

Sukkhu Adn Others vs State Of U.P. on 12 January, 2018

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 15

Case :- CRIMINAL APPEAL No. - 603 of 1988

AFR

Appellant :- Sukkhu And Others

Respondent :- State Of U.P.

Counsel for Appellant :- V Singh

Counsel for Respondent :- A.G.A., S.P. Tiwari

Hon'ble Arvind Kumar Mishra-I, J.

By way of instant appeal, challenge has been made to the validity and sustainability of the judgment and order of conviction dated 16.03.1988/17.03.1988 passed by Special Judge, Varanasi, in Session Trial No.154 of 1984 State Vs. Doman and others, arising out of Case Crime No.34 of 1982 under Sections 304 Part II read with Section 34, 323 read with Section 34 IPC, Police Station- Dhanapur, District- Varanasi, whereby the accused-appellants have been sentenced to undergo five years rigorous imprisonment under Section 304 Part II read with Section 34 IPC and one year rigorous imprisonment under Section 323 read with Section 34 IPC. All the sentences were directed to run concurrently.

Relevant to mention that in this case, out of the three appellants in all, two appellants namely Sukkhu and Rajjan @ Rajju @ Rajai have died, therefore, the appeal qua appellants Sukkhu and Rajjan @ Rajju @ Rajai stood abated vide order dated 01.03.2017.

Heard Sri Veer Singh, learned counsel for the surviving appellant Doman, learned AGA for the State and perused the record.

The prosecution story as unfolded from the record appears to be that the incident took place on 20.06.1982 around 12:00 noon at village Naudhara, within police circle Dhanapur, the then District Varanasi (now Chandauli) for which the written report was lodged by the informant Dukkh

alleging that there was enmity between the informant side and the accused. The accused out of vengeance assaulted the informant side at 12:00 noon initially to Sumitri Devi, the wife of the informant and after resistance was offered by the informant and others when they were also beaten by the accused. The first information report was lodged at Police Station Dhanapur around 2:20 p.m. the very same day i.e. 20.06.1982.

Pursuant to the lodging of the first information report, the investigation ensued. The injured persons namely Sumitri Devi, Dukkhu, Shankar, Ram Lal and Shanti were medically examined at S.S. Hospital Dhanapur, Varanasi on 20.06.1982 between 3:15 p.m. to 4:18 p.m. by the Medical Officer, who has proved medical examination reports of the aforesaid injured as Ext. Ka-1, Ext. Ka-2, Ext. Ka-3, Ext. Ka-4 and Ext. Ka-5, respectively.

Record reflects that the injured Sumitri Devi was in serious condition, therefore, she was referred to the District Hospital, Varanasi, for better treatment where she succumbed to her injuries on 21.06.1982 at 5:05 p.m. Pursuant thereto, inquest of the deceased was held by the Investigating Officer on 22.06.1982 around 11:40 a.m. and it was completed at 12:35 p.m. Formal proof of this paper was dispensed with. As per opinion of the inquest witnesses and the Investigating Officer, the dead body was sent to the mortuary, Varanasi for conduction of the post mortem examination whereupon the post mortem examination on the cadaver of the deceased Sumitri Devi was conducted by Dr. P.S. Shukla, PW-7 who has proved ante mortem injuries which are very much described in his testimony before the trial court as formal witness PW-7.

The Investigating Officer recorded statement of the various persons and prepared site plan of the incident as Ext. Ka-6. After completing the investigation, the Investigating Officer submitted charge sheet Ext. Ka-10 against the appellant under Section 304 IPC.

As a sequel to it, proceedings were committed to the court of Sessions from where it was transferred for conduction of trial to the aforesaid trial court of Special Judge, Varanasi who in turn heard both the prosecution and the accused on point of charge and was prima-facie satisfied with case against the accused-appellant, accordingly, framed charges under Sections 323 read with Section 34 IPC and 304 read with Section 34 IPC. Charges were read over and explained to the accused-appellant who abjured charges and opted for trial.

In furtherance of the proceedings the prosecution produced in all 9 witnesses. A brief sketch of witnesses is ut-infra:-

Shankar PW-1 is the injured witness. Ramji Upadhyay PW-2 is eye-witness, he has described about the incident in his examination-in-chief, but has not supported the prosecution case in his cross examination. Similarly, Hriday Narain Upadhyay PW-3 has turned hostile and has not supported the prosecution case. Shanti PW-4 has described about the assault and it being caused on her by the appellant. Dr. L.S. Yadav PW-5 has proved the medical examination reports of the injured. S.I. Rajeet Singh PW-6 is the Investigating Officer, he has proved the process he took during course of the investigation. Dr. P.S. Shukla PW-7 has conducted the post mortem

examination report on the cadaver of the deceased Sumitri Devi. Bajrang Singh PW-8 is the head constable, he has noted relevant entries in the concerned Check FIR and the concerned general diary of date 20.06.1982. Similarly Constable Hansraj PW-9 has participated in preparation of the inquest report and has conveyed the dead body to the mortuary on 22.06.1982. Thereafter, the trial court examined one witness Vijay Bahadur Singh as CW-1. Except as above, no other evidence was adduced by the prosecution.

Thereafter, evidence for the prosecution was closed and statement of the accused was recorded u/s 313 Cr.P.C., wherein, he claimed to have been falsely implicated in this case on account of enmity. However, the defence did not lead any testimony, whatsoever.

The learned Special Judge, Varanasi, after appraisal of facts and merit of the case and the evidence on record, returned aforesaid finding of conviction under Section 304 Part II read with Section 34 IPC and 323 read with Section 34 IPC and sentenced the appellant to five years rigorous imprisonment on the first count and one year rigorous imprisonment on the second count.

Resultantly, this appeal.

The basic point urged before this Court while claiming acquittal of the surviving appellant Doman rests on the anvil of element of intention, whatsoever, to kill the deceased Sumitri Devi. There was no common intention among the accused and no such common intention was ever shared by the accused. The case of the present appellant is specific and confined only to the ambit of Section 323 IPC. The appellant had no intention or motive to cause any such injury which might have resulted into death of any person what to say about the deceased Sumitri Devi.

It has been further contended that in the cross examination of Shankar PW-1, it has emerged that Lathi blow was caused to him which Lathi blow on medical examination is confined only to the ambit of Section 323 IPC and it cannot travel beyond that. The entire evidence of the injured witnesses is silent on the point as to who, in fact, dealt fatal blow on the skull of the deceased Sumitri Devi. In absence of any such specific testimony, no conviction can be had under Section 304 Part II IPC against the appellant.

It has been contended next that the appellant has already suffered one year imprisonment which sentence is sufficient and fair enough to justify perpetration of the crime by the appellant. Assuming it to be that some offence has been committed even then conviction under Section 304 Part II IPC is not justified and the sentence so imposed is disproportionate to the offence committed by the appellant, whereas, conviction should be confined only to Section 323 IPC though the same is denied on fact. Unless it is proved as to who caused fatal blow on the deceased, it cannot be said

with reasonable certainty that it was the surviving appellant who dealt the fatal Lathi blow and responsibility for causing the same cannot be fastened on him.

Learned AGA has replied to the ambit that it is a clear cut case of sharing common intention in furtherance of the criminal act which criminal act was jointly committed by a company of three persons who were inimical towards the informant side. Specific testimony has come forth in the shape of Shankar PW-1 and Shanti PW-4 that a joint assault was caused by all the accused. Merely because there was no specification about the fatal blow caused on the deceased Sumitri Devi, it cannot be said that the appellant never committed any offence as alleged as he did not share the common intention.

Learned AGA has added that the nature and magnitude of injury caused on the skull of the deceased is suggestive of fact that injury was sufficient in the ordinary course of nature to cause death of the deceased, which injury rendered the victim unconscious on the spot and she remained as such while she was taken to the hospital where she ultimately succumbed to her injury. This by itself is a fact established in this case by the testimony of the injured eye witness and it cannot be said that the injured witnesses were not present on the spot.

Learned AGA has added next that the doctor witness who conducted post mortem examination on the cadaver of the deceased Sumitri Devi has also proved the injury caused on the skull of the deceased to be fatal. The appellant being the sole surviving appellant cannot take advantage of fact that fatal lathi blow has not been assigned to any particular accused.

Lastly, learned AGA has brought to the notice of the Court essential ingredients of Section 34 IPC by submitting that prevalence and existence of the common intention to commit crime was operative and the accused were sharing common intention while committing the offence which common intention is very much proved by fact of the assault being caused and the circumstances of the case and there is no worthy reason to disbelieve the version of the prosecution witnesses. Their testimony on the point is clinching and consistence which leave no room for any doubt, even in the least degree.

Also considered the rival submissions.

Obviously, perusal of the first information report is indicative of fact that animosity was existing between the informant side and the appellant. The appellant in company with other accused caused assault on the informant side around 12:00 noon on 20.06.1982. Injuries were caused jointly by all the three accused including the appellant. The assault was caused by the three accused on the informant side which ultimately resulted into death of the deceased Sumitri Devi. The inquest was held on 22.06.1982. In the opinion of the inquest witnesses, it was suggested that post

mortem examination be conducted so as to ascertain real cause of death. In the post mortem examination cause of death was stated to be coma as a result of head injury. The cause of death has been specifically proved by Dr. P.S. Shukla PW-7 who has categorically stated that injury in question was fatal and was sufficient in ordinary course of nature to have caused death of the deceased Sumitri Devi. Nothing adverse has emerged from testimony of the doctor witness that the injury so caused was not fatal.

Insofar as the argument relates to the magnitude that there was no intention to cause any such assault which would have resulted into death of a person, is not accepted, for the reason that even very nature and degree of the injury as caused on the deceased ultimately proved fatal though intention was lacking/missing but knowledge of the consequence of injury caused cannot be dispelled with any sort of reasoning. The concerted assault on the deceased is self-speaking about the ambit of explicit knowledge of consequence of the criminal act.

The testimony of injured eye witness PW-1 and another injured eye witness PW-4 profusely inspires confidence on the point of the involvement of the appellant in the incident. Moreso, injury reports of the various injured of this case are also suggestive of fact that the assault was opened on several persons including the deceased. That way, participation of the appellant in the incident cannot be ruled out.

The learned trial Judge while appreciating aforesaid aspects of the case has based his finding of conviction on the material on record which finding of conviction cannot be faulted with. Consequently, the conviction under Sections 304 Part II, 323 IPC both read with Section 34 IPC is hereby maintained.

Insofar as the sentencing part of the judgment is concerned, it has been claimed that the appellant has by now attained 73-74 years of age and his case may be considered leniently, vis-a-vis facts and circumstances of the case. Obviously, now the appellant is the only surviving accused, the other two accused-appellants have died.

Learned AGA has intervened and submitted that the age of the appellant Doman on the day of recording of the statement under Section 313 Cr.P.C. on 06.02.1988 was described to be 22 years. That way, he has submitted that he will be around 60 years of age and he cannot be said to be above 70 years of age.

Anyway considering the various aspects of the case and also the fact that the appellant has grown up and is around 60 years of age and there is no specific proof that the fatal blow was dealt with by the appellant, the sentence so awarded by the trial court under Section 304 Part II IPC read with Section 34 IPC for five years rigorous imprisonment appears to be harsh under facts and circumstances of the case, and the same is reduced to three years rigorous imprisonment as that would meet the end of justice.

Accordingly, sentencing part of the impugned judgment and order dated 16.03.1988/17.03.1988 passed by Special Judge, Varanasi, in Session Trial No.154 of 1984 State Vs. Doman and others, arising out of Case Crime No.34 of 1982 under Sections 304 Part II read with Section 34, 323 read with Section 34 IPC, Police Station- Dhanapur, District- Varanasi, is hereby modified to the aforesaid extent and the conviction is maintained.

Consequently, the instant appeal is allowed partly in aforesaid terms.

Let a copy of this order/judgment be certified to the court below for necessary information and follow up action.

Order Date :- 12.01.2018 rkg