

Bhagwan Das Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-24-2012

Appellant : Bhagwan Das

Respondent : The State of M.P.

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR Single Bench:
Hon'ble Shri Justice N.K.Gupta,J.CRIMINAL APPEAL NO.1841 OF
199.Bhagwandas. Vs. State of Madhya Pradesh.

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B.J.Chourasiya, Advocate for the appellant. Shri G.S.Thakur, Panel Lawyer for the
respondent/ State.

JUDGMENT

(Delivered on the 24th day of July, 2012) This criminal appeal is preferred by the appellant being aggrieved by the judgment dated 4/8/1998 passed by the First Additional Sessions Judge Chhattarpur in ST No.177/1996 whereby the appellant was convicted for commission of offence punishable under Section 436 of IPC and sentenced for one year's rigorous imprisonment with fine of Rs.500/-, in default of payment of fine, two months' simple imprisonment in addition.

2. Prosecution case, in short, is that in the night of 3rd and 4th February 1996 complainant Santu (PW-1) was sleeping in his house at Village Angor police

station Gulganj. In the night he was woke up after hearing the abuses uttered by the appellant. He saw the appellant from the gap of the door. The appellant threatened him that if he would not come out of the house, then he will set his new 2 Cr.A.No.1841/1998 house on fire. After half an hour, one Sarman (PW-3) came to the house of the complainant that someone informed him that the appellant set his new house on fire. The complainant went to see his new house, then he found that the appellant was abusing him there and enjoying that fire. The complainant had lodged the FIR on 4.2.1996 at about 8:05 in the evening at Outpost Gulganj. Thereafter the FIR was transferred to the police station Badamalhara and case was registered. The police found that a lose of Rs.1,000/- was caused to the victim. Some ash was collected from the spot and a bottle of kerosene with a match box was seized from the appellant. All the things were sent for forensic science analysis. After due investigation, a charge sheet was filed before the JMFC Bijawar, who committed the case to the Sessions Court, Chhattarpur and ultimately the case was transferred to the First Additional Sessions Judge, Chhattarpur.

3. The appellant-accused abjured his guilt. He took a specific plea that he was falsely implicated in the matter, because there was an enmity between the appellant and the complainant. In defence Gorelal (DW-1) and Natthu (DW-2) were examined.

4. The learned First Additional Sessions Judge, Chhattarpur after considering the evidence adduced by the parties convicted and sentenced the appellant as mentioned above. 3 Cr.A.No.1841/1998 5. I have heard learned counsel for the parties.

6. Learned counsel for the appellants has submitted that the star witness Sarman(PW-3) turned hostile. No one had proved that it was the appellant who set the house of the complainant on fire. The FIR was lodged with a delay of at least 10 hours, and therefore it was lodged after due consultation with the friends and relatives. A story was cooked that the appellant abused the victim. The appellant is implicated on the basis of suspicion and no offence under Section 436 of IPC is proved against the appellant beyond doubt. It is further submitted that in case if

conviction is maintained, then sentence may be reduced on the basis that the appellant was the first offender and he has faced the trial and appeal for last 16 years.

7. On the other hand, learned counsel for the State has submitted that conviction and sentence directed by the trial Court appears to be correct and no interference is required by this Court.

8. After considering the submissions made by learned counsel for the parties and looking to the evidence adduced by the parties before the trial Court, it is to be considered as to whether the testimony of the complainant Santu (PW-1) was believable?. Whether the conviction directed by the trial Court can be maintained and if yes, then as to whether sentence passed against the appellant can be reduced?. 4 Cr.A.No.1841/1998 9. Santu (PW-1) and Shyambai (PW-2) have stated that the appellant came to the house of the complainant in the night and abused him. He pelted some stones on the gate of the complainant's house. Thereafter he threatened that he would set his new house on fire. After half an hour, Sarman came to the complainant with an information that his new house is burning. The complainant sustained loss of Rs.4-5 thousand due to that fire. However, Sarman (PW-3) turned hostile before the trial Court. He stated that when he saw that the new house of the complainant was setting on fire, he went to the complainant and informed, but he did not see anyone near the house including the appellant. There is no independent witness to say that either the witness Sarman has informed the complainant with the name of the appellant or when the complainant reached to the spot, he saw the appellant at the spot. Under such circumstances, the entire evidence of the case depends upon the circumstantial evidence.

10. Since the appellant was not seen at the spot, his previous conduct may be considered. According to the witnesses Santu (PW-1) and Shyambai (PW-2), the appellant went to the house of the complainant and abused him. He wanted that the complainant should come out of the house. The complainant claimed that he saw the appellant from the gap of the door. However, it is nowhere mentioned by the complainant that there was any arrangement of the light in 5

Cr.A.No.1841/1998 front of his house. In the spot map Ex.P-2, no arrangement of light is shown in the front of the house of the complainant, and therefore the complainant could not identify the person who was abusing from the street. The complainant has not claimed that he could identify the appellant on the basis of his voice. The story told by the complainant appears to be unnatural. If the appellant was of the view that the complainant should come out of the house to quarrel with the appellant then there must be some reason to quarrel. The complainant could not tell any reason as to why the appellant required to call the complainant in the midnight for a quarrel. It is told by the complainant Santu in para 6 of his statement that the appellant was jealous, because an engagement of his brother took place with daughter of some important person. However, such reason was not shown by the complainant either in the FIR or in his case diary statement. On the contrary, he admitted that the appellant had the possession of the land, which is of the complainant and the complainant had lodged four FIRs against the appellant to take the possession of that land, but the police did not take any action against the appellant. Under such circumstances, enmity proved between the parties is one sided enmity. Looking to the enmity, there was no grievance to the appellant so that he would visit the house of the complainant in the midnight for quarrel. But looking 6 Cr.A.No.1841/1998 to the enmity, it was possible that a false FIR could be lodged by the complainant.

11. For the sake of argument, by accepting that it was the appellant, who set the house of the complainant on fire and the complainant had the knowledge of this fact soon after the incident, then certainly he could lodge an FIR in the early morning at the concerned Outpost. The complainant Santu has stated in para 6 of his statement that he reached to the Outpost Gulganj at 7:00 AM in the morning and his report was recorded. He remained at the Outpost upto 9:00 AM in the morning, but police came to the spot on the next day. If the FIR Ex.P-1 is perused, then it would be apparent that the FIR was lodged at about 8:05 PM in the evening i.e. 12 hours delayed. No reason of such delay has been shown by the complainant. Looking to the delay in lodging the FIR, it is apparent that the complainant had no knowledge in the morning as to whom set the house on fire, and therefore he cooked a case in the entire day by consultation with his friends and relatives and thereafter an FIR was lodged at about 8:05 in the evening.

Looking to the delay caused in lodging the FIR and enmity between the parties, where the independent witness Sarman turned hostile, it appears that the complainant has cooked a false case against the appellant. There was no evidence to show that the appellant was the person, who set the house of the complainant on fire, and therefore a story was cooked that 7 Cr.A.No.1841/1998 the appellant came to the house of the complainant and abused him and called him to come out. Under such circumstances, when the testimony of the complainant Santu and his mother Shyambai is not believable, then chain of circumstantial evidence goes away. No any piece of chain is proved beyond doubt. There was no evidence adduced by the prosecution by which the appellant could be implicated with the alleged crime.

12. It is not proved that the appellant was seen at the, seen of the crime, soon after the incident. It is not proved that he visited the house of the complainant before the incident. The FIR is delayed by at least 12 hours, and therefore a suspicion is created that the appellant is falsely implicated in the matter due to enmity. Under such circumstances, a benefit of doubt is to be given to the appellant, therefore he could not be convicted for the offence punishable under Section 436 of IPC. The trial Court has erred in convicting the appellant for the said offence.

13. On the basis of aforesaid discussion, the appeal of the appellant appears to be acceptable and hence it is accepted. The conviction and sentence directed by the trial Court for commission of offence punishable under Section 436 of IPC are hereby set aside. The appellant is acquitted from all the charges appended against him. He would be 8 Cr.A.No.1841/1998 entitled to get the fine amount back, if he has deposited before the trial Court.

14. The presence of the appellant is no more required, therefore it is directed that his bail bonds shall stand discharged.

15. A copy of this judgment be sent to the trial Court with its record for information and compliance. (N.K.Gupta) Judge 24/07/2012 Ansari.