshan, Vijendra and Omi, who could manage to save complainant's son. In the FIR, the reason assigned for the commission of the above said incident was that Babu Ram was stopping the appellants-accused to take pigs from the front of his house. With the same averments, the FIR Ex.Ka-1 was lodged by P.W.1 Amar Singh on 5.3.1992 at 2:00 PM. On the basis of the FIR (Ex.Ka-1), Constable Clerk Ramesh Chand prepared the Chik FIR of the case, i.e. Ex.Ka-3. He also made entry in G.D., copy of which is Ex.Ka-4. Investigation of this case was entrusted to P.W.4 S.I. Phool Singh. Injured Babu Ram was medically been examined on 4.3.1992 at 5:50 PM by CW1 Dr. O.P. Sharma, who prepared the injury report Ex.Ka-8. Thereafter, the supplementary report of injured was also prepared by the same medical officer, i.e. Ex.Ka-7. The I.O. took in his possession the bloodstained clothes of injured and prepared Fard, i.e. Ex.Ka-2. During the course of investigation the I.O. inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-5. The I.O. during investigation recorded the statements of witnesses and after completing the investigation, submitted the charge sheet against the appellants/accused in the court, i.e. Ex.Ka-6.

4. After receiving the charge sheet, learned J.M., Roorkee committed the case to the court of Sessions on 15.04.1993 after giving necessary copies to the appellants/accused as provided under Section 207 Cr.P.C. The case was first transferred to Assistant Sessions Judge and then to Additional Sessions Judge by the Sessions Judge for disposal as per law.

5. Learned Second Assistant Sessions Judge, Roorkee has framed the charge against the appellant/ accused Bhuta Under Section 307 IPC and against rest of

the appellants-accused Mam Chand, Mahendra and Ladu Under Section 307/34 IPC. The charge was read over and explained to appellants/accused, who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined P.W.1 Amar Singh, complainant, P.W.2 Babu Ram, injured witness, P.W.3 Darshan, eyewitness, P.W.4 S.I. Phool Singh, I.O. of the case and P.W.5 Dr. K.P. Sarabhai, who proved the medical reports.

7. After that the statements of the appellants/ accused were recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who denied the allegations made against them and stated that they have been falsely implicated. They did not produce any documentary evidence but in oral evidence, they have examined D.W.1 Surender and D.W.2 Muni Ram.

8. After that Dr. O.P. Sharma was also examined by the court being a witness as CW1, who had medically examined the injured.

9. Thereafter, again the statements of accused/appellants were recorded Under Section 313 Cr.P.C. in the question form on the basis of statement of CW1 Dr. O.P. Sharma.

10. After hearing learned Counsel for the parties and appreciating the entire material available on record, the learned Additional Sessions Judge, Roorkee vide judgment and order dated 18.4.1996 convicted and sentenced the appellants/accused as above discussed. Feeling aggrieved, the accused/appellants have preferred the present appeal.

11. Before further discussion, it is pertinent to mention the injury report of injured Babu Ram who was medically been examined on 4.3.1992 at 5:50 PM. The following injuries were recorded in the injury report Ex.Ka-8:

Injury- Incised wound 3.5 cm x 1.00 cm x abdominal cavity deep on right side abdomen 5.00 cm above right iliac crest, Intestines-Mesentery portending out, Profused bleeding present, margins clear cut.

General condition-very low, patient in state of shock.

Opinion-Injury kept under observation, patient hospitalized, injury caused by sharp object, fresh.

Thereafter, the supplementary report of injured was also prepared i.e. Ex.Ka-7, which is as follows:

Exploratory laprotomy done under G.A. on exploration wound was abdominal cavity deep, mesenteric and small intestine was cut and 1000 cc of blood present in abdominal cavity, intestine and mesentery repaired and abdomen closed around drainage. Two units blood given during operation.

Hence, injury is dangerous to life.

12. To prove the above injury reports, the prosecution has examined CW1 Dr. O.P. Sharma who has proved the injury report Ex.Ka-8 and supplementary report Ex.Ka-7 prepared by him. He also stated that the above injury could be caused on 4.3.1992 at 4 PM and further that the injury could have been caused by some sharp edged weapon.

13. The prosecution has also examined P.W.5 Dr. K.P. Sarabhai who has stated that the injury report and supplementary report was prepared by CW1 Dr. O.P. Sharma, which are Ex.Ka-8 and Ka-7 respectively.

14. To further prove its case, the prosecution has examined P.W.1 Amar Singh who has reiterated the version as stated in the FIR and further stated that Darshan and Omi had narrated the incident to him on the basis of which he lodged the report, i.e. Ex.Ka-1. He also stated that when he reached hospital, his son Babu Ram was unconscious.

15. P.W.2 Babu Ram, who is the injured witness, has stated that on the date of incident, he was returning while taking Rs. 4,000/- earned as a labourer and as soon as he reached in front of the meat shop, the appellants-accused Mam Chand, Bhuta, Mahendra and Ladu surrounded him. The appellants-accused Ladu and Mahendra caught hold of him and the appellant-accused Mam Chand gave

dagger to Bhuta and exhorted him to kill him (this witness). On this, the appellant-accused Bhuta gave blow of dagger in his stomach with the intention to kill him due to which he fell down and became unconscious. He was admitted into the hospital by Darshan, Omi and Vijendra. His father had lodged the report of this incident in the police station. This witness was cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is reliable and believable.

16. P.W.3 Darshan also fully corroborated the version of P.W.2 Babu Ram. He also stated that he had narrated the incident to Amar Singh on the basis of which the FIR was lodged by Amar Singh.

17. P.W.4 S.I. Phool Singh who stated that investigation of this case was entrusted to him. Chik FIR of this case was prepared by C/C Ramesh Chand, i.e. Ex.Ka-3. Entry was also made in the G.D. by him, i.e. Ex.Ka-4. He inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-5. He also took the bloodstained cloth of injured and prepared Fard, which is on record. During investigation, he recorded the statements of witnesses and on completion of investigation, he filed the charge sheet, i.e. Ex.Ka-6.

18. After that the statements of the appellants/ accused were recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who denied the allegations made against them and stated that they have been falsely implicated. They did not produce any documentary evidence but in oral evidence, they have examined D.W.1 Surender and D.W.2 Muni Ram.

19. DW1 Surender stated that on the date of incident, Babu Ram (injured) and his associates were roaming in the market and were trying to outrage the modesty of women and they were drunk. He further stated that when Babu Ram and his associates ran to save themselves, they fell down but he does not know how Babu Ram received the injuries as so many people were there.

20. D.W.2 Muni Ram also gave the evidence as that of D.W.1 Surender. He further stated that he had seen the appellants-accused while running away from

the place of occurrence.

21. Learned senior counsel for the appellants- accused argued that the prosecution has not proved its case against the appellants-accused beyond reasonable doubt as per the above said evidence. I do not find any force in this argument put forth on behalf of the appellants for the reason that P.W.2 Babu Ram, injured witness of the case, has stated that on the date of incident, he was returning while taking Rs. 4,000/- earned being a labourer and as soon as he reached in front of the meat shop, the appellants-accused Mam Chand, Bhuta, Mahendra and Ladu surrounded him. The appellants-accused Ladu and Mahendra caught hold of him and the appellant-accused Mam Chand gave dagger to Bhuta and exhorted him to kill him. On this, the appellant-accused Bhuta gave blow of dagger in his stomach with the intention to kill him due to which he fell down and became unconscious. After that his father lodged the report of this incident in the police station. The evidence of this witness is reliable and believable and inspires confidence and the same gets full corroboration from the oral testimony of PW3 Darshan as well as that of P.W.1 Amar Singh, who lodged the report on the basis of information given to him by Darshan (PW3) and Omi and he also narrated the same facts in his statement. Besides, the oral testimony, the medical version also fully corroborates the prosecution story. CW1 Dr. O.P. Sharma has specifically stated in his evidence that the injury on the person of injured could have been caused on 4.3.1992 at 4 PM and further that the injury could have been caused by sharp edged weapon. In the supplementary report of injured, the wound on the person of injured was found abdominal cavity deep, mesentery and small intestine was also found cut. It was also stated by the medical officer that intestine and mesentery of injured were repaired and abdomen closed around drainage. Hence, it was opined that injury is dangerous to life.' From the above-said evidence, it is proved that the appellants-accused had caused injuries to Babu Ram on 4.3.1992 at 4 PM at Village Iqbalpur, P.S. Jhabrera, District Haridwar with the intention to kill him. Therefore, it is also proved that the appellants-accused committed the above-said offence of causing injuries to Babu Ram with such intention and knowledge, and under such circumstances that, if they by that caused death, they would be guilty of murder and as such the offence punishable Under Section 307/34 IPC is clearly made out against the appellants-accused by the prosecution

beyond reasonable doubt. The trial court has rightly convicted and sentenced the appellants-accused as above discussed and no ground of interference is called for.

22. For the reasons as above discussed, the appeal lacks merit and is accordingly dismissed. Judgment and order dated 18.4.1996 convicting and sentencing the appellants-accused as above discussed, stands affirmed. Appellants are on bail. Let they be taken into custody forthwith to serve the sentence as awarded against them. However, the period already served out in jail by them during investigation, trial or appeal shall be adjusted after verifying the records.

23. Copy of this order along with record of trial court be sent back for compliance forthwith.

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