

Anil Kumar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-09-2012

Appellant : Anil Kumar

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Ashok Tiwari

Judgement :

1 Criminal Appeal No.1333/1996 HIGH COURT OF MADHYA PRADESH
JABALPUR Criminal Appeal No.1333/1996 Anil Kumar Vs. State of Madhya
Pradesh ----- Present

: Hon'ble Shri Justice N.K. Gupta.

----- Name of counsel for
the parties: Shri Ashok Tiwari, counsel for the appellant. Shri Ajay Tamrakar,
Panel Lawyer the respondent/State.

JUDGMENT

(Passed on 9th day of August, 2012) The appellant has preferred this appeal against the judgment dated 8.8.1996 passed by the 4 th Additional Sessions Judge, Rewa in S.T. No.56/94, whereby the appellant was convicted for the offence punishable under Section 307 of IPC and sentenced for five years' R.I. with fine of `200/-. In default of payment of fine, he was to undergo for two months' S.I. in addition.

2. The prosecutions case in short is that on 30.12.1993 at about 4:00 p.m. in the noon, the complainant Amritlal (PW-2) was passing near the house of Shankar Kachhi in village Bajraha Tola, Sirmour then, the appellant met him on the way and he abused the complainant with filthy abuses and also assaulted him by a dagger. The appellant assaulted 2 Criminal Appeal No.1333/1996 the complainant for two times. The victim sustained two injuries on his chest. The victim/complainant was taken to the Police Station Sirmour, where he lodged an FIR Ex.P/2. He was directed to the Primary Health Centre, Sirmour for his medico legal examination. Dr. R.K. Ojha (PW-1) had examined the complainant Amritlal and gave his report Ex.P/1. He found one incised wound on the left side of the chest of the victim near left cleical bone and that injury was simple. He also found a penetrating wound on the left side of his chest below the sternum and the air was coming out from that wound. Such injury was dangerous to the life. The cavity was field with the blood and therefore, Dr. Ojha referred the victim Amritlal to the Medical College, Rewa. Dr. Gaharwar (PW-6), the lecturer of the Medical College, Rewa admitted the victim in his unit. His wound was repaired and a small surgery was done and approximately, 1.5 liters of blood mixed with water was removed from the cavity. He opined that the second injury caused to the victim was fatal in nature. After due investigation, a charge sheet was filed by the S.H.O. Police Station, Sirmour before the J.M.F.C., who committed the case to the Sessions Court and ultimately, it was transferred to the 4th Additional Sessions Judge, Rewa.

3. The appellant abjured his guilt. He did not take any specific plea but he has submitted that a false case was lodged against him. However, no defence evidence was adduced by 3 Criminal Appeal No.1333/1996 the appellant.

4. After considering the prosecutions evidence, the learned 4th Additional Sessions Judge convicted the appellant for the offence punishable under Section 307 of IPC and sentenced him as mentioned above.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the appellant has submitted that the victim Amritlal did not sustain any fatal injury. The victim has alleged against three accused persons

that they assaulted him but the trial Court has acquitted the co-accused persons namely Shiv Kumar @ Lalli and Rajkumar from the charges of offence punishable under Section 307 of IPC and there was no reason as to why the appellant was convicted, whereas the independent witnesses turned hostile and the testimony of the complainant could not be believed. Learned counsel for the appellant has placed his reliance to the judgment passed by the Single Bench of this Court in the case of Mukimuddin @ Mukim Vs. State of M.P.

. [2004 (5) M.P.H.T. 48]., in which the accused was acquitted because the sole testimony of the complainant was disbelieved. He has also submitted that in the present case, no weapon of the alleged offence was seized from the appellant. He was falsely implicated in the matter. In alternate, it is submitted that the appellant remained in the custody fo

60. days and therefore, it is prayed that his jail sentence may be reduced to 4 Criminal Appeal No.1333/1996 the period, which he has already undergone in the custody. Learned counsel for the appellant has also placed his reliance upon the judgment passed by the Single Bench of this Court in the case of Sanjay @ Sanju Patil and another Vs. State of Madhya Pradesh [2004 (2) M.P.H.T. 1 (NOC)].

7. On the other hand, learned Panel Lawyer has submitted that the conviction as well as the sentence directed by the trial Court appears to be on sound footings and therefore, no interference is needed in the findings of the trial Court.

8. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether the appellant has wrongfully convicted for the offence punishable under Section 307 of IPC?. and; whether the sentence directed against the appellant can be reduced?.

9. Looking to the evidence adduced by Dr. Ojha (PW-1) and Dr. Gaharwar (PW-6), it is apparent that the second injury caused to the victim Amritlal was fatal in nature and due to that injury, more than 1.5 liters blood and liquor was collected in the cavity of his chest. The stab wound was deep and it had affected to the internal parts of the body like lungs and therefore on cough, the air was coming

out from that wound. Under such circumstances, if the surgery was not done to the victim, then he would have died in the due course 5 Criminal Appeal No.1333/1996 of his life. Hence, the second injury caused to the victim was fatal in nature.

10. Learned 4th Additional Sessions Judge relied upon the testimony of the victim Amritlal (PW-2) that the appellant assaulted him by a dagger for two times. The victim implicated three persons in the Court and he had alleged that each of them had assaulted him by the knife but it was noticed that the victim Amritlal sustained only two injuries. Initially, in the FIR Ex.P/2, he had mentioned that it was the appellant, who assaulted him by a dagger for two times. The statements of the victim Amritlal were found trustworthy, which were duly supported by the version given in the FIR and therefore, the learned 4th Additional Sessions Judge acquitted the remaining accused persons. The testimony of the victim Amritlal, which was duly supported by the FIR Ex.P/2 and medical evidence is believable. It is settled view of the Hon'ble Apex Court that a maxim falsus in uno and falsus in omnibus is not applicable in India. In the case of Ugar Ahir Vs. State of Bihar. [AIR 196.S.C. 278]., it is held by the Hon'ble Apex Court that there is no any person, who did not tell a falsehood and therefore, it is the duty of the Court to pick up the grains of the truth from the chasm of the falsehood. In the present case, in the first version, the victim Amritlal had stated in the FIR that it was the appellant, who assaulted him by a dagger for two times and therefore, his evidence up to that extent, can be 6 Criminal Appeal No.1333/1996 accepted being a true version of the incident and therefore, the trial Court has rightly accepted the testimony of the victim, though other eyewitnesses turned hostile.

11. The learned counsel for the appellant has placed his reliance upon the judgment of the Single Bench of this Court in the case of Mukimuddin (supra) but in that case, the assailant was not known to the complainant from the very beginning and therefore, in absence of the identity of the assailant, the accused was acquitted. But in the present case, the name of the appellant is mentioned in the FIR and there is no problem of the identity of the appellant and therefore, the dictum laid in the case of Mukimuddin (supra) is not applicable, due to the different factual position. Under such circumstances, it is proved that it was the appellant,

who caused the fatal injury to the victim Amritlal by a dagger. He assaulted for two times and therefore, he knew the effect of his overt act. The appellant did not take any plea in the right of private defence that he was given any sudden or grave provocation by the victim. Hence, the learned 4th Additional Sessions Judge has rightly convicted the appellant for the offence punishable under Section 307 of IPC.

12. So far as the sentence is concerned, the appellant remained in the custody fo

60. days during the trial and appeal and he was 19 years old at the time of incident. However, looking to the crime, he could not be given any 7 Criminal Appeal No.1333/1996 benefit of the Probation of Offenders Act. He has faced the trial and appeal for last 16 years but looking to the overt act, his sentence cannot be reduced to the period, which he has already undergone in the custody because that period is too short. Relating to the judgment passed by the Single Bench in the case of Sanjay (supra), the Hon'ble Apex Court has expressed its displeasure on such discretion exercised by the High Court. Such type of judgment cannot be taken as a precedent that may be a step of merciful attitude of the Single Bench, but it cannot be considered as a law laid by the Court. In the present case, there is no reason by which the sentence of the appellant can be reduced to the period o

60. days only. Looking to his custody period, also the period in which he has faced the trial and appeal and his age at the time of crime, the sentence may be reduced to the R.I. for the period of one year with fine of `10,000/- so that some compensation may be awarded to the victim Amritlal.

13. On the basis of aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. The conviction directed for the offence punishable under Section 307 of IPC is hereby maintained but the sentence is reduced to the period of one year R.I. with fine of `10,000/-. In default of payment of fine, the appellant has to undergo for one year's R.I. in addition. If the appellant deposits the fine amount then, a sum of `7,000/- be given to the victim Amritlal S/o Shyamlal by way 8 Criminal Appeal No.1333/1996 of a compensation. The period of custody shall be set off in the main jail sentence of the appellant.

14. The appellant is directed to surrender before the trial Court forthwith so that the trial Court shall make a super session warrant and get the sentence executed against the appellant.

15. Copy of the judgment be sent to the trial Court alongwith its record for information and compliance. (N.K. GUPTA) JUDGE 09 08.2012 pnkj

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