

Ram Charan Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-27-2012

Appellant : Ram Charan

Respondent : The State of M.P.

Judgement :

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT, JABALPUR SINGLE
BENCH PRESENT: HON'BLE JUSTICE SHRI N. K. GUPTA CRIMINAL APPEAL
NO.2174/1996 Divya Shankar Shukla Vs. State of Madhya Pradesh

..... For the
appellant : Shri A. K. Pathak, Advocate. For the respondent: Shri Ajay Tamrakar,
Panel Lawyer .

JUDGMENT

(Delivered on the 27th day of September, 2012) The appellant has preferred this appeal against the judgment dated 27.11.1996 passed by the learned Vth Additional Sessions Judge, Rewa in ST. No.08/1993 whereby the appellant was convicted for offence punishable under Section 308 of I.P.C and sentenced for 3 years rigorous imprisonment with fine of Rs.200/-. In default of payment of fine, an additional rigorous imprisonment for two months.

2. The prosecution's case, in short, is that on 30.7.1992 at about 8.00 a.m in the morning Chandrashekher Prasad (PW9) was present in his house situated at

Village Gonda Teonthar (Police Station Suhagi, District Rewa). There was a function of katha in 2 Criminal Appeal No.2174 of 1996 his house and therefore, after taking prasad he was sitting on the platform outside his house. Thereafter, the appellant Divya Shankar @ Bhulai and other accused persons Ginnari @ Shivsewak and so many accused came to the spot. The appellant Divya Shankar had a katta, Ginnari had a licensed 12 bore gun and others had a gandasa, sang and sticks. Ginnari fired from his gun and some pellets struck on the face of Munindra Prasad (PW10). The appellant fired from the gun and some pellets struck the victim Sarla Devi (PW14) and Shivkali (PW6). The other accused persons had assaulted Munindra Prasad and other victims by gandasa and sticks. Chandrashekhar Prasad had lodged an FIR Ex.P/19 at Outpost Teonthar. Injured persons were sent for their medico legal examination and treatment to the concerned Government Hospital. Dr. Anand Mahendra (PW15) examined Shivkali (PW6), Munindra (PW10) and Sarla Devi (PW14) and gave his reports Ex.P/25, P/26 and P/27 respectively. He found that Shivkali (PW6) sustained penetrating wounds of pellets at three places on her right hand. Similarly Sarla Devi (PW14) sustained a single punctured wound on right side of her head. Presence of a pellet was felt by Dr. Anand Mahendra below the skin of Sarla Devi (PW14) whereas, he found two lacerations to the victim Munindra Prasad (PW10) on his nose but, so many punctured wounds were found on his face. After a radiological examination of Munindra Prasad Dr. N. S. Parte (PW17) found several radio opaque shadow on his face and so many pellets were 3 Criminal Appeal No.2174 of 1996 found below the skin on his face. After due investigation, charge sheet was filed before the JMFC, Teonthar who, committed the case to the Sessions Judge Rewa and ultimately it was transferred to the learned VIth Additional Sessions Judge, Rewa.

3. The appellant abjured his guilt. He took a plea that he was falsely implicated in the matter. He was not present at the spot. He was admitted in a hospital on 27.7.1992 where he remained up to 5.8.1992. In support of his contention Matadeen Mishra (DW1) and Man Singh (DW2) were examined.

4. The learned Additional Sessions Judge after considering the evidence of the parties acquitted all the other accused persons from all charges. The appellant was also acquitted from offence punishable under Sections 147, 148, 307 read

Section 149 of I.P.C but he was convicted for offence punishable under Section 308 of I.P.C and sentenced as mentioned above.

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

6. The learned counsel for the appellant has submitted that statements given by the various witnesses were contradictory to the FIR. The appellant was not the person who, fired from a 12 bore gun and caused injuries to the victim Munindra Prasad. On the contrary it was mentioned that he had a pistol and by firing from a pistol, so many pellets cannot be discharged to struck any person. On the contrary a bullet may be fired from a pistol. If medical evidence was not corroborative to the ocular evidence then ocular evidence was to be discarded. In support of his 4 Criminal Appeal No.2174 of 1996 contention, he invited the attention of this Court to the paras 23, 24, 25 and 27 of the judgment passed by Hon'ble the Apex Court in the case of Kapildeo Mandal and others Vs. State of Bihar. ((2008) 16 SCC 99)]. In alternate it is submitted that the appellant has faced the trial and appeal for last 19 years and therefore, he may not be sent to the jail again.

7. On the other hand the learned Panel Lawyer has submitted that it is proved beyond doubt that the appellant was the person who, fired from the pistol of 12 bore and therefore, a cartridge of 12 bore could be fired from that gun and the victim could be injured by the pellets. The conviction and sentence directed by the trial Court appears to be correct.

8. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case it is to be considered as to whether the appeal filed by the appellant can be accepted ?. And whether the sentence directed against the appellant can be reduced ?.

9. In the present case Girja Shankar (PW1), Santosh Kumar (PW2), Shivkali (PW6), Dinesh Kumar Shukla (PW7), Shyamnarayan Shukla (PW8), Chandrashekhar Prasad Shukla (PW9), Munindra (PW10), Kamlakant (PW11) and Sarla Devi (PW14) have stated that a quarrel took place because the appellant and other co-accused came prepared to fight. Initially the accused Ginnari @ Shivsewak fired from a 12 bore gun but, nobody sustained any injury. Thereafter,

the appellant went 5 Criminal Appeal No.2174 of 1996 inside his house and from behind a window he fired from his gun. By that fire, Munindra Prasad (PW10), Sarla Devi (PW14) and Shivkali (PW6) had sustained injuries. Dr. Anand Mahendra (PW15) proved the injury report Exs.P/25, P/26 and P/27 relating to the victims Shivkali, Munindra Prasad and Sarla Devi respectively. All of them sustained penetrating wounds. When a radiological examination was done by Dr. Parte (PW17) of the victim Munindra Prasad (PW10), he found some pellets inside the skin of victim Munindra. Similarly Dr. Mahendra (PW15) himself found a pellet below the skin of Sarla Devi (PW14) by his clinical examination. Looking to the size and shape of the injuries it was apparent that Shivkali, Munindra as well as Sarla Devi had sustained injuries of pellets discharged by a firearm.

10. The learned counsel for the appellant has submitted that the appreciation of evidence should be done in such a manner that if medical evidence is not supportive to the ocular evidence, then the ocular evidence may be discarded. He referred the judgment of Honble the Apex Court in the case of Kapildeo Mandal (supra). Actually he referred the paras 23, 24, 25 and 27 of that case in which various previous decisions of the Supreme Court were mentioned by Hon'ble the Apex Court about the appreciation of evidence. In the present case, it is duly established that the victims Shivkali (PW6), Munindra (PW10) and Sarla Devi (PW14) got the injuries of pellets discharged from a gun. Therefore, in the present case there is no contradiction 6 Criminal Appeal No.2174 of 1996 between the medical evidence and ocular evidence therefore, law laid down by Hon'ble the Apex Court in the case of Kapildeo Mandal (supra) cannot be applied here as such. In the present case, the learned counsel for the appellant has invited the attention of this Court to the fact that the investigation officer has accepted that some pellets were found in the wall. If the appellant fired with a gun from the window then there was no possibility that the pellets could reach the wall and therefore, there is an inherent inconsistency between the ocular evidence and the circumstances. Actually the contention of the learned counsel for the appellant in this regard cannot be accepted because two fires took place in the incident. One fire was done by Ginnari @ Shivsewak where the victims were sitting on a platform and therefore, due to that fire pellets could be inserted in the wall. Similarly, the learned counsel for the appellant has submitted that by a pistol the pellets cannot

be fired. However, this contention cannot be accepted. It is nowhere mentioned by the witnesses that what was the caliber of the pistol kept by the appellant. Since the appellant was absconding during the investigation, no fire arm could be recovered from him but not a days pistols of 12 bore caliber are also available and pellets can be fired from a pistol. Under such circumstances, it cannot be said that no one sustained injuries due to the fire caused by the appellant.

11. All the witnesses have stated that the appellant fired 7 Criminal Appeal No.2174 of 1996 from a gun causing injuries to Munindra Prasad (PW10), Sarla Devi (PW14) and Shivkali (PW6). However, it appears that the witnesses have changed their version before the trial Court. Initially so many persons were implicated in the crime but, in the statements before the trial Court all the witnesses concentrated on the appellant only and therefore, the learned Additional Sessions Judge acquitted all the accused persons in the case. It is possible that the witnesses must have told a falsehood before the trial Court but, principle of *falsus in unot falsus in omnibus* is not applicable in the country. Hon'ble the Apex Court has laid in the case of *Ugra Ahir Vs. State of Bihar*. (AIR 196.SC 277) that it is the duty of the Court to pick up the grains of the truth from the chasm of the falsehood but, simultaneously it is warned by Hon'ble the Apex Court that the Court should not create a new story of the incident. In the present case, it appears that the witnesses are telling something different from their version told either in FIR or in the case diary statements. In the FIR Ex.P/19 it is clearly mentioned by Chadrashekhhar Prasad (PW9) that Ginnari @ Shivsewak fired from a gun causing injuries on the face of Munindra Prasad (PW10) whereas, second fire was done by the appellant by which injuries were caused to Shivkali (PW6) and Sarla Devi (PW14). Looking to the version of the FIR Ex.P/19 it appears that not witnesses are telling a falsehood that the firing was done by the appellant and the victim Munindra Prasad sustained injuries but, a small portion of the statements of various 8 Criminal Appeal No.2174 of 1996 witnesses can be accepted that by firing from a gun by the appellant, Shivkali and Sarla Devi sustained some injuries. If charges framed against the appellant are perused then it would be clear that charges of offence punishable under section 307 of I.P.C were framed for all the three victims and therefore, if it is found that the appellant injured the victims Sarla Devi and Shivkali then still he is guilty of offence punishable under Section 308 of

I.P.C.

12. The trial Court has convicted the appellant for offence punishable under Section 308 of I.P.C but no counter appeal has been filed by the State. The learned counsel for the appellant did not argue that no offence under Section 308 of I.P.C is made out or any lower offence will be made out therefore, in the present case not it is not required to consider as to whether offence under section 307 of I.P.C will be made out or offence under Section 308 of I.P.C will be made out.

13. The evidence given by the various witnesses is acceptable up to to the extent that the appellant fired from a gun and due to that fire, Sarla Devi and Shivkali sustained injuries by the pellets and therefore, it is proved that the appellant had committed an offence punishable under section 308 of I.P.C for these two victims.

14. Some suggestions of enmity were given to the various witnesses, but enmity is a double edged weapon. Due to enmity one can assault any other person and due to enmity one can be falsely implicated in a crime. In the present case, genesis of the 9 Criminal Appeal No.2174 of 1996 crime which is available by FIR Ex.P/19, it is apparent that out of the accused person one Ginnari @ Shivsewak and the appellant had fired from their guns. The testimony of the victims are duly confirmed by the medical evidence and timely lodged FIR Ex.P/19. Under such circumstances, it cannot be said that the appellant is falsely implicated in the matter due to enmity. The trial Court has rightly convicted the appellant for offence punishable under Section 308 of I.P.C.

15. So far as the sentence is concerned it is true that the appellant was a first offender but, two persons sustained injuries due to his crime. Though he faced the harassment of the trial and appeal for the last 19 years but, looking to the overt act of the appellant it cannot be said that his custody period is sufficient punishment for his crime. However, looking to the minor injuries caused to Shivkali and Sarla Devi the sentence of the appellant can be reduced from three years R.I. to one years rigorous imprisonment by enhancement of some fine.

16. On the basis of the aforesaid discussion the appeal filed by the appellant can be partly allowed. The conviction directed for the offence punishable under Section

308 of I.P.C is hereby maintained but, his sentence is reduced to the period of one years rigorous imprisonment but fine is enhanced from a sum of Rs.200/- to a sum of Rs.4000/-. In default of payment of fine the appellant shall undergo for one years rigorous imprisonment in addition. The appellant who remained in the custody during the trial and 10 Criminal Appeal No.2174 of 1996 appeal for more than six months, such custody period be adjusted in the main sentence awarded to the appellant.

17. The appellant is on bail. He is directed to surrender before the trial Court forthwith so that remaining sentence can be served upon him. He is also directed to deposit the remaining fine amount before the trial Court otherwise, he will be liable for execution of default sentence.

18. Copy of the judgment along with the record of the trial Court be sent to the trial Court for information and compliance. (N.K.GUPTA) JUDGE 27 9.2012 bina

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