
(2010) 08 RAJ CK 0191
In the Rajasthan High Court
Case No : Criminal Appeal No. 169 of 1989

Tara Devi (Smt.) (L.R. of Late Prakash)	APPELLANT
Vs	
State of Rajasthan	RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 394
Penal Code, 1860 (IPC) — Section 307, 324, 326

Citation : (2011) 1 RLW 142

Hon'ble Judges : Kailash Chandra Joshi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kailash Chandra Joshi, J.—This appeal was preferred by then Appellant Prakash S/o Chhoturam, by caste Harijan, resident of Deedwana, against the judgment of conviction and order of sentence dated 10.04.1989 passed by learned Additional District and Sessions Judge, Nagaur in Sessions Case No. 89/1987, whereby the accused Appellant Prakash was convicted for commission of offence u/s 307, 326 and 324 IPC and sentenced for commission offence u/s 307 IPC to undergo five years" simple imprisonment alongwith a fine of Rs. 100/- and in default of payment of fine, further to undergo one month"s simple imprisonment and for commission of offence u/s 326 IPC, the accused Appellant Prakash was sentenced to undergo five years" simple imprisonment alongwith fine of Rs. 100/- and in default of payment of fine, further to undergo one month"s simple imprisonment and further for commission of offence u/s 324 IPC, he was sentenced to undergo six months" simple imprisonment alongwith a fine of Rs. 50/- and in default of payment of fine, to further undergo fifteen days" simple imprisonment. It was further ordered to serve the substantive sentences concurrently.

2. The accused Appellant Prakash had died on 01.11.2001 and on 09.09.2003, the court allowed the application of Smt. Tara Devi, the wife of the accused

Appellant Prakash filed u/s 394 Code of Criminal Procedure and permitted her to prosecute this appeal after the death of the accused Appellant Prakash.

3. The nub of the prosecution story as disclosed during the course of investigation and trial was that on 06.11.1987, complainant Manakchand's son Billu was sitting in his shop of repairing shoes at the Bus Stand Deedwana, at that time accused Appellant Prakash attacked Billu and caused injuries with a sword on the neck and temporal region of Billu. When Billu tried to rescue himself and caught hold of sword, injuries were caused at his thumb and two fingers of left hand. Manakchand, father of injured Billu, lodged the First Information Report at Police Station Deedwana, on which a criminal case No. 143/1987 u/s 307, 326 and 324 IPC was registered at the Police Station Deedwana and investigation commenced.

4. During the course of the investigation, injuries on the body of the injured were examined by Medical Jurist, site inspection memo was prepared by the Investigating Officer, accused was arrested and at the instance of the accused Appellant, a sword was recovered, the statements of the witnesses were recorded u/s 161 Code of Criminal Procedure and after usual investigation, a charge-sheet was presented in the court of Judicial Magistrate, Nagaur, from where the case was committed to the court of Additional District and Sessions Judge, Nagaur, for trial.

5. The accused Appellant was charged for commission of offence u/s 307, 326 and 234 IPC, to which he did not plead guilty and claimed trial. To prove its case prosecution examined as many as 16 witnesses, namely, P.W.1 Billu @ Panchu, P.W.2 Chhoturam, P.W.3 Lichhman, P.W.4 Jagdish, P.W.5 Omprakash, P.W.6 Manakchand, P.W.7 Nemichand, P.W.8 Ramratan Vijay, P.W.9 Mahesh Jha, P.W.10 Kaluram, P.W.11 Ramniwas, P.W.12 Sukharam, P.W.13 Roopnarayan, P.W.14 Kishanlal, P.W.15 Abdul Razzak and P.W.16 Gordhanram. The incriminating evidence adduced against the accused Appellant during the course of the trial was put to him for explanation u/s 313 Code of Criminal Procedure and the accused Appellant examined one witness, namely, D.W.1 Shankar @ Shakoor in his defence.

6. The learned trial court after conclusion of the trial convicted the accused Appellant for commission of offence u/s 307, 326 and 324 IPC and sentenced him as narrated above. Hence, this appeal.

7. The main contention of the learned Counsel for the accused Appellant in the present appeal was that the incident took place in a thickly inhabited market area where the bus stand of Deedwana was situated and further there was main road near the place of the incident, but the Investigating Officer never tried to record the statements of independent witnesses and simply on the basis of the statements of the interested witnesses, the chargesheet was filed. Further during the course of trial, the prosecution examined P.W.2 Chhoturam, P.W.7 Nemichand, P.W.12 Sukharam and P.W.14 Kishanlal as the eye-witnesses of the

incident and out of these 4 witnesses, P.W.12 Sukharam and P.W.14 Kishanlal did not corroborate the prosecution story and therefore, they had been declared hostile by the prosecution. The learned Counsel for the accused Appellant contended that the place of incident was the main market area near the bus stand and Musafirkhana and there the presence of only 4 witnesses as eye-witnesses could not be believed and he further argued that only P.W.2 Chhoturam and P.W.7 Nemichand corroborated the evidence of the injured. The learned Counsel for the Appellant further argued that P.W.7 Nemichand admitted in his cross-examination that Kishanlal (P.W.14) and Sukharam (P.W.12) were also present near the place of the incident and these witnesses have not corroborated the evidence of the injured and similar admission had been made by P.W.2 Chhoturam, therefore, the entire story of the prosecution could not be believed because had there been an incident at such a thickly inhabited place, then there would have been number of witnesses to witness the incident, whereas the prosecution examined only 4 eye-witnesses, out of whom two witnesses did not corroborate the prosecution story. Learned Counsel for the accused Appellant further argued that the First Information Report (Ex.P.2) was filed by Manakchand, the father of the injured, and it did not contain the names of the eye-witnesses, therefore, the statements of P.W.2 Chhoturam and P.W.7 Nemichand could not be believed and the learned trial court committed an error in believing the statements of these two eye-witnesses.

8. Learned Public Prosecutor while controverting the above contentions vehemently defended the judgment of the learned trial court and argued that the judgment of the learned trial court is based on trustworthy evidence of P.W.1 Billu, P.W.2 Chhoturam and P.W.7 Nemichand and it does not require any interference.

9.1 have pondered over the arguments advanced by the learned Counsel for both the parties and also carefully evaluated and scanned the evidence produced during the course of the trial.

10. P.W.1 Billu, injured, deposed that 8 or 8 1/2 months earlier to recording his statement in the court, at 8.00 am. he was sitting at his shop near the bus stand. At that time accused Appellant Prakash came there with a sword and inflicted blow with the sword on his head. He stopped the second blow of the sword by his hands, thereby his fingers and thumb of left hand were injured. Chhoturam and Nemichand who were there caught the accused Appellant. He was brought to the hospital and report was lodged by his father. Further P.W.2 Chhoturam and P.W.7 Nemichand corroborated the evidence of P.W.1 Billu.

11. P.W.2 Chhoturam further deposed that he saw the injuries on the head and left hand of injured Billu.

12. P.W.3 Lichhman deposed that 9 months earlier to recording of his statement in the court, he was at his residence and his brother Billu came to his residence and informed that Prakash had caused injuries on his head with a sword. Blood

was oozing from his head and hand.

13. P.W.4 Jagdish deposed that he brought injured Billu to the hospital. Blood was oozing from his hand and head.

14. P.W.5 Omprakash was the witness of execution of Fard Ex.P.1, by which blood stained clothes of the injured were taken into possession by the Investigating Officer.

15. P.W.6 Manakchand deposed that when Billu came to the residence, he saw the injuries on his head and left hand, then he lodged the report Ex.P.2 at the Police Station. The Investigating Officer inspected the site of the incident and prepared memo Ex.P.4. He presented the blood stained pant and shirt of Billu in the police station vide memo Ex.P.1. The sword was presented by the accused Appellant Prakash to the police in his presence.

16. P.W.8 Dr. Ramratan was the Medical Officer who examined the injuries on the body of injured Billu and observed the following injuries on his body :

(i) Incised wound 10 x 0.5 cm extended upto periosteum with cutting at periosteum on right side of skull extending upward and laterally from occipital protuberance bleeding profusely.

(ii) Incised wound 3 x 0.5 x 0.2 cm on left thumb over middle and distal phalanx on palmer aspect.

(iii) Incised wound 5 x 0.4 x 0.3 cm on left middle finger over middle and distal phalanx on palmer aspect.

(iv) Incised wound 3 x 0.5 x 0.2 cm on left ring finger over middle and distal phalanx on palmer aspect.

All the above four wounds were bleeding profusely.

17. According to P.W.8 Pr. Ramratan, all the abovementioned injuries were caused by sharp edged weapon and he advised x-ray for the injury No. 1. The injury at the right side of the skull was found grievous in nature because it was a fracture and rest of the injuries were simple in nature. The duration of the injuries was within two hours of the time of examination. He further deposed that he prepared the injury report Ex.P.7.

18. P.W.9 Dr. Mahesh Jha deposed that on 10.11.1987 he was posted as in-charge of the Radiology Department in the Government Hospital, Deedwana, and x-ray of Billu was conducted in his presence by Technician Bhanwarlal and he examined the x-ray films and opined that there was fracture in right occipital parietal bone of skull. He prepared the report Ex.P.9.

19. P.W.10 Kaluram deposed that the Investigating Officer inspected the place of occurrence in his presence and prepared memo Ex.P.4.

20. P.W.11 Ramniwas did not corroborate the prosecution story, therefore, he

was declared hostile.

21. P.W.13 Roopnarayan, P.W. 15 Abdul Razzak and P.W. 16 Gordhanram were the Investigating Officers who took various steps during the course of the investigation.

22. The accused Appellant Prakash in his statement took a simple stand of denial of the prosecution witnesses and further stated that he was falsely implicated due to previous rivalry.

23. The defence witness D.W.1 Shankar @ Shakoor deposed that at the time of incident he was at the Bus Stand of Deedwana. There was a quarrel between Billu and one boy. Billu ran after that boy with a "Rapi". The other 2 or 3 boys caught Billu and thereby injuries were caused on the body of Billu by that "Rapi".

24. The learned trial Judge while appreciating the evidence in para 24 of the judgment disbelieved evidence of P.W.2 Chhoturam and P.W.7 Nemichand simply for the reason that they were created witnesses and the First Information Report did not contain the names of these two persons. Then further the learned trial court believed the evidence of injured Billu alone and convicted the accused Appellant.

25. It is undeniable fact that the incident took place in a thickly inhabited market area and number of persons gathered at the scene of occurrence, but nobody except the injured Billu and P.W.2 Chhoturam and P.W.7 Nemichand named the accused Appellant Prakash (now deceased) as the assailant. So far as the testimony of P.W.2 Chhoturam and P.W.7 Nemichand is concerned, the learned trial court also disbelieved it and rightly so because they were very well known to the person who lodged the First Information Report, but their names did not find any mention in the First Information Report (Ex.P.2).

26. It is true that quality and not the quantity of the evidence carries weight, yet withholding of evidence may otherwise get importance because no other alleged eye-witness corroborated the version of the injured. Two false eye-witnesses were inducted and they had been disbelieved by the learned trial court and in addition thereto, there were exaggerations and contradictions also in deposition made by the injured himself. It is, therefore, unsafe to place reliance on the testimony of such a solitary witness because none else corroborated the evidence of the injured. Hence, I am of the considered view that benefit of doubt ought to be extended to the accused Appellant Prakash (now deceased), whose wife Smt. Tara Devi is prosecuting the appeal with the permission of the court.

27. In view of the discussion made above, the judgment of conviction and order of sentence dated 10.04.1989 passed by learned Additional District and Sessions Judge, Nagaur in Sessions Case No. 89/1987 against the accused Appellant Prakash (now deceased) is set aside and he is acquitted of the charges levelled against him. Accordingly, this appeal prosecuted by Smt. Tara Devi, the wife of the accused Appellant Prakash, is allowed.