

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Appeal No. 330/1993

1. Gajendra @ Pappu S/o Laxmichand
2. Devendra @ Devkinandan S/o Sh. Radhamohan Nai
Both R/o Sultanpur-Dist. Kota (At present in District Jail, Kota)

----Appellant

Versus

The State of Rajasthan

----Respondent

For Appellant(s) : Mr. Harendra Singh with
Mr. Dharmendra Choudhary

For Respondent(s) : Mr. Mahender Meena, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

28/03/2024

1. Instant S.B. Criminal Appeal is preferred by the appellants-accused Gajendra @ Pappu and Devendra @ Devkinandan aggrieved from the order of conviction and sentence dated 23.08.1993 in sessions case No. 343/1991 passed by learned Special Judge, SC/ST (POA) Cases, Kota wherein the petitioners Gajendra @ Pappu and Devendra @ Devkinandan were convicted under Sections 307 and 324 IPC and Sections 307/34, 324/34 IPC respectively and further sentenced to undergo rigorous imprisonment of 7 years with fine of ₹500/- and rigorous imprisonment of 1 year respectively.

2. In brief, the facts of the matter are that on the basis of Parcha bayan (Ex.P-8) of PW-5 Nand Kishore, FIR No. 44/1991 was registered at P.S. Sultanpur District Kota (Ex. P-9).

3. After completing the investigation, police had filed the charge-sheet against the appellants herein and Brij Sunder. Learned Trial Court has framed the charge under Section 307 IPC read with Section 3(2)(5) of SC/ST (POA) Act, 324 IPC and 4/25 Arms Act against Gajendra and Devendra but under Sections 307/34 IPC read with Section 3(2)(5) SC/ST (POA) Act, 307/34 IPC against Brij Sunder. During Trial, 15 witnesses were examined by the prosecution to establish the charge. Accused were examined under Section 313 Cr.P.C. wherein they opted to led defence evidence. Two witnesses DW-1 Ram Lal and DW-2 Zakir Hussain, were examined in support of the defence. Learned Trial Court after concluding the arguments had acquitted Brij Sunder from all charges whereas acquitted Devendra @ Devki Nandan and Gajender @ Pappu from charge under Section 4/25 Arms Act and Section 3(2)(5) of SC/ST, (POA) Act, but appellant-accused Gajendra @ Pappu was convicted under Section 307 and 324 IPC and Devendra @ Devki Nandan under Sections 307/34 and 324/34 IPC.

4. Learned counsel for appellant while relying upon the grounds of appeal would submitted that as per the story of prosecution, three persons assaulted the injured, but no specific attribution was alleged. He further submitted that testimonies of Chotte Lal, Nand Kishore and Om Parkash indicate that they have not disclosed, who made assault on which part of the body of the injured. He further submitted that PW-5 and PW-6 are real brothers and their different versions about the assault clearly indicated that they were not eye-witnesses. He specifically referred to the admission of PW-6 Om Parkash and submitted

that he is not an eye-witness. He also submitted that according to PW-5 Nand Kishore, when he reached the spot, one blow on abdomen of Chotelal was caused in his presence but all other blows were caused prior to his reaching the spot. He further submitted that PW-5 did not attribute the blow (assault) on abdomen to any of the appellants. He submitted that testimony of PW-5 Nand Kishore and PW-6 Om Parkash cannot be read as an eye-witness in support of PW-15 Chotu. He also submitted that PW-2 Bhawani Shankar, PW-3 Hari Vallabh and PW-4 Prabhu Lal have turned hostile and not supported the version of the prosecution. He referred to the cross-examination of PW-15 and submitted that at the time of beating no one came to rescue PW-15 and even PW-15 did not attribute any specific blow to any of the appellant. He also submitted that the cross-examination of PW-15 clearly indicated that the incident took place due to sudden provocation and there was no pre-meditated assault by the appellants. Learned counsel submitted that the Trial Court has committed serious error while convicted Devendra @ Devki Nandan without any evidence of common intention. At last, he submitted that the appellants are facing trial since 1991, and a lenient approach should be adopted against them. He also submitted that the appellants be released on probation or sentence already undergone.

5. Aforesaid contentions were opposed by learned Public Prosecutor. Learned Public Prosecutor submitted that the Trial Court after considering the material on record has rightly convicted the appellants, therefore, there is no scope of interference in the order of conviction and sentence.

6. Heard learned counsels for the appellants and learned Public Prosecutor. Perused the record.

7. A perusal of the evidence led by the prosecution clearly indicate that on the basis of oral statement Ex. P-8 of Nand Kishore on 30.04.1991 the report was registered by police. Ex. P-8 and P-9 clearly indicate that the incident was occurred at 9.45 P.M. and report was received at 11.45 P.M. Thus, there was no delay in reporting the matter to the police. In Ex. P-8 names of Bhawani Singh, Om Parkash and complainant Nand Kishore were mentioned as eye-witness. Out of the aforesaid PW-2 (Bhawani Shankar) turned hostile and did not supported the version of prosecution. PW-6 Om Parkash who is brother of injured PW-15 Chotu has admitted in cross-examination that the place of incident is not visible from his house. In Examination-in-Chief he deposed that when he reached the spot his brother was caught by Devki Nandan whereas Gajender and Brij Sunder were giving beatings. According to PW-6 Om Parkash he did not saw any object in the hands of the accused. PW-5 Nand Kishore also stated that Devki Nandan and third person gave beatings to Chotu. He also stated that he saw them assaulting Chotu with knife but he could not explain the attribution of specific assault by any of the appellant/accused. In cross-examination, PW-5 admitted that when he reached at the spot then Chottu Lal was lying on ground in unconscious state. During the arguments, Ld. Counsel for appellant specifically referred to the discrepancies in cross examination of PW-5 and PW-6.

8. PW-15 Chotu, who is injured, attributed the blows of knife upon Gajju and Brij Sunder but the Trial Court has acquitted Brij

Sunder and no revision petition was preferred challenging the acquittal of Brij Sunder. In cross-examination, PW-15 admitted that after the altercation the accused had assaulted him. Considering the aforesaid evidence a fact is quite clear that the incident was a result of sudden altercation, and there is no evidence of a pre-meditated fight. The evidence of PW-5 and PW-6 clearly indicates that when they reached the place of incident the assault was almost over. PW-5 Nand Kishore admitted that when he reached the crime scene then Chottu Lal was already fell on the ground and he could not explain that which of appellant (accused) was possessing knife in their hand. Similarly, PW-6 Om Parkash reached after PW-5 Nand Kishore. Thus, PW-5 and PW-6 are not eye-witnesses. Herein, the entire case rests on the sole testimony of PW-15 Chottu Lal.

9. PW-13 Dr. Abdul Rehman and PW-12 Dr. H.K. Singh have deposed that PW-15 had sustained 6 injuries and all were caused by a sharp edged weapon. According to PW-13 these injuries were on vital parts of the body. The surgical intervention conducted by PW-12 (Dr. H.K. Singh) was further proved from the surgical notes Ex. P-12 and discharge ticket Ex. P-13. PW-15 has sustained 6 stab/incised wounds caused by a sharp edged weapon. PW-15 injured, named Gajju and Brij Sunder for inflicting the blows from knife. The admission of PW-15 also indicated that all blows were caused within 2-3 minutes. PW-15 did not name Devendra for causing any blow from a sharp edged weapon. No one has deposed that Devendra had given any beating to injured to contribute in the incident.

10. Having considered the aforesaid, the only evidence on record is that of PW-15 and the injuries which were supported by PW-12 and PW-13 also indicated that PW-15 has sustained injuries in the incident but looking to his testimony, no specific role in causing the injury was alleged against upon Devki Nandan @ Devendra. Similarly, in Parcha bayan also the allegation on Devki Nandan was that he tied the hands of the injured meaning thereby that no knife blow was caused by Devendra @ Devkinandan though police has recovered a knife from the possession of Devendra @ Devki nandan and the Trial Court on the basis of the evidence on record has acquitted both the appellants from the offence under Section 4/25 Arms Act.

11. The material on record establishes that the incident was due to sudden altercation and it was not established that Devki Nadnan had committed assault in furtherance of a common intention. No direct allegation was found to be proved by the Trial Court against the Devki Nandan unless there is any evidence of common intention, the charge against Devendra @ Devkinandan cannot be established. Section 3 IPC provides that when a criminal act is done by several persons (more than one) in furtherance of common intention of all, each of such person shall be liable for the act in the same manner as if it were done by him alone. In an order to prove this fact, a prior meeting of mind or at least on the spot must be established from the evidence and the factum of common intention has to be determined by drawing inference from the circumstances established from the evidence on record. Herein due to sudden altercation, the incident started and finished in 2-3 minutes. Thus, there is no evidence or circumstances to

draw inference of common intention to fasten liability with aid of Section 34 IPC. The Trial Court has committed serious error while convicting Devendra @ Devki Nandan for the offence under Section 307/34 and 324/34 IPC.

12. The evidence on record clearly establishes the involvement of appellant Gajendra @ Pappu who was also named in the FIR. After the incident he was named by the injured and both the witnesses who reached on the spot to save PW-15 Chotu. PW-6 further stated that he identified the voice of Pappu. The evidence on record clearly pointed out the involvement of Gajendra @ Pappu. The testimony of PW-12 & PW-13 indicated that the injuries were sufficient to cause death in the ordinary course of nature. Therefore, the Trial Court has rightly convicted Gajendra @ Pappu.

13. In view of the aforesaid, the Trial Court has committed a grave error while convicting Devendra @ Devki Nandan for offence under Section 307/34 and 324/34 IPC. Thererfore, he is liable to be acquitted after getting the benefit of doubt but conviction of Gajendra @ Pappu is liable to be upheld.

14. The Trial Court has sentenced both the appellant Gajendra @ Pappu and Devendra @ Devkinandan for imprisonment of 7 years under Section 307 IPC nd injury report suggest that six blows were caused to PW-15 and the injuries were dangerous to life. All injuries were caused by sharp edged weapon, and sufficient sentence is required to be awarded to implement the sentencing policy. Therefore, this is not a fit case wherein benefit of probation be granted to Gajendra @ Pappu but looking to period

of time he faced, his sentence can be reduced as he is facing a criminal trial since 1991.

15. In view of aforesaid, the appeal preferred by Devendra @ Devki Nandan is hereby allowed and order of conviction and sentence dated 23.08.1993 is hereby set aside. Appellant-accused Devendra @ Devki Nandan is acquitted from charge under Section 307/34 and 324/34 IPC. He is required to submit undertaking in form of bond with surety under Section 437-A Cr.P.C to the satisfaction of Trial Court.

16. The appeal preferred by Gajendra @ Pappu against conviction under Section 307 and 324 IPC is hereby dismissed, but the sentence order dated 23.08.1993 is hereby partially modified and he will have to undergo sentence as under:-

(i) Under Section 307 IPC:- rigorous imprisonment of one year with fine of ₹25000/- but in case of non-payment of fine the appellant-accused Gajender @ Pappu shall undergo rigorous imprisonment of 3 months.

(ii) Under Section 324 IPC:- rigorous imprisonment of six months with fine of ₹5000/- and in case of default in payment of fine, he will undergo additional sentence of rigorous imprisonment of one month.

(iii) Both the sentences shall run concurrently.

(iv) The appellant-accused is entitled for benefit of set off under Section 428 CPC.

17. Thus, sentence of Gajender @ Pappu stands modified accordingly.

18. With the aforesaid, the instant appeal is hereby disposed of.

19. Pending application(s), if any, also stands disposed of.

(ASHOK KUMAR JAIN),J