

Nathu Ram and ors Vs. the State

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Court : Delhi

Decided On : Jul-11-2013

Judge : Veena Birbal

Appellant : Nathu Ram and ors

Respondent : The State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision: July 11, 2013 CrI.A.379/2000 NATHU RAM & ORS Appellants Through : Mr.N.K.Deo, Adv. Through : Respondent Ms.Jasbir Kaur, APP versus THE STATE CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

* 1. By way of present appeal, a challenge has been made to the judgment dated 8th May, 2000 and order of sentence dated 15th May, 2000, both passed by the learned Additional Sessions Judge in case SC No.162/96 arising out of FIR no.401/94 Police Station Desh Bandhu Gupta Road under section 307/34 IPC whereby the learned Additional Sessions Judge has held the appellants, i.e. accused persons namely, Nathu Ram, Kapoor Chand and Ved Prakash guilty for the offence punishable under section 324/34 IPC and sentenced them to undergo RI for one year and to pay a fine of Rs.1000/each and in default of payment to undergo SI for 15 days. Benefit u/s 482 Cr.P.C has been given to the appellants/accused persons.

2. At the outset, it may be pointed out that during the pendency of proceedings before this court, appellant no.1 Nathu Ram had expired and proceedings qua appellant no.1 stood abated by the order of this court dated 8.9.2010.

3. The prosecution case is based on the statement Ex.PW 1/6, alleged to have been made by the complainant Raj Kumar @ Raju, PW-1 to ASI Keshav Prakash PW10 which is as under: The complainant Raj Kumar @ Raju, PW-1 had alleged that on 29th November, 1994 at 9.30 pm, he along with his father, i.e. Sh. Sohan Singh PW2 who was having a tailoring shop, were returning home after closing their shop. Their house was above the shop. When they turned towards the gali, after passing through the house of accused Nathu Ram, they found all the three accused persons were standing there. The accused Nathu Ram had demanded stitching charges from his father who told him that he would pay later. Thereupon all the three accused persons started abusing him as well as his father. On hearing this, his mother i.e. Nihalo PW3 and mausi Anar Devi PW4 also came out of the house. Thereupon Nathu Ram had exhorted other accused persons by saying that Sohan Singh (PW2) be caught hold and be also killed. While exhorting so, accused Nathu Ram and Kapoor Chand had caught hold of his father while the third accused i.e., Ved Prakash gave knife blows on the chest of his father towards left side and second blow was given on the abdomen, as a result of which, his father fell down and was removed to JPN Hospital where he was admitted.

4. The above statement was recorded by ASI Keshav Prashad PW10 when he reached the aforesaid hospital on getting the copy of DD No.28 Ex.PW10/B at the spot. Prior to that, DD No.27 Ex.PW 10/A was got registered in the concerned police station about a quarrel having taken place at house no.10553, Gali Peepalwali Manakpura, Delhi and that a police officer be sent. Copy of the said DD was handed over to ASI Keshav Prashad who reached the spot with Ct. Rishi Pal PW 9. ASI Keshav Prashad PW10 obtained MLC Ex.PW8/A of the injured who was found unfit for statement. Thereafter, as stated above, Raj Kumar, PW-1 son of injured had made statement the aforesaid statement Ex.PW 1/A to PW10.

5. On the basis of statement Ex.PW 1/A of Raj Kumar @ Raju, PW-1, ASI Keshav Prashad PW10 made endorsement Ex.PW 10/C and got registered FIR No.401/94

Ex.PW 7/A u/s 307/34 IPC against the aforesaid accused persons i.e., appellants.

6. The accused Nathu Ram and Kapoor Chand were arrested on 30th November, 1994. Accused Kapoor Chand made a disclosure statement Ex.PW 9/A and pursuant thereto he got recovered blood stained shirt Ex.P-4 from his house bearing no.10334, Gali Pathashala Wali, Manakpura, Delhi which was sealed in pulanda and taken into possession vide Memo Ex.P9/B after doing necessary formalities. Accused Ved Prakash was arrested on 1st December, 1994. He made a disclosure statement Ex.PW 10/F and pursuant thereto got recovered knife (Ex.P-1) from his house. Knife Ex.P1 was measured and its sketch was prepared and thereafter the same was put in a pulanda and was taken into possession by preparing necessary memo in this regard after completing necessary formalities.

7. After completion of necessary investigation, a challan was fled before the court of Id.MM, Delhi. CrI.A379/2000 persons, case was committed to the court of session. Charge u/s 307/34 IPC was framed against the appellants to which the appellants pleaded not guilty and claimed trial.

8. To prove its case, prosecution in all had examined 10 witnesses. Out of which PW-2 Sohan Singh is the injured. Raj Kumar PW-1 is the complainant, PW-3 Smt. Nihalo is the mother of complainant PW-1 and PW-4 Anar Devi, is sister of PW-3. They are all eye witnesses to the alleged occurrence. The remaining testimony relates to the police officials and medical evidence.

9. After prosecution closed its evidence, the entire incriminating material which had come on record was put to the accused persons and their statement under section 313 Cr.P.C. was recorded wherein they have denied the same and stated that they were falsely implicated.

10. After hearing arguments of both the sides, the learned Additional Sessions Judge held that there was sufficient evidence on record to prove the role assigned to the accused persons. Id. ASJ further held that considering the circumstances in which injuries were caused and dimension of injuries, it cannot be said that appellants had caused injuries with an intention to cause death. Accordingly, it was held that ingredients of section 307 IPC were not fulfilled and moreover the

doctor who opined the injuries as grievance was not produced. Accordingly, the learned Additional Sessions Judge had held the accused guilty of the offence punishable u/s 324/34 IPC and imposed the sentence vide order dated 15th May, 1994 which has already been stated above.

11. Aggrieved with the aforesaid judgment of conviction and order of sentence, present appeal is filed.

12. Learned counsel for the appellant has contended that appellants/accused persons have been falsely implicated as there was a money dispute the victim Sohan Singh and the accused Nathu Ram. It is contended that material witnesses of prosecution i.e. PW1 to PW4 are interested witnesses and are not worthy of credence and their testimony cannot be relied upon. It is contended that in any event even if the appellants are held to be responsible for the alleged occurrence, in that event, they be given benefit of Section 360 Cr.P.C.

13. On the other hand, learned APP has argued that from the evidence of Pw-1 to 4, the case of the prosecution stands proved. It is stated that even the testimony of aforesaid witnesses also find support from the MLC Ex.PW8/A. It is contended that reading the entire evidence on record, the appellants have been rightly convicted by the learned Additional Sessions Judge. It is further contended that considering the role played by the accused persons, they do not deserve the benefit of probation.

14. I have heard learned counsel for the parties and perused the material on record.

15. Shri Sohan Singh, PW-2 is the injured who has deposed that on 29 th November, 1994 at about 9.30 pm, he along with his Raj Kumar @ Raju were going to his house after closing his shop and when they reached in front of house of accused Ved Prakash, he demanded stitching charges told him that he would pay next day to which accused Ved Prakash insisted that money be paid then and there. The other two accused persons i.e. Kapoor Chand and Nathu Ram were also there. However, they started abusing him. Nathu Ram exhorted that Sohan Singh PW2 be caught hold. Thereupon, accused Nathu Ram and Kapoor Chand

caught hold of him and appellant Ved Prakash stabbed him on his chest and at lower abdomen near the waist. As a result of which, he fell down. Thereafter, he was removed to the hospital. The above witness was cross-examined at length by the learned counsel for the accused persons but his evidence on material points was not shaken in cross-examination. The said witness had also identified the knife Ex.P1 with which he was stabbed. He had also identified the clothes which he was wearing i.e., underwear P-2 and pant P-3.

16. Raj Kumar @ Raju, PW-1 is the complainant. As per prosecution case, he is an eye witness to the alleged occurrence. He has categorically deposed that on the day of incident, he was returning home along with his father PW-2 from their shop when accused persons came there and appellant Ved Prakash asked his father PW2 for stitching charges for the shirt who told him that money would be paid on the next day. However, accused Ved Prakash wanted the money then and there. Thereupon accused Nathu Ram started abusing his father. Thereafter Nathu Ram uttered catch hold him and Sohan Singh (PW2). Thereupon, accused Nathu Ram and Kapoor Chand caught hold of him and accused Ved Prakash stabbed his father with a knife near the heart and second time near the left side of abdomen. Thereupon he shouted and his mother PW3 and aunt PW4 came and he took his father to a hospital. The accused persons ran away from the spot. In the hospital, police came and his statement Ex.PW1/A was recorded. His evidence on material points was also not shaken in cross-examination. However, he has not supported the prosecution case as regards recovery of blood stained shirt of Kapoor Chand in his presence from his house.

17. Even the witnesses Nihalo Devi, PW-3 and Anar Devi, PW-4 have also supported the case of the prosecution by deposing that they were present at the time of occurrence and both the accused persons i.e. Kapoor Chand and Nathu Ram caught hold of Sohan Singh, PW-2 and appellant Ved Prakash had stabbed him with a knife. Even their evidence was not shaken in cross-examination. The evidence of PW 2 to 4 fully support the case set up by the prosecution in the FIR Ex.PW7/A. The witnesses have corroborated the entire version with regard to the incident of stabbing. The complainant PW-1 has also corroborated the case of the prosecution as regards stabbing of his father by Ved Prakash. He has also

deposed about presence of all the accused persons at the spot and demand of stitching charges by Ved Prakash from his father just before the incident and uttering of abuses. He has not supported the prosecution case as regards recovery of blood stained shirt by accused Kapoor Chand from his house. Even if he has not fully supported the case of the prosecution, his testimony has been rightly accepted by the learned Additional Sessions Judge as regards stabbing incident is concerned. Reference in this regard is made to the judgment of the Supreme Court in Sat Paul Vs. Delhi Administration reported in AIR 197.SC 294.

18. The prosecution case stands proved from the testimony of Raj Kumar, PW-1, Sohan Singh PW2, Smt. Nihalo Devi PW3 and Anar Devi PW4. Their testimony is trust worthy and is reliable and corroborates each other on material points. Reading the entire evidence on record, it cannot be said that appellants have been falsely implicated, as is contended by learned counsel for the appellants. Their evidence finds support from the medical evidence i.e. MLC Ex.PW8/A which shows that victim sustained stab wound at left side of chest and at lower side of abdomen and at epigastric region. The size of stab wounds are not stated. The doctor who opined the injury as grievous is not produced. Ld. ASJ has rightly taken the injuries as simple by referring to the judgments in Rajesh Vimal Kumar & Ors vs. State reported in 1995(2) CCCases-57(HC) and Attar Mian vs. State reported in 1997 IV AD Delhi-44. The evidence of material witnesses of prosecution also finds support from recovery of knife Ex.P1.

19. The learned Additional Sessions Judge has rightly held them responsible for the alleged occurrence though their defence was that there was money dispute and that appellants have been falsely implicated. However, no suggestion has been given to the aforesaid witnesses in crossexamination neither any evidence in defence has been led by the appellants to substantiate the same.

20. Considering the entire material on record, the learned Additional Sessions Judge has rightly convicted the appellants u/s 324/34 IPC. The trial court has correctly analyzed the evidence while arriving at the conclusion that appellants are guilty of the offence u/s 324/34 IPC. Accordingly, the judgment of the learned trial court dated 8th May, 2000 is upheld.

21. On the point of sentence, it may be noted that presently accused Ved Prakash and Kapoor Chand are 40 years and 52 years of age respectively. They had remained in custody of 11 days and 13 days respectively. Now, they are married. Accused Kapoor Chand has 3 children. They have faced agony of litigation for about 19 years. No previous conviction has been proved against the accused persons, as such benefit u/s 360 Cr.P.C. can be given to them. Considering the age, character, antecedents of the appellants and the circumstances in which offence was committed, it would be expedient to release them on probation of good conduct. Accordingly, it is directed that sentence imposed upon them be not given effect to immediately and they both be released on entering into a bond of Rs.10000/- each with one surety of the like amount each for a period of one year. They shall appear and receive the sentence if called upon within one year from the execution of the said bond. The bond in question shall be furnished before the concerned trial court. In case of non-compliance, sentence imposed by learned ASJ shall remain in force. Appeal stands disposed of in the above terms. No costs. VEENA BIRBAL, J JULY 11 2013 ssb

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