

A NEELAM BAHAL & ANR.
v.
STATE OF UTTARAKHAND
(Criminal Appeal No. 1012 of 2009)

B DECEMBER 02, 2009

[HARJIT SINGH BEDI AND DEEPAK VERMA, JJ.]

Penal Code, 1860:

C s.326 – Knife injuries caused by accused to victim during
altercation – Accused convicted u/s 307 and his sister and
D mother convicted u/s 307 r/w s.34 – Pending appeal, mother
of accused died – High Court confirming conviction of
E accused and his sister – HELD: There is absolutely no reason
to doubt the statement of prosecution witnesses including the
victim with regard to the incident – It is true that there are
F some differences between the statements of the witnesses but
they are bound to occur with the evidence being recorded after
G about five years – There is some uncertainty about the
involvement of appellant No. 1 (sister of accused) – The facts
of the case indicate that she was perhaps not aware that
H accused was carrying a weapon with him – Prosecution
evidence also reveals that it was only after the quarrel had
reached a certain pitch that the accused rushed inside the
house and brought a knife and caused injuries to victim – No
specific overt act has been attributed to appellant no. 1 and
only a very tenuous role has been ascribed to her – This kind
of evidence creates a clear doubt as to her participation –
Appellant no. 1, therefore, must be given the benefit of doubt,
and thereby acquitted – With regard to the nature of offence,
medical evidence indicates that though the general condition
of the patient was very bad yet there is no categoric statement
in the medical certificate that the injuries were in fact
dangerous to life – The benefit must accrue to the accused –
At the same time, the statement of victim that he had

remained in hospital for fifteen days due to the injuries caused to him, makes out a case of greivous hurt – Accused alone should thus be held guilty u/s.326 IPC simplicitor – However, in the facts and circumstances of the case, the sentence is reduced to the period already undergone.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1012 of 2009.

From the Judgment & Order dated 5.12.2008 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 751 of 2001 (Old No. 1077 of 1991).

Kamini Jaiswal, S. Bakshi, A. Shrestha for the Appellants.

A.P. Sahai, Jatinder Kumar Bhatia for the Respondent.

The following Order of the Court was delivered

ORDER

This appeal arises from the following facts:

Satish Chandra (PW.3) was running a video and tea shop in Tagore Villa, Dehradun and had employed Shanichar (PW.2) as a servant. It appears that Shanichar and Satish Chandra fell out over the payment of wages on which the former left his employment and accepted fresh employment with Rakesh Bahal, one of the appellant's herein, as a servant in his shop. On account of this development the relations between the parties, who were otherwise well known to each other, became extremely strained and some threat was given by the Rakesh Bahal that in case Shanichar was not returned to his employment, dire consequence would follow on the complainant party. As a result of some compromise, however, it was ultimately agreed that Shanichar would return to Rakesh Bahal and for that purpose Satish Chandra took Shanichar on his scooter to the residence of Rakesh Bahal. It is further the case of the prosecution that there was some altercation between

A Rakesh Bahal on the one hand and Satish Chandra, Neelam
appellant (sister of Rakesh Bahal) and mother Raj Bahal on the
other, and in the course of this altercation Rakesh Bahal,
caused two injuries with a knife which he was carrying on the
person of Satish Chandra. Satish Chandra was removed to the
hospital but en route he told his brother Rajiv (PW.4) as to what
had transpired and on this information a report was lodged by
(PW.4) in the police station. The investigation was thereafter
started and various steps therein were taken and on the
completion thereof a charge under Sec. 307/34 was framed
against the three accused - Rakesh Bahal, his mother Raj
Bahal and sister Neelam Bahal. The trial Court in its judgment
dated 27/5/1991 relying on the statement of Shanichar (PW.2)
and the injured himself Satish Chandra (PW.3) as also on the
evidence of Dr.S.M.Sehgal (PW.1) who had examined Satish
Chandra on his admission to the hospital on the crucial day,
convicted appellant Rakesh Bahal under Sec.307 IPC and
sentenced him to undergo seven years R.I. and Neelam Bahal
and Raj Bahal under Sec.307/34 IPC and sentenced them to
undergo two years R.I. each.

E An appeal was thereafter filed in the High Court of
Uttarakhand at Nainital by all three and was ultimately
dismissed qua Rakesh Bahal and Neelam Bahal, the appellants
herein, but as Raj Bahal had in the meanwhile passed away
the appeal qua her was disposed of as having abated. It is in
this situation that the matter is before us after grant of special
leave.

G Ms. Kamini Jaiswal, the learned counsel for the appellants
has raised several argument in the course of the hearing. She
has pointed out that there was absolutely no justification in
believing the story given by PW.2 and PW.3 as several other
witnesses from the locality including one Rajender Kapur and
Bablu were admittedly present at the place of incident and
though examined by the police, had not been produced as
witnesses in Court. It has further been pleaded that the

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evidence of PW.2 did not inspire confidence and as it suffered from glaring improvements vis-a-vis his statement under Sec.161 of the Cr.P.C., the entire story stood falsified. It has also been contended that in any case Neelam Bahal, appellant could not have been roped in with the aid of Section 34 as no injury had been attributed to her, and as per the prosecution story she had only held Satish Chandra along with her mother so as to facilitate the infliction of the injury and that she was unaware that Rakesh Bahal was carrying a knife on his person. It has also been submitted that in any case in the background of the fact that Dr. S.M.Sehgal (PW.1) had not given a categorical opinion as to the nature of injury, the conviction, if at all, would fall under Section 323 or 324 of the IPC. Ms. Jaiswal's arguments have been controverted by the learned counsel for the State. He has submitted that there was absolutely no reason to discard the evidence of PW.2 and PW.4 and the mere ipsi dixit of the accused in their statements under Section 313 of the Cr.P.C. with regard to the fact that Satish Chandra had an evil eye on Rakesh Bahal's sister including Neelam, which had led to the incident was not borne out from the evidence. It has also been pleaded that a case of common intention vis.-a-vis. Neelam Bahal was also made out and that from the overall tenor of the evidence of Dr. S.M.Sehgal (PW.1) it was apparent that the injury caused to Satish Chandra was dangerous to life.

We have considered the arguments advanced by the learned counsel for the parties. We find absolutely no reason to doubt the statements of PW.2 and 4 with regard to the incident. PW.2 was an independent witness in as much that he had been employed with the complainant party as well as the accused party at various times. It also appears that he was the focus of the quarrel and the motive that had precipitated the incident, as both the parties were pushing for employing which had led to the unpleasant situation between them. Likewise we find difficult to disbelieve the statement of PW.3 the injured victim himself as he has given a graphic description as to what had happened. It is true, as has been contended by Ms.

- A Jaiswal, that there are some differences between the statements of these two witnesses but they are bound to occur with the evidence being recorded after about five years. It must also be borne in mind that a parrot like deposition after a long lapse of time smacks of tutoring and some differences in fact advance the credibility of the witness. We also find that the counter version given by the accused cannot be accepted. The accused has claimed that PW.3 had an evil eye on Neelam Bahal but if that was the reason for the incident they were further called upon to explain as to how the injuries had been suffered by PW.3, more particularly as the incident had apparently taken place outside the residential home of the appellants.

- D We are, however, of the opinion that there is some uncertainty about the involvement of Neelam Bahal, appellant No.1. The facts of the case indicate that she was perhaps not aware that Rakesh Bahal was carrying a weapon in his pocket or on his person. The prosecution evidence also reveals that it was only after the quarrel had reached a certain pitch that he had rushed inside the house and had brought a knife and caused the injuries to Satish Chandra. We also find that no specific overt act has been attributed to Neelam Bahal and only a very tenuous role that has been ascribed to her. To our mind this kind of evidence creates a clear doubt as to her participation.

- F We are, therefore, of the opinion that Neelam Bahal, appellant No.1 must be given the benefit of doubt, and thereby acquitted. The appeal qua her is allowed.

- G We also find some merit in Ms. Jaiswal's third argument with regard to the nature of the offence. We have very carefully gone through the evidence of PW.4 - Dr. Singal. We reproduce the injuries hereunder:

"1. Incised wound 5cm x 1.5 cm depth not probed on outer aspect of left side of chest, 28 cm below left axilla.

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2. Incised wound 6 cm x 2 cm x bone deep on top of left shoulder. A

In general condition of the patient was very bad.
Pulse was very week. B.P. could not be recorded."

A reading of the above would indicate that though the general condition of the patient was very bad yet there is no categorical statement in the medical certificate issued by Dr. S.M.Sehgal that the injuries were in fact dangerous to life. We are unable to fathom as to whether this was a deliberate omission or an oversight but whatsoever it may be, the benefit must accrue to the accused. We have also gone through the evidence of Dr.S.M.Sehgal and find that he had admitted that he had not mentioned that the injury was dangerous to the life as he did not think it necessary to do so. At the same time we are unable to accept Ms. Jaiswal's statement that the case would fall under Section 323 or 324 of the IPC but in the light of the statement of victim that he had remained in hospital for fifteen days due to the injuries caused to him, makes out a case of greivous hurt. Rakesh Bahal alone should thus be held guilty under Sec.326 of the IPC simplicitor. We are told that he has already undergone almost one year of the sentence and in the light of the fact that the incident happened in the year 1987 when he was a young man of about 25 and now must be of middle age, we reduce the sentence to the period already undergone by him.

The appeal is disposed of as above.

We direct that the bail bonds executed by Neelam Bahal shall stand discharged.

R.P.

Appeal disposed of.