

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: Cr. Appeal No.22-A/2004 & Cr.M.P. No. 188/2004

Dated: 18.09.2008

Onkar Nath alias Om Parkash Vs. State of Jammu & Kashmir
Age 32 years S/o Puran Chand
R/o Sahazadpur, Tehsil Samba

Coram:

Hon'ble Mr. Justice Virender Singh, Judge.

Appearing counsel:

For appellant : Mr. C. M. Gupta, Advocate.
For respondents : Mr. S. C. Gupta, Addl. Advocate General.

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| i) | Whether approved for reporting
in Press/Journal/Media | Yes/No |
| ii) | Whether to be reported in
Digest/Journal | Yes/No |
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Appellant Onkar Nath alias Om Parkash (for short referred as 'accused') stands convicted by learned Additional Sessions Judge, Jammu, vide impugned judgment dated 17.08.2004 under Sections 307/354 Ranbir Penal Code and has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default thereof, to undergo simple imprisonment for six months. The amount is ordered to be paid to the complainant. The accused was also charged under Section 354 RPC, but he has been acquitted for the same charge. The State has not preferred any appeal against the said acquittal.

The occurrence is of 29.03.1995. Complainant is one Sanjogta Kumari, who is injured also and at the time of occurrence she was a student of 12th class. She alleged before the concerned police while being admitted at Ramgarh hospital on 29.03.1995 that 7-8 days prior to the occurrence, the accused had thrown a straw (in common parlance known as 'wooden teela') at her and she had brought this fact to the notice of her father, who had complained to the parents of the accused. For this reason, accused was keeping enmity and on the date of occurrence (29.03.1995) at

about 6 p.m., when she alongwith her friends was returning to home after taking examination and reached a culvert, the accused was found sitting there. As soon as she passed nearby the accused, he started abusing her, whereupon he was asked to behave properly. It is then alleged that the accused was having a sickle in his hand and attacked her with the same causing injuries on the different parts of her body. Upon her noise, certain persons collected there and the accused fled away from the spot. The police after registration of the case, started investigation, arrested the accused and ultimately put him for trial. He was charged under Sections 354/307 RPC.

The prosecution, in support of its case, has examined Sanjogta Kumari complainant (injured), Bodh Raj her father, Amar Nath, Nasib Chand, Rekha Kumari, Anu Radha, Primala and Dr. Bodh Raj. The case of the accused was of false implication. However, he has no produced any defence in support of his plea.

The learned trial Court, after appreciating the case of the prosecution, has convicted and sentenced the accused as stated above. Hence, this appeal.

I have heard Mr. C. M. Gupta, learned counsel appearing for appellant and Mr. S. C. Gupta, learned Addl. Advocate General representing State. I have also gone through the trial Court record minutely.

The foremost attack launched by Mr. C. M. Gupta is that it is a case of false implication on account of the previous enmity. He submits that may be the accused has not come with a specific plea projecting enmity for his false implication, but the case as set up by the prosecution itself speaks volume of the said fact as the case of the complainant is that 7-8 days prior to the occurrence the accused had thrown a straw on her; on oath she has categorically given this date as 22.03.1995. Admittedly, the complainant or her father had not lodged any report with the police in this regard. No one knows, whether it is a true incident or not. So non-lodging of the report creates doubt about the very case set up and it creates doubt even with

regard to second occurrence of 29.03.1995, which otherwise is not proved to the hilt. This, according to the learned counsel, is a serious flaw going deep to the roots of the prosecution case.

Mr. Gupta then submits that the complainant's case was initially getting support from the statements of Rekha Kumari, Anu Radha and Primala, who were allegedly accompanying her when the accused had made an assault on her with sickle. All these independent witnesses have not supported her cause and turned hostile, and now the prosecution is banking upon the un-corroborated statement of Sanjogta Kumari, the complainant, only. Therefore, her statement has to be tested with great care and caution to arrive at a just conclusion. According to learned counsel, the discrepancies crept in her statement render her total unreliable and it would not be safe to base conviction on her solitary statement. Shattering her statement, Mr. Gupta submits that if one reads her substantive statement, she does not say a word about presence of PW Nasib Chand whereas PW Nasib Chand when stepped into the witness box stated that he had seen the accused assaulting Sanjogta Kumari. She in her substantive statement has categorically stated that but for Amar Nath, who is father of Rekha Kumari, no one else had reached the spot. From this Mr. Gupta wants to develop that even PW Nasib Chand has been introduced by the prosecution; whereas he had actually not seen the occurrence. This according to the learned counsel is again a very vital flaw.

With regard to the presence of PW Amar Nath (father of Rekha Kumari), Mr. Gupta submits that even his presence is doubtful on spot. He has once again read over the statement of Sanjogta Kumari, where she has stated that Rekha Kumari had called her father, whereas Amar Nath has projected himself to be the witness to the occurrence. From all the aforesaid infirmities, Mr. Gupta submits vehemently that in fact the case of the complainant is not getting any support from any independent source and, therefore, her statement is shrouded under clouds of doubt.

Mr. Gupta then submits that not only the case of the prosecution is weak on account of the aforesaid weaknesses, even the investigating officer has not been produced by the prosecution in this case. No sickle, stone or even wooden dasta (wooden part of the sickle) have been taken into possession by the investigating officer. He submits that from the statement of Sanjogta Kumari, it has come that after the wooden dasta of sickle had broken, the accused had picked up stone and started assaulting her and it is not her case that he had fled away alongwith sickle or stone. Therefore, in all probabilities both these items should have been lying at the spot and it was incumbent upon the investigating officer to take them into possession, but the same is not done in this case. Learned counsel submits that had the investigating officer been produced by the prosecution, he would have made it clear in his cross-examination in this regard. Therefore, his non-examination also dents the case of the prosecution so as to show that it is not coming forward with a clear cut case.

Mr. Gupta then submits that not that the case of the prosecution is not proved to the hilt on account of the weaknesses pointed hereinabove, even the main offence of Section 307 RPC is also not made out. He submits that no doubt it has come on record from the statement of Sanjogta Kumari that she remained admitted in the hospital for 7-8 days, but that fact by itself would not bring the present case within the mischief of Section 307 RPC. Even otherwise, out of the total eight injuries received on the person of Sanjogta Kumari, injury No.1 has been declared as grievous in nature and this injury is by blunt weapon. Therefore, it attracts Section 325 RPC. There is only one incised wound over pina of the left ear. This injury is simple in nature and would attract Section 324 RPC. Therefore, testing the case of the prosecution case from medical evidence, Section 307 RPC is not made out and the main offence deserves to be diluted accordingly. Mr. Gupta submits that in that eventuality, in the event of the conviction being maintained (although not admitted

and opposed vehemently) the prosecution case falls within the mischief of Sections 325 & 324 RPC. To develop this aspect further with regard to quantum of sentence, Mr. Gupta submits that the offence occurrence relates to year 1995 and by now the accused has suffered a protracted trial of 13 years. No doubt, at the time of occurrence, the complainant was a student of 12th class, but by now she must have got married. The accused is also bringing up his entire family, which consists of minor children and, therefore, keeping in view all these factors into consideration, his case would call for a lenient view may be his release on probation or reducing the sentence to the period already undergone by him which is about one month, which also includes his detention period he suffered after being convicted by the trial Court and granting of bail.

Refuting arguments advanced by Mr. C. M. Gupta, Mr. S. C. Gupta, learned Additional Advocate General, submits that it cannot be said to be a case of enmity to falsely implicate the accused in this case, whereas the accused was nursing a grudge to settle the score with the complainant with regard to the earlier incident dated 22.03.1995 about which a protest was lodged with the parents of the accused. He then submits that may be the case of the complainant is not getting any corroboration from the independent source, still her statement is sufficient to hold conviction especially when it is not suffering from any flaw on any material aspect. He, thus, prays for confirmation of the conviction of the accused. He, however, fairly states that as per medical evidence, it cannot be said to be a case of Section 307 RPC and, therefore, he has no serious objection, if the main offence is diluted from the main charge of Section 307 to Sections 324 & 325 RPC being lesser one.

Mr. Gupta lastly submits that the accused does not deserve the concession of probation or any concessional tilt. Even otherwise, the sentence awarded by the trial Court is most adequate as per the act committed by him.

No doubt, in the present case, statement of Sanjogta Kumari is not corroborated by her three friends, who were accompanying her as they have been turned hostile or even the statements of Nasib Chand and Amar Nath are also not lending much support to the case of the complainant, still in my considered view, there appears to be no reason to disbelieve Sanjogta Kumari as her statement does not shatter the basic substratum of the prosecution case. It is well settled that conviction can be based on the solitary statement of an injured witness if it is reliable and trustworthy to hold conviction. She has received as many as eight injuries as is clear from medical evidence and was taken to the hospital immediately after the occurrence, where her statement was recorded. The attack launched by Mr. C. M. Gupta is that the accused has been implicated on account of the previous enmity. Possibly, there could not be any previous enmity in the bosom of the complainant to falsely implicate the accused. She was teased a week prior to the occurrence by the accused, for which she reported the matter to her father, who in turn, went and lodged a protest with the family of the accused. It was a very natural reaction. The second occurrence is after 6-7 days of the earlier occurrence. The accused, in fact, was nursing a grudge on account of the protest lodged against him before his family members. Sanjogta Kumari has categorically stated that she was coming back after appearing in the examination when she was assaulted. It cannot be a case of mistaken identity at all. All these factors go to show that the story as projected by the complainant is true and it has no tinge of adulteration in it. I, therefore, repel the arguments of Mr. Gupta on this aspect.

Much has been said by learned counsel for the appellant to demolish the case of the complainant saying that there are material discrepancies in her statement and in the statements of Nasib Chand and Amar Nath. No doubt, certain discrepancies have crept in the statement of these witnesses, but in my firm view, all these are immaterial discrepancies, which do not uproot the basic case set up by the

complainant. Certain aspects obliterate from the memory of even most truthful witness and some margin is to be given for that. What is to be seen is as to whether these weaknesses knock out the prosecution case in its totality or not? In the case on hand, the story unfolded by the complainant Sanjogta Kumari coupled by the medical evidence speaks volume of the fact that the accused had assaulted her with a sickle.

At the same time, I do not find any force in the other argument advanced by Mr. Gupta with regard to non-examination of the investigating officer. No doubt, sickle or stone has not been taken into custody by the investigating officer in this case as is clear from the record, but that too would not dent the case of the prosecution as this fact by itself cannot cast doubt upon the very case set up by the complainant. It is not a case in which many accused are involved by knitting a net wider. In fact, it is one versus one. Therefore, even if the investigating officer has shown some laxity in not taking into possession the sickle or stone allegedly used by the accused in assaulting the complainant, that fact would not be fatal to the prosecution when the prosecution case is otherwise proved beyond any shadow of reasonable doubt.

I, however, find some substance in the argument advanced by Mr. C. M. Gupta with regard to diluting of offence, to which Mr. S. C. Gupta, learned Addl. Advocate General, has also conceded. No doubt, the complainant Sanjogta Kumari has received as many as eight injuries, out of which four injuries are on head, but these injuries are simple in nature in the shape of lacerated wounds, which are possible by a brick/ bat or stone. These injuries would at the most attract Section 323 RPC. Injury No.1, which is again caused by a blunt weapon turned out to be grievous. This injury is on right finger of the complainant and would attract Section 325 RPC. Injury on pina of the left ear is the incised wound with irregular margin of 4 inches in length gap. This injury is simple in nature caused by a sharp edged

weapon attracting Section 324 RPC. Admittedly, Sanjogta Kumari remained admitted in the hospital for 7-8 days only. Therefore, taking the entire facts situation of the case vis-a-vis the medical evidence on record, in my considered view, the present case would not fall within the mischief of Section 307 RPC as it cannot be said on the basis of the evidence on the record that the accused had any intention or knowledge to cause death. His intention only was to cause injury to the complainant, for which he used force. Therefore, I dilute main offence from Section 307 RPC to Sections 324/325 RPC being lesser one.

As a sequel to the aforesaid discussion, the net result now surfaces is that the prosecution is able to prove its case against the accused beyond any shadow of reasonable doubt, but for the offence punishable under Sections 324/325 RPC only and not Section 307 RPC for which he stands charged and convicted by the learned trial Court. The conviction is, thus, altered in the said terms.

So far as quantum of sentence is concerned, in my view, the accused does deserve some leniency, especially under the circumstances when I have already diluted the main offence. In my view, keeping in view the totality of facts and circumstances, the accused does not deserve to be released on probation or reduction of sentence to period already undertaken by him (about one month) as prayed for, but ends of justice would be adequately met if the sentence of three years as already slapped upon him is reduced to one year and six months (18 months). The sentence of fine shall remain as unaltered. Ordered accordingly.

The appeal on hand is, thus, partly allowed. Cr.M.P. No.188/2004 also stands disposed of.

The appellant is stated to be on bail as his substantive sentence was suspended by this Court vide order dated 06.09.2004. Let necessary steps be taken to take him

into custody to serve the remainder of his substantive sentence. All quarter(s) concerned be informed accordingly.

(Virender Singh)
Judge

Jammu
18.09.2008
'Narinder'