

Ram Sunder Yadav and Others

Vs

State of Bihar

Criminal Appeals Nos. 1608-1609 of 1995

(M. K. Mukherjee, G. T. Nanavati, D. P. Wadhwa JJ)

24.08.1998

JUDGMENT

1. The questions which have been referred to this Bench by a two-Judge Bench of this Court are, whether the prosecution is obliged to explain the injuries sustained by the accused in the same occurrence and whether failure of the prosecution to so explain would mean that the prosecution has suppressed the truth and also the origin and genesis of the occurrence. The above questions arose in the context of divergent views expressed in the Jagdish v. State of Rajasthan ((1979) 2 SCC 178 : 1979 SCC (Cri) 436) and Hare Krishna Singh v. State of Bihar ((1988) 2 SCC 95 : 1988 SCC (Cri) 279). In the former, a two-Judge Bench of this Court laid down the proposition that where serious injuries are found on the person of the accused, as a principle of appreciation of evidence, it becomes obligatory on the prosecution so as to satisfy the court as to the circumstances under which the occurrence originated but before the obligation is placed on the prosecution, two conditions must be satisfied :

(i) That the injury on the person of the accused must be very serious; and

(ii) That it must be shown that these injuries must have been caused at the time of the occurrence in question.

2. In the other case, another two-Judge Bench of this Court held that it is not the law or invariable rule that whenever the accused sustains an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved.

3. It has now been brought to our notice that earlier a three-Judge Bench of this Court had considered the above questions in Bhaba Nanda Sarma v. State of Assam ((1977) 4 SCC 396 : 1977 SCC (Cri) 602) and held that the prosecution is not obliged to explain the injuries on the person of the accused in all cases and in all circumstances and, according to the learned Judges, it is not the law. The same question again came up for consideration before another three-Judge Bench of this Court in Vijayee Singh v. State of U.P. ((1990) 3 SCC 190 : 1990 SCC (Cri) 378) wherein it has been held as under : (SCC p. 202, para 10)

"In Mohar Rai Case (Mohar Rai v. State of Bihar, AIR 1968 SC 1281 : (1968) 3 SCR 525) it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in Lakshmi Singh case (Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394 : 1976 SCC (Cri) 671) also it is observed

that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case."

4. Since the questions raised herein have already been answered by a larger Bench, we send the record back to the Bench, hearing the connected appeal.