

PETITIONER:
RAM SUNDER YADAV & ORS.

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT: 24/08/1998

BENCH:
M.K. MUKHERJEE, G.T. NANAVATI, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

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 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 Jagdish vs. State of Rajasthan [(1979) 2 SCC 178] and Hare Krishna Singh & Ors. vs. State of Bihar [(1988) 2 SCC 95]. 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:

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

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 on the failure of the prosecution to do so the prosecution case should be disbelieved.

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 & Ors. vs. State of Assam [(1974) 4 SCC 396] and held that the prosecution is not obliged to explain the injuries on the person of 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 & Ors. vs. State of U.P. [(1990) 3 SCC 190] wherein it has been held as under:

" In Mohar Rai case [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 [1976 (4) SCC 394] also it is observed that any non-explanation of the injuries on the accuse by the prosecution may affect the prosecution case But such a non-explanation may assume great importance where the evidence consists of interested or inimical witnesses or where the defence gives probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy the truth from falsehood the mere fact that injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case."

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