

Niranjan Singh and ors. Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Apr-06-2000

Reported in : 2001CriLJ1544

Judge : Arun Mishra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 392 and 397; Code of Criminal Procedure (CrPC) , 1974 - Sections 161

Appeal No. : Cr.A.No. 513 of 1989

Appellant : Niranjan Singh and ors.

Respondent : State of Madhya Pradesh

Advocate for Def. : Rajiv Shrivastava, Adv.

Advocate for Pet/Ap. : S.L. Kochar, Adv.

Judgement :

ORDER

Arun Mishra, J.

1. The appellants being aggrieved by their convictions under Sections 392 and 397, I.P.C. have preferred this appeal before this Court. They have been sentenced to undergo R.I. for seven years and fine of Rs. 500/- on each count,

and on default of payment of fine to undergo further R.I. for six months.

2. As per the prosecution case, on 2nd June, 1986 the accused persons had entered the shop of Babulal while he was in the process of closing. One shutter was already put and one shutter was still to be put. They entered the shop at about 9.15 p.m. and asked for a sum of Rs. 1001/- from the injured Babulal and asked him the reason why he had offered only two 'Ilachis' when the three persons had come to the shop the previous day. At the relevant time injured Babulal and his brother Munnalal (PW 4) were present and they were settling the account. Babulal was having Rs. 400/- in his hands. Ramsahay and Niranjana asked to hand over Rs. 1000/-. On refusal of the complainant Babulal, Ramsahay inflicted one injury on his right arm with a knife. Another injury was caused on left side of chest by knife. Rs. 400/- which the complainant had in his hands were snatched by Niranjana Singh. It is alleged that one more boy was accompanying the accused persons whose name was not known. The incident was witnessed by Santosh Kumar (PW 3) and Jinendra Kumar.

3. Injured Babulal was referred for medical examination to Dr. Anand Singhai (PW 7) who found two injuries. One injury 1' x ' was found on the left side of chest below the nipple and the other injury ' x ' was on the left arm. Both the injuries were caused by hard and sharp weapon. The medical report is Ex. P/12. The clothes of Babulal were seized which carried corresponding sign of insertion of knife.

4. From the possession of accused Niranjana as per information given by him, a knife was recovered. Accused Sitaram was put up for identification parade by Mulle Singh (PW 2) who was Sarpanch of the village. The identification parade was allegedly held near the paper mill. The money which was allegedly looted could not be recovered from the accused.

5. The accused abjured the guilt. Accused Sitaram contended that he was falsely implicated in the case. Accused Niranjana took the defence that he was standing in front of the shop of Munnalal and accused Ramsahay was demanding money from Babulal which was due from him. On that altercation took place between Munnalal and Ramsahay and there was a scuffle. The accused intervened and separated

the two. As the accused (Niranjan) sided Ramasahay, his name was also mentioned in the array of accused. Ramsahay took the plea that Rs. 1050/- were due from Babulal on account of purchase of 'Ghana' which was payable to his uncle and when money was demanded an altercation took place. No incident of robbery took place. Knife was not recovered from him.

6. The learned counsel for the appellant has submitted that it is a case where no offence under Section 392 or 397 of I.P.C. is made out. It is submitted that no property was seized which goes to indicate that the accused persons have been falsely implicated. No grievous hurt was found, therefore, Section 397, I.P.C. was not attracted. His further submission is that from the evidence it is clear that identification parade was not conducted. According to the prosecution identification parade was conducted by Mulle Singh (PW 2) but he has not supported the prosecution case. Suresh Kumar (PW 5) witness to the alleged identification parade has also not supported the alleged holding of identification parade. Another witness to the identification parade has not been examined. There is contradiction as to the place of holding of the identification parade. There is over-writing in the memo of identification parade as to the date of holding of the said parade. The first information report alleged to have been lodged by Babulal (PW 1) was in fact not lodged by him but by his brother Munnalal (PW 4). Learned counsel placed reliance on *Marudanal Augusti v. State of Kerala*, AIR 1980 SC 638 : (1980 Cri LJ 446) and *Bandi Mallaiah v. State of Andhra Pradesh*, AIR 1980 SC 1160 : (1980 Cri LJ 914).

7. Learned counsel appearing for the State Shri Rajiv Shrivastava, Panel Lawyer, has submitted that there is nothing to disbelieve the version of injured witness Babulal (PW 1) supported by his brother Munnalal (PW 4) and also by another witness Santosh Kumar (PW 3). He submitted that offences Under Sections 392 and 397 are clearly made out and the judgment and finding recorded by the learned trial Court call for no interference.

8. The submission of the learned counsel for the appellant that as it is not proved that any grievous hurt was caused offence under Section 397, IPC is made out, is taken up first for consideration. Dr. Anand Singhai has been examined as P.W. 7.

He stated that two injuries were found on the person of injured Babulal -- one on the right side of chest below the nipple 1 cm x cm and the other on the left arm cm x cm. The depth of the injuries was not measured by the doctor. In the absence of measurement of depth and other evidence to show that the injuries were grievous in nature, it cannot be held that any grievous hurt was suffered by injured Babulal. However, it is found from medical evidence that he had suffered two incised wound and one of them was on the chest. It is clear that attempt was made to cause grievous hurt. Therefore, the submission of the learned counsel that offence under Section 397, I.P.C. is not made out; cannot be accepted.

9. The second submission raised by the learned counsel for the appellant is with respect to identification of Sitaram. It may be seen that identification memo Ex. P/2 is on record. The identification parade was held on 28-7-1986, i.e. after about two months of the incident. There is no satisfactory explanation for holding it so belatedly. No doubt about it that there is over-writing in column No. 2 of the date of holding-of the identification parade. Initially 27-7-86 was written as the date of holding of the parade but later on it was changed to 28-7-86. Whatever that may be, identification parade was allegedly held in the presence of two witnesses Sureshchandra and Abhaykumar. Suresh was examined as P.W. 5 but he has not supported the holding of identification parade. Another witness Abhay Kumar ought to have been examined by the prosecution but the prosecution has not chosen him to support the identification particularly when Mulle Singh (PW 2) who is said to have conducted the identification parade himself has not supported the said fact. As per identification memo (Ex. P/2) it was mentioned that it was conducted near the paper mill. Exact place is not mentioned in the memo. Santosh (PW 3) has stated that the identification parade was conducted inside the paper mill.

10. Babulal (PW 1) has deposed in paragraph 4 of his evidence that identification parade was conducted in the police station itself. Thus, holding of identification parade near paper mill is totally false and it is apparent that prosecution has failed to prove that identification parade was properly conducted. There is no satisfactory evidence on the point of holding of identification parade with respect to accused Sitaram.

11. Question arises is whether for want of proper identification parade accused Sitaram is entitled for acquittal. In the first information report it was mentioned that three persons came within the shop. Name of one person was not known to complainant Babulal (PW 1). Munnalal (PW 4) has stated in para 11 of his deposition that only two of the accused persons had entered inside the shop. He has stated that Ramsahay and Niranjana had entered the shop. Thus there is contradiction with respect to whether the third accused person, namely, Sitaram had entered the shop. For the said reason, accused Sitaram is entitled to benefit of doubt and he deserves acquittal as his identification has not been proved coupled with the fact that it is doubtful whether the third person had entered the shop.

12. Learned counsel for the appellants, with respect to the two other appellants, heavily relied upon the two decisions of the Supreme Court (*supra*) to contend that the F.I.R. has not been proved to be lodged by Babulal (PW 1) as alleged by the prosecution. In *Marudana Augustiv. State of Kerala*, AIR 1980 SC 638 : (1980 Cri LJ 446) the trial Court had acquitted the accused person of the charges on the ground that the manner in which the F.I.R. was lodged coupled with the delay in despatch of the F.I.R. and the delay on the part of P.W. 1 in getting the injuries examined by the doctor created suspicion and they went to the root of the matter, according to the Sessions Judge. The High Court reversed the acquittal. The Supreme Court observed that the view adopted by the Sessions Judge was reasonable and it was not possible to interfere with the order of acquittal. In the said case the incident took place on 23-6-71 at the report was lodged in the mid-night. The police station was at distance of about 20 k. ms. from the place of occurrence. The names of P.Ws. 4, 5 and 6 were not mentioned in the F.I.R. Even though P.Ws. 2 and 3 have been mentioned in the F.I.R. as having given first aid to the deceased it was not mentioned that these two witnesses were present when the deceased was actually assaulted. The case at hand is distinguishable and the factual matrix does not support the contention of the learned counsel.

13. The other decision relied upon in *Bandi Mallaiah v. State of A.P.*, AIR 1980 SC 1160: (1980 Cri LJ 914). In the said decision F.I.R. was discarded on the ground that the part attributed to Accused No. 2 in the attack on the deceased was not

mentioned in the F.I.R. or in the former statement Under Section 161, Cr. P.C. Such circumstances are not available in the present case.

14. In the present case, complainant Babulal was injured in the incident. He has lodged the first information report and has admitted his signature on the F.I.R. (Ex. P/ 2). May be that he has stated in para 6 of the deposition that owing to the injuries caused he was taken to the Police Station and at that time his brother Munnalal had accompanied him to the Police Station. He has also mentioned that his brother had lodged the report. He was not further cross-examined whether his signature was obtained or not or whether the FIR was reduced in writing in his presence. When he has owned the F.I.R. and has owned his signature, he should have been cross-examined further by the defence so as to destroy the veracity of the F.I.R. It has not been suggested that F.I.R. was not lodged when it was written. There is no evidence to show that the F.I.R. was lodged subsequently. Thus merely because in the particular portion of deposition of the complainant he stated that his brother had accompanied him and lodged the report, it cannot be said that the F.I.R. is an unreliable piece of evidence as suggested by the learned counsel for the appellants particularly in view of the version in the F.I.R. and the fact that it contains the signature of the complainant.

15. Whether offence of robbery is made out or not is another submission addressed at the bar. Babulal (PW 1) has clearly mentioned that the accused had stated that when they had come on earlier occasion only two 'Ilachis' were given whereas they were three in number and they had raised a demand for Rs. 1001/-. He also clearly stated that a sum of Rs. 400/- was snatched away. It is amply proved from his evidence that injuries were inflicted on his arm and chest by means of knife. Learned counsel for the appellants has submitted that there was dispute with respect of the payment of money. Even if there was some dispute as suggested by the learned counsel, it was not open to the accused persons to enter into the shop and take away money at the point of knife. The evidence of Babulal (P.W.-1) has been supported by Santosh Kumar (PW-3) who was standing outside the shop at the relevant time and also supported by Munnalal (P.W.-4) and there is no infirmity in the evidence of these witnesses. Thus, the offence under Section 392, I.P.C. is clearly made out against the two accused persons, namely, Niranjana

Singh and Ramsahay.

16. Learned counsel for the appellant has submitted that Santosh (PW-3) has deposed on the basis of what was informed to him by complainant Babulal. Thus his evidence is hearsay and is not admissible. A close scrutiny of the deposition of P.W. 3 Santosh Kumar it is clear that he was standing in front of the shop at the relevant time. He has clearly deposed that he has seen Ramsahay and Niranjana Singh in the shop along with another person Sitaram. Ramsahay and Niranjana both have inflicted injuries on Babulal by knife and thereafter the accused persons ran away. No doubt the witness has stated that the fact of snatching away Rs. 400/- was told to him by Babulal but merely for this reason it cannot be said that he did not witness the incident. He has clearly stated that while causing the injuries he was at some distance and had thus seen the incident. He has not deposed that he had seen snatching the money but he deposed, that Babulal had informed him about the same. Thus, his evidence cannot be said to be hearsay so far as causing of injuries to the complainant is concerned.

17. The learned counsel for the appellant has further submitted that there is no common intention for committing the offence under Section 397, I.P.C. In this respect, F.I.R. mentions that Ramsahay and Niranjana both had entered the shop and asked for a sum of Rs. 1001/- and stated that in the event of non-payment the complainant would be killed. Further, the complainant Babulal (PW-1) has stated that Niranjana and Ramsahay were carrying knife at the relevant time. He further stated that both Ramsahay and Niranjana had inflicted injuries with knife. Knives have been recovered from both. Santosh (PW-3) also stated that Ramsahay and Niranjana both had inflicted injuries. Munnalal (PW-4) has stated that Ramsahay and Niranjana were carrying knives and both had inflicted injuries. In these circumstances, convictions of both the appellants under Sections 397 and 392, I.P.C. and sentence of R.I. for seven years on both counts do not call for any interference.

18. In the result, the appeal in so far as it relates to appellant Sitaram is allowed. His conviction and sentence Under Sections 392 and 397, I.P.C. are set aside and he is acquitted. The appeal is dismissed so far as appellants Niranjana Singh and

Ramsahay are concerned. The convictions and sentences passed against them under Sections 392 and 397, I.P.C. are maintained.

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