

Jitendra Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Aug-13-2013

Appellant : Jitendra

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. A.D. Mishra

Judgement :

1 Criminal Appeal No.1208 of 2009 HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH: HONBLE SHRI JUSTICE SUBHASH KAKADE CRIMINAL APPEAL NO.1208 of 2009 APPELLANT: Jitendra s/o Mahasingh Verma, aged about 37 years, R/o Pataleshwar, Chhindwara, P.S. Kundipura, District Chhindwara (MP) Versus RESPONDENT: State of Madhya Pradesh, through Police Station Chourai, District Chhindwara (M.P.).

----- Shri
A.D. Mishra, Advocate for the appellant. Smt. Nirmala Nayak, Govt. Advocate for
the respondent.

Judgment reserved on :

14. 05.2013 Judgment delivered on :

13. 08.2013 (

JUDGMENT

) The appellant Jitendra being aggrieved by the judgment dated 10/06/2009 passed by learned Additional Session Judge, Chhindwara in Session Trial No.134/2007 has filed this appeal under Section 374(2) of the Code of Criminal Procedure, 1973, whereby, the appellant held guilty, convicted under Section 324 of Indian Penal Code and sentencing for six months' rigorous imprisonment and fine of Rs.1000/-, in default of payment of fine, further to suffer imprisonment for one month.

02. The prosecution case in short is that on 13/09/2006 when complainant was came to own residence at village Palhari from Sihora, his nephew Sanju @ Sanjeev Kumar narrated the stone throwing activity by one Faglal on their house. At that time, Faglal was present there, so the 2 Criminal Appeal No.1208 of 2009 complainant Indrajeet asked him why he was throwing stone on his house, meanwhile accused Jeevan, Mohan, Khemnarayan and appellant Jitendra were came near to house of complainant Indrajeet and abused him. When Indrajeet stopped them, thereupon accused Jeevan inflicted him injury by some sharp edged weapon. Accused Jitendra and Khemnarayan also given blow to Indrajeet by sticks. Shivnarayan and Hiralal intercepted the matter. Indrajeet went to police station, Chourai, where his report was written on Rochnamacha Sana No.750 by Head Constable Laxmi Prasad who also managed to send Indrajeet for medical examination. Dr. R.B. Verma at Community Health Centre, Chourai examined Indrajeet and found three injuries on his person, out of which, Injury No.1 was found inflicted by sharp edged weapon and to ascertain the nature of this injury referred him for X-ray. On receiving this medical report, First Information Report was lodged by Head Constable Sanjay Suryawanshi. After completing the due investigation, challan was filed against the accused persons.

03. The Magistrate committed the case with cross case for trial to learned Session Judge, who in his turn framed charge against appellant Jitendra and other accused Jeevan, Mohan and Khemnarayan for commission of offence punishable under Section 324 read with Section 34 of IPC. They abjured their guilt, therefore, they were put to trial.

04. The prosecution has examined 06 witnesses and produced documents Ex.P/1 to P/10 to prove his case.
05. During statements recorded under Section 313 of Criminal Procedure Code, 1973 the appellant Jitendra and other accused Jeevan, Mohan and Khemnaranayan denied all the evidence put forth against them 3 Criminal Appeal No.1208 of 2009 and stated that they are falsely implicated in this crime. The defence did not examine any witness.
06. Learned trial Judge after appreciating the evidence produced by the prosecution arrived at a conclusion that prosecution successfully anointed the guilt of the appellant Jitendra for inflicting injuries and convicted appellant Jitendra for charge under Section 324 of Indian Penal Code. But, acquitted the other accused Jeevan, Mohan and Khemnaranayan from the charges punishable under Section 324/34 of IPC, against this acquittal, the State did not prefer any appeal.
07. Complainant Indrajeet along with witness Sanjeev and one Ramkrishna were prosecuted in cross case for the offences punishable under Sections 307/34, 324/34 of IPC and vide judgment dated 10.06.2009 complainant Indrajeet and Sanjeev were convicted under Section 324/34 of I.P.C.
08. Shri A.D. Mishra, learned counsel for the appellant taken me through the entire judgment and main grounds of challenge mentioned in the memo of appeal has pointed out error that has allegedly committed at the time of recording evidence by the learned trial Court and recording conviction of appellant. One of big bone of submission of Shri Mishra is that there were material contradictions, omissions, improvements in the version of the prosecution witnesses and as such the impugned judgment is based on presumption and surmises, hence, liable to be set aside.
09. On the contrary, Smt. Nirmala Nayak, learned Government Advocate for the respondent/State has vehemently opposed the appeal contending that the impugned judgment has been passed by the learned trial Court on proper appreciation of evidence of prosecution witnesses. Thus, the appeal lacks merits and is liable to be dismissed. 4 Criminal Appeal No.1208 o

10. Considered the submissions made by learned counsel for the parties and gone through the entire record and impugned judgment carefully.

11. An appeal against conviction must be disposed of with reasoned order as failure to give reason amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. High Court, in appellate jurisdiction, should not come to an abrupt conclusion that trial courts reasonings are erroneous, without discussing why those were considered erroneous or unacceptable. There is no embargo on the appellate court reviewing the evidence. But the High Court must point out not only that the conclusions arrived at by the trial court were erroneous. Appellate Court should give due weight and due appreciation of evidence made by the trial Court.

12. Finding of learned trial Judge that complainant Indrajeet (PW/1) got injuries on his person is not disputed. Indrajeet (PW/1) stated that on second day he was medically examined.

13. At Community Health Centre, Chourai Dr. R.P. Verma (PW/6) examined Indrajeet and vide his MLC report (Ex.P-10) found 3 injuries on his person. Doctor was of the opinion that injuries No.2 and 3 were caused by hard and blunt object and injury No.1 was caused by hard and sharp object. Injury No.2 and 3 were simple in nature and to ascertain nature of injury No.1 he advised for X-ray. Though X-ray report is not on record and I.O. Shri Sanjay Suryawanshi (PW/5) did not seize weapons used during incident.

14. This brings to determine the crucial question as to whether Jitendra caused injury to Indrajeet by hard and sharp object?. 5 Criminal Appeal No.1208 o

15. Learned trial Judge committed grave mistake while passing impugned judgment.

16. Learned trial Judge, in para 6 of impugned judgment specifically observed regarding accused Jeevan that when complainant Indrajeet (PW/1) stopped accused persons from abusing, then accused Jeevan blowed him by knife on his

left side elbow. And for other three accused persons, Jitendra, Mohan and Khemnaranayan it is categorically observed that after scuffle remaining accused started wielding sticks, due to which his Kavelu. (roof tiles) and chair broken.

17. In para 7 of impugned judgment learned trial Judge on behalf of complainant Indrajeet repeated some part of FIR stating that accused Jitendra given blow by stick on his head, Hemwati (wrongly named for Khemnaranayan) given blow on right side of ribs. Shivnarayan Verma and Hiralal Chandrawanshi intervened. Repeating again, that after scuffle remaining accused started wielding sticks, due to which his Kavelu. (roof tiles) and chair broken. It was further observed that though, this statement of Indrajeet (PW/1) is altogether different from the facts disclosed in FIR (Ex.P-1) and also contradictory with statements recorded under Section 161 of Criminal Procedure Code. On the basis of these facts, learned trial Judge observed that complainant Indrajeet in his court statement made a different version, which in fact not disclosed in the FIR. Finally, on appreciation of evidence of Indrajeet, learned trial Judge come to the conclusion that complainant Indrajeet himself did not support the averments made in FIR. Learned trial Judge categorically opined that this statement is not supported by FIR, not Sanju (PW/2) supported this version of complainant Indrajeet. 6 Criminal Appeal No.1208 o

18. On the basis of evidence of witness Sanju Sharma (PW/2) in para 8 of impugned judgment, learned trial Judge observed that it was accused Jeevan who inflicted injury on person of complainant Indrajeet (PW/1) by given blow of knife on left side elbow. For appellant Jitendra and accused Mohan it is observed that they have given stick, hard and blunt object, blow to Indrajeet.

19. In para 9 of impugned judgment it is observed on the basis of evidence of Shivnarayan Verma (PW/3) by learned trial Judge that accused Jeevan Singh and Indrajeet (PW/1) went in one lane.

20. Purpose better known to learned trial Judge that after mentioning maxim uno falsus, omni falsus. why he mentioned in this para 07 that Na Hi Sakshi Ko Sharab Ke Brand Ki Tarah Satyabhashi Ya Mithyabhashi Ka Brand Diya J.Sakta Hai. (witness cannot be branded as liquor, veracious or malicious).

21. Looking to trend of marshelling of evidence of prosecution witnesses by learned trial Judge as mentioned, in para 6 to 9 of the impugned judgment, the intention of learned trial Judge was clear that he wanted to held guilty accused Jeevan for the offence punishable under Section 324 of IPC. For other accused persons, Jitendra, Mohan and Khemnarayan, the intention of learned trial Judge was to acquit them from the charges punishable under Section 324/34 of IPC.

22. But, by clerical mistake or for any other reason on the part of learned trial Judge, he acquitted accused Jeevan instead to held guilty him, with other accused Mohan and Khemnarayan and convicted appellant Jitendra instead of accused Jeevan for the offence punishable under Section 324 of IPC, which was not intention of learned trial Judge. 7 Criminal Appeal No.1208 o

23. However, mistake is committed by learned trial Judge and advantage definitely goes in favour of appellant Jitendra, because as per the observations made by learned trial Judge in para 6 to 9 of the impugned judgment, the intention was to convict accused Jeevan, not appellant Jitendra, because on the strength of available evidence appellant Jitendra otherwise also cannot be convicted for any offence.

24. In view of the above, the appeal succeeds and is allowed. The impugned judgment and order dated 10.06.2009 passed by the learned trial Court is hereby set aside and appellant Jitendra is acquitted from the charge punishable under Section 324 of Indian Penal Code. The appellant Jitendra is enlarged on bail by this Court vide order dated 01.07.2009. The bail bonds stand discharged.

25. Before parting, because this matter involves question of grave mistake committed by learned trial Judge, Registry, subject to approval of Hon'ble the Chief Justice, may deliver copy of this judgment with copy of impugned judgment dated 10.06.2009 passed by learned trial Judge for his perusal that in future he will not repeat such type of mistake, with the liberty to file his representation. Appeal allowed. (SUBHASH KAKADE) JUDGE SJ/AK