

The State of M.P. Vs. Amarnath

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Court : Madhya Pradesh

Decided On : Jun-26-2012

Appellant : The State of M.P.

Respondent : Amarnath

Advocate for Def. : Shri. Ajay Tamrakar

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SB: Honble Mr. Justice N.K.Gupta, J.Criminal Appeal No.1887 of 1997 State of Madhya Pradesh Vs. Amarnath

----- Shri G. S. Thakur, Panel Lawyer for the State/appellant. Shri Ajay Tamrakar, counsel for the respondent. -----

JUDGMENT

(Delivered on the 26th day of June, 2012) The appellant/State has preferred this appeal against the judgment dated 10.4.1997 (Shri Sudip Kumar Shrivastava) passed by learned JMFC Amarpatan, District Satna in Criminal Case No.260/1994 whereby the respondent was acquitted from the charges of offence punishable under Section 324 of I.P.C.

2. Prosecution's case in short is that on 19.7.1991 the victim Shobnath Patel (P.W.1) was grazing cattles near garden of accused situated in village Mohat,

Police Station Amarpatan. At about 10.00 a.m, the respondent came to the complainant and started talking. Thereafter, he assaulted the victim by a stone causing injury near his left eye. Thereafter, he assaulted the victim by a stick for two times on his legs. Incident was seen by the witnesses Ram Sanjivan (P.W.2) and 2 Criminal Appeal No.1887 of 1997 Manti (P.W.3) etc. The complainant, Shobnath went to the Police Station, Amarpatan and lodged an FIR at 2.00 p.m on the same very day. He was sent to the hospital for examination and treatment. Dr. Awadhiya (P.W.13) had examined the victim Shobnath and gave a report Ex.P/5. He found three injuries to the victim. One was on the left leg, second was an incised wound on left leg and some diffused wound on his left leg. After due investigation charge sheet was filed by the Police before the concerned Magistrate who, had jurisdiction to try the case.

3. The respondent abjured his guilt. He did not take any specific plea but, he had stated that he was falsely implicated due to previous enmity. No defence evidence was led.

4. Appeal was pending since the year 1997. Attendance of the respondent could not be procured in last so many years. Looking to the merits of the case Shri Ajay Tamrakar, Advocate whose name is in the panel of Legal Aid is directed to defend the respondent and to assist the Court. Thereafter, I have heard learned counsel for the parties in the case.

5. Learned Panel Lawyer has submitted that the learned JMFC has passed a judgment in a hurried manner. Appreciation of evidence is not done properly. If one injury was not matching with the allegations of the prosecution then the entire version of the complainant cannot be thrown. Offence under Section 324 of I.P.C is very well made out 3 Criminal Appeal No.1887 of 1997 against the respondent and therefore, he be convicted and sentenced accordingly.

6. On the other hand the learned counsel for the respondent submits it is alleged that the respondent assaulted the victim by hard and blunt object and no reason has been shown as to how the victim sustained incised wound. Under such circumstances, it is possible that victim has sustained the injuries due to any other reason and respondent was falsely implicated. In the alternate, it is submitted that

the respondent was only 18 years old at that time and therefore, he may be given an advantage of probation. Learned JMFC, Amarpatan after considering the prosecution evidence acquitted the respondent from the charges of offence punishable under Section 324 of I.P.C.

7. Learned JMFC found that the victim sustained an injury which was an incised wound whereas there was no allegation upon the respondent that he assaulted the victim by any sharp cutting weapon and therefore, testimony of all the eye witnesses were thrown away. It is also mentioned that there was some overwriting on the time of occurrence given in the FIR Ex.P/4. However, FIR was lodged in Rojnamcha which is placed at Ex.P/3 in which it was clearly mentioned that incident took place at 10.00 a.m and therefore, FIR was not delayed. It is true that there was a previous enmity between the respondent and the victim therefore, victim could be falsely implicated. It is true that incised wound could not be 4 Criminal Appeal No.1887 of 1997 caused by a stick. The complainant has specifically stated that the respondent assaulted him by a stone causing him injury over his left eye whereas injuries caused on his leg were caused by a stick and therefore, incised wound found on the leg was not caused by a stone and therefore, it cannot be said that the respondent assaulted the victim by a sharp cutting weapon. Since there was no allegation against the respondent that he assaulted the victim by any sharp cutting or deadly weapon, no offence punishable under Section 324 of I.P.C could be constituted but, learned JMFC did not appreciate that a lower offence of Section 323 of I.P.C was made out.

8. Ram Sanjivan (P.W.2) and Mati (P.W.3) have confirmed the testimony of the complainant that he was being assaulted by the respondent. Under such circumstances, if a single injury is proved to the complainant caused by the respondent then offence under Section 323 of I.P.C shall be constituted. If the complainant and the some witnesses could not be believed for that injury caused by any sharp cutting weapon then still it is proved by the witnesses and the complainant that the respondent assaulted him by a stone causing some injury over his eye. Incident took place at 10.00 a.m whereas FIR was lodged at 2.00 p.m. Time taken by the complainant in lodging the FIR appears to be reasonable. Testimony of the victim is duly confirmed by medical evidence. Under such

circumstances, it is proved 5 Criminal Appeal No.1887 of 1997 that the respondent assaulted the complainant by a stone causing him some injuries.

9. It is not a case of the respondent that he had any right of private defence or he assaulted the victim in any sudden or grave provocation. On the contrary when the victim was grazing the cattles the respondent came to the spot and quarrel started. Under such circumstances, it would be clear that the respondent assaulted the victim voluntarily and therefore, looking to his overt act offence punishable under section 323 of I.P.C is made out. Learned JMFC was expected to convict the respondent for offence punishable under Section 323 of I.P.C at least.

10. As far as offence is concerned it is apparent that the respondent was 18 years old at the time of incident. The incident took place in such a manner that a satire was given by the respondent. The respondent has faced the trial for some time. He assaulted the victim for two times only causing some superficial injuries. Under such circumstances, looking to the gravity of the offence of the respondent, it would be proper to give him benefit of provisions of Section 3 of Probation of Offenders Act.

11. Consequently, appeal filed by the State is hereby partially allowed. The respondent is convicted for offence punishable under Section 323 of I.P.C and he be released on probation under Section 3 of Probation of Offenders Act after giving due admonition. 6 Criminal Appeal No.1887 o

12. Copy of the judgment and file of the trial Court be sent to the trial Court for information and compliance as early as possible. (N.K.Gupta) Judge 26/06/2012
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