

6 July 2010

Criminal Appeal No. 1223 of 2004 [From the Judgment & Order dated 12.05.2004 of the High Court of Judicature at Allahabad in CrI.A. No. 3024 of 1981]

The Judgment was delivered by : C. K. Prasad, J.

1. Appellants Suraj and Hari Singh alongwith Shyam, Gulab and Baladin were put on trial for offence under Sections 302/149, 147 and 148 of the Indian Penal Code. Baladin died during the pendency of the trial. All of them were convicted for offence under Section 302/ 149 of the Indian Penal Code and sentenced to undergo imprisonment for life by Judgment and Order dated 8th December, 1981 passed by the III Additional Sessions Judge, Hamirpur in Sessions Trial No. 201 of 1980. Shyam, Gulab and Appellant Suraj were also convicted under Section 148 of the Indian Penal Code and each of them sentenced to undergo two years rigorous imprisonment. Appellant Hari Singh was also found guilty under Section 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year. All the sentences were directed to run concurrently. All the convicted persons including the appellants herein preferred appeal before the Allahabad High Court which was registered as Criminal Appeal No. 3024 of 1981. Convicts Shyam and Gulab died during the pendency of appeal and their appeal had abated. However, appeal preferred by the appellants was dismissed by the Division Bench of the High Court by its Judgment and Order dated 12th May, 2004 passed in Criminal Appeal No. 3024 of 1981.

2. Aggrieved by the said, appellants have preferred this Appeal by Special leave to this Court.

3. According to the prosecution, on 29th March, 1980 at about 10 a.m., Smt. Sirawan (PW.1) along with her minor daughter, Dhanti (PW.3) and her husband Mansha (deceased) alongwith one Chitwa Chamar were going to harvest masur crop belonging to the deceased. When they were passing through a lane and came near Gurwahi Bakhari of Tulsi Dass, all the accused persons variously armed arrived there. Appellant Suraj was alleged to have been armed with farsa whereas Hari Singh was armed with lathi. Prosecution had further alleged that accused Baladin abused Mansha and exhorted to kill him. At this, all the accused persons including the appellants assaulted Mansha with farsa, lathi etc. On alarm being raised by Smt. Sirawan (PW.1), Dhanti (PW.3) and Chitwa Chamar, villagers including Swamidin (PW.2) collected at the spot and being challenged by them, the accused persons fled away from the place of occurrence. Smt. Sirawan (PW.1), Dhanti (PW.3) and Swamidin (PW.2) witnessed the accused persons including the appellant Suraj and Hari Singh assaulting Mansha with lathi and Farsa. According to the prosecution, while the informant, Smt. Sirawan (PW.1) was making arrangements of bullock cart for shifting her injured husband-Mansha, he died.

4. Appellants denied to have committed the offence. From the trend of the cross-examination, their defence is of false implication. In order to bring home the charge, the prosecution had examined altogether six witnesses out of whom Smt. Sirawan (PW.1), Swamidin (PW.2) and Dhanti (PW.3) claimed to be the eye-witnesses to the occurrence. Prosecution had also examined Dr. A.K. Srivastava (PW.6), the Medical Officer, who had conducted post mortem on the dead body of Mansha on 30th March, 1980 at 10.30 a.m.

5. Trial Court, relying on the evidence of the eye-witnesses and the doctor, held the appellants guilty as above which has been affirmed in the appeal.

6. Mrs. Shally Bhasin Maheshwari, learned counsel appearing on behalf of the appellants raises a very short point. She submits that the doctor in his evidence has not stated about any injury sustained by the deceased nor whispered about the cause of death. She also points out that the post-mortem report has neither been brought on record nor proved or marked as an exhibit. It has also been pointed out that the doctor has not stated anything about the nature of injury i.e. grievous or simple, sustained by the deceased. Not only this, according to Mrs. Maheshwari, the doctor has been declared hostile by the prosecution itself and was cross-examined. She also emphasizes that even in the cross-examination, the prosecution has not elicited anything regarding the cause of death, nature of injury and post-mortem report has not been proved. Accordingly, she submits that appellants utmost can be convicted under Section 324 of the Indian Penal Code.

7. Mr. Pramod Swarup, learned Senior Counsel appears on behalf of the State.

8. The aforesaid submission advanced by Mrs. Maheshwari is on the basis of the materials in the paper book and at the first blush, we were impressed by her submission. But the entire premise on which she based her submission looked unusual to us and accordingly we examined the original record. We find that Dr.

A.K. Srivastava (PW. 6) had stated all the injuries sustained by the deceased. In his evidence as also in the post-mortem report, he has stated that the deceased had sustained sixteen ante-mortem injuries of various kinds and descriptions i.e. contusion, abrasion, laceration, incised & punctured wounds. Injury nos. 7, 8, 10 and 11 have been found to be punctured wounds. Cause of death, according to the evidence of this witness as also postmortem report is haemorrhage and shock as a result of the aforesaid ante-mortem injuries. He had also proved the post-mortem report and from the record, it is evident that the same has been marked as Exhibit 12.

9. From what we have stated above, it is evident that Mrs. Maheshwari's submission is unfounded on facts. True it is that PW.6 Dr. A.K. Srivastava has been declared hostile but that itself shall not wipe out his entire evidence. In his evidence he has given the details of the injuries sustained by the deceased and the cause of death. Merely an erroneous opinion in regard to the punctured wounds led the prosecution to declare him hostile but this will not dilute his other evidence if otherwise worthy of reliance. Merely the fact that PW.6 Dr. A.K. Srivastava has been declared hostile, his entire evidence is not wiped out and for the purpose of nature of injuries and the cause of death, his evidence can be relied on.

10. Counsel for the appellants, then points that injury nos. 7, 8, 10 and 11, according to the doctor himself are punctured wounds and the weapon alleged to have been used by the accused persons cannot cause punctured wounds. According to her, eye-witnesses' account has not been corroborated by the medical evidence and hence on this ground alone, the case of the prosecution deserves to be rejected.

11. We do not find any substance in the submission of Mrs. Maheshwari. The doctor who had conducted the post-mortem examination has been declared hostile when he opined that injury nos. 7, 8, 10 & 11 as punctured wounds. He had admitted that before giving the opinion, he had not measured dimensions i.e. thickness or depth of the injuries. In view of the aforesaid, this opinion of the doctor, which has no foundation deserves to be ignored and has rightly been ignored by the trial Court and the appellate Court.

12. Smt. Sirawan (PW.1) who happens to be the wife of the deceased Mansha, Swamidin (PW.2), an independent witness and Dhanti (PW.3) daughter of the deceased have clearly stated that it was the appellants alongwith other accused persons who had assaulted the deceased with pharsa, lathi etc. The doctor has found contusion and incised wounds on the person of the deceased. Eye-witnesses' account are consistent and there is no material contradiction in their evidence to discredit their truthfulness. In our opinion, the prosecution has been able to prove its case beyond all reasonable doubts.

13. We do not find any merit in the appeal and it is dismissed accordingly.

Appeal dismissed