

Narayan and ors. Vs. State of Madhya Pradesh

Narayan and ors. Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/502573

Court : Madhya Pradesh

Decided On : Jan-28-2008

Reported in : 2008CriLJ1657; 2008(2)MPHT138

Judge : S.L. Kochar, J.

Appellant : Narayan and ors.

Respondent : State of Madhya Pradesh

Disposition : Appeal allowed

Judgement :

S.L. Kochar, J.

1. The appellants, by preferring this appeal, have challenged their conviction under Sections 341, 323 and 325 read with Section 34 of the Indian Penal Code, and sentences passed by the learned Addl. Sessions Judge, West Nimar, Mandleshwar by judgment dated 14-3-95 in S. No. 121/93 thereby sentencing each of the appellants to pay a fine of Rs. 200/-, in default of payment of fine to suffer S.I. for ten days, fine Rs. 300/-, in default of payment of fine to suffer S.I. for three months and R.I. for four years with fine of Rs. 500/-, in default of payment of fine to suffer additional S.I. for six months, respectively.

2. The prosecution case as unfurled before the Trial Court is that on 13-9-92 in the evening at 4.05 PM the complainant Gabru (P.W. 2) and his brother Pratap (P.W. 3) were returning back in a bullock cart from their field and when they were passing through the field of appellant No. 1 Narayan who was sitting there, met them. Narayan objected to their taking of the bullock cart and abused them. Appellant Narayan dealt a blow from blunt side of axe on the head of Gabru and he was caught by appellants Bhuwaniram and Rewaram. The fourth accused Rameshwar caught Pratap (P.W. 3) and he was also belaboured. The incident was reported by Gabru (P.W. 2) vide First Information Report (Each. P-1). On the basis of this report, Crime No. 293 of 1992 for commission of offence punishable under Sections 341, 294 and 323 read with Section 34 of the Indian Penal Code was registered against the appellants. The Police took up investigation and sent Gabru and Pratap for medical examination. From complainant Gabru a broken pesticide spray machine was seized vide seizure memo (Exh. P-4). Exh. P-6, memorandum of damage of property of the complainant was prepared and his Baniyan was also seized through seizure memo (Exh. P-5). Spot map (Exh. P-7) was prepared by the Investigating Officer Nawaz Khan (P.W. 4), Head Constable at the instance of one Lakhani. The appellants were arrested and from the possession of appellant Narayan one axe was seized vide seizure memo (Exh. P-12). Dr. S.K. Rawat (P.W. 9) medically examined complainant Gabru (P.W. 2) and injured witness Pratap (P.W. 3). Their medical reports are Exhs. P-16 and P-17. After completion of investigation, the appellants were charge-sheeted for commission of offences punishable under Sections 323, 325, 341 and 427 read with Section 34 of the Indian Penal Code.

3. The appellants denied the charges and pleaded innocence. They have examined Shambhu (D.W. 1) in defence who also sustained injuries in the same incident. The prosecution, in order to establish its case, examined as many as nine witnesses and adduced in total 17 documents. Learned Trial Court, finding the appellants guilty, convicted and sentenced them as indicated hereinabove.

4. Learned Counsel for the appellants has submitted that the incident occurred in the field of the appellants which is clear from the First Information Report (Exh. P-1) and the prosecution witnesses have not explained the injuries sustained by all

the three appellants as well as Shambhu (D.W. 1) in the same incident for which the report (Exh. D-1) was lodged by appellant Narayan recorded by Sub Inspector, H. Ohariya (P.W. 1). The medical reports of the appellants and defence witness Shambhu have been proved by Dr. Rawat (P.W. 9). Learned Counsel has also submitted that Trial Court has committed grave error of law while appreciating the evidence of the prosecution witnesses in the instant case taken into consideration the statements of the witnesses examined in the counter case against the complainant party vide Crime No. 292/92 for commission of offence punishable under Section 307 read with Section 34 of the Indian Penal Code in Sessions Trial No. 9/93.

5. On the other hand, learned Counsel appearing for the State has supported the impugned judgment and finding passed by the learned Trial Court.

6. Having heard learned Counsel for the parties and after perusing the entire record, this Court is of the opinion that the learned Trial Court has committed serious illegality by reading and considering the evidence adduced by the prosecution in the counter case vide Sessions Trial No. 9/93 against the complainant party (Gabru, Pratap and Babulal). Learned Trial Court, in Para 8 has specifically mentioned that the complainant of the instant case, i.e., Gabru (P.W. 2), Pratap, the injured were prosecuted in Sessions Trial No. 9/93 alongwith third accused Babulal for causing injuries to the appellants and one Shambhu, examined as D.W. 1. Learned Trial Court has also mentioned some facts of the prosecution case of the counter case. Again in Para 16, while appreciating the evidence of the defence witness Shambhu (D.W. 1) who was an injured eye-witness in counter case, the Trial Court has taken into consideration his statement given in the counter case and disbelieved his testimony. In Para 16, learned Trial Court has considered in detail the evidence of the prosecution witnesses in the counter case and compared the statements regarding individual overt act, place of incident, and weapon of offence etc. Again in Para 21, the Trial Court has mentioned that in S.T. No. 9/93, the Trial Court came to the conclusion that the appellants were the aggressors and caused injuries to the complainant Gabru (P.W. 2) and Pratap (P.W. 3) and gave finding that they acted in right of private defence of person and there were no embellishment or contradictions in their

statements for disbelieving their testimony.

7. Consideration of evidence recorded in the counter case as well as the finding given while passing the impugned judgment, the learned Trial Court has failed to keep in mind the basic principles of criminal jurisprudence that each case is to be decided on the basis of its own oral and documentary evidence adduced by either party and no extraneous material can be taken into consideration. This Court can usefully refer herein the Supreme Court judgment passed in the case of *Mitthulal and Anr. v. State of M.P.* : 1975 CriLJ236 , wherein in Para 4, it has been laid down thus:

It is elementary that each case must be decided on the evidence recorded in it and evidence recorded in another case, though it may be a cross-case cannot be taken into account in arriving at the decision. Even in civil cases this cannot be done unless the parties are agreed that the evidence in one case may be treated as evidence in the other. Much more so in criminal cases would this be impermissible. It is doubtful whether the evidence recorded in one criminal case can be treated as evidence in the other even with the consent of the accused. Decision of Madhya Pradesh High Court reversed.

8. Apart from the aforementioned grave illegality, the learned Trial Court has also failed to consider that both the prosecution witnesses Gabru (P.W. 2) and Pratap (P.W. 3) have failed to explain the injuries sustained by the three appellants in the same incident as well as the defence witness Shambhu (D.W. 1) for which, the complainant party was prosecuted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and their injury reports (Exhs. D-12-C, D-13-C, D-14-C and P-15-C) have been proved by the prosecution witness Dr. S.K. Rawat (P.W. 9). Dr. Rawat also found that all these four persons had sustained ten injuries on different parts of the body including head, chest, and rib area etc. All the injuries were caused by hard and blunt object and the injuries were contusions, lacerated wounds and abrasions.

9. Dr. T.H. Malik (P.W. 8) proved the Bed Head Ticket Exh. D-11 of appellant Rcwaram and found clinically fractures of 7th and 8th ribs of left chest. Dr. J.D. Gupta (P.W. 7) has proved the X-ray report (Exh. D-9-C) of Rewaram and found

fracture of skull bone. Ordinarily non-explanation of injuries on the persons of the accused itself would not be sufficient to discard the whole prosecution case as well as the eye-witnesses' account. But in the instant case, having regard to the number and nature of injuries, day time of the incident and the incident occurred according to the prosecution case itself in the field of the appellants, when complainant Gabru alongwith his brother was taking bullock cart from the field of Narayan, the appellants had accrued the right of private defence of property. Under these circumstances witnesses must explain the injuries sustained by the accused persons. The appellants were also having right of private defence of property. Though the Investigating Officer Nawaz Khan (P.W. 4) has stated in Para 3 of his examination-in-chief that he prepared the spot map (Exh. P-7) at the instance of one Lakhan s/o Ranchhor, but the prosecution has not examined this witness. It is well settled legal position that the contents of the spot map prepared by police at the instance of a witness would be considered as the statement of the witness recorded under Section 161 of the Code of Criminal Procedure and merely by exhibiting the map by the Investigating Officer, its contents would not become admissible in evidence. The use of the contents of the map can be as per provision under Section 162 of the Code of Criminal Procedure for impeaching the testimony of witness Lakhan.

10. In view of the foregoing discussion, this Court is of the firm view that the impugned judgment of conviction and sentence of the appellants is not sustainable and the same is liable to be and is hereby set aside.

Resultantly this appeal succeeds and is hereby allowed. The conviction and sentences of the appellants as passed by the learned Trial Court are hereby set aside. They are acquitted from the charges levelled against them. The appellants are on bail. Their bail and surety bonds stand discharged. Office is directed to send a copy of this judgment to the Trial Court alongwith its record in due course.