

Mukesh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-14-2002

Reported in : 2002(5)MPHT340; 2002(4)MPLJ591

Judge : S.P. Khare, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307 and 326

Appeal No. : Criminal Appeal No. 907/93

Appellant : Mukesh

Respondent : State of M.P.

Advocate for Def. : R.A. Robertson, Govt. Adv.

Advocate for Pet/Ap. : None

Disposition : Appeal allowed

Judgement :

S.P. Khare, J.

1. Appellant Mukesh has been convicted under Section 326, IPC and sentenced to rigorous imprisonment for five years and to a fine of Rs. 500/-.

2. It is not in dispute that an incident of violence did take place on 12-4-1992 at 12 noon near the house of accused Mukesh in Village Shahpur. There were injuries on both the sides which gave rise to two counter cases. In the present case accused Mukesh was prosecuted for the offence punishable under Section 326, IPC. In the counter case the complainant party was prosecuted for the offence under Section 307, IPC.

3. The prosecution case is that accused Mukesh and his father Ramdayal caused injuries to Parwat Singh (P.W. 4) and Gendalal (P.W. 5). The injury sustained by Parwat Singh (P.W. 4) on his right hand was as a result of an axe blow and it led to the fracture of second metacarpal bone.

4. Accused Mukesh pleaded not guilty. His defence is that Parwat Singh (P.W. 4) and Gendalal (P.W. 5) with two other persons trespassed into his house and caused injuries to him and his father which were found to be of grievous nature and they are facing the prosecution for more serious offence punishable under Section 307, IPC.

5. The Trial Court after appreciation of the evidence held that it is not proved that the accused sustained the injuries in the same incident and therefore, the non-explanation of the injuries sustained by him and his father is not material. In this appeal it is clear from the evidence on record that appellant Mukesh acted in self-defence and therefore his conviction and sentence should be set aside.

6. The evidence on record has been scanned by this Court. It is necessary to look at the injuries sustained by both the sides. Dr. R.K. Gupta (P.W. 1) has deposed that he had examined Gendalal and Parwat Singh on 12-4-1992 and found following injuries on their persons as per his reports (Ex. P-1 to Ex. P-5).

Gendalal (P.W. 5):

Superficial incised wound with clear cut edges-- size 3/4 cm x 1/4 cm with swelling of 1/2 cm diameter all around on occipital region of his skull.

Parwat Singh (P.W. 4):

(1) Incised wound with clear cut edges-- size 1 cm x 1/4 cm on dorsum of left hand below index finger.

(2) Contusion-- 10 cm x 5 cm on antero lateral aspect of left forearm upper one third.

(3) Incised wound 1/2 cm x 1/4 cm with huge swelling of 5 cm x 7 cm and tenderness on dorsum of right hand.

(4) Contusion 3 cm x 2 cm on antero lateral left wrist.

There was fracture of second metacarpal bone of his right hand.

7. The injuries sustained by accused Mukesh and his father Ramdayal as per reports (Ex. D-3 to Ex. D-5) are as under:--

Accused Mukesh:

(1) Lacerated wound-- 6 cm x 1 cm bone deep on right parietal region of skull.

(2) Contusion 5 cm x 4 cm on lower one third of right forearm.

Accused Ramdayal:

(1) Lacerated wound-- 11 cm x 1 cm bone deep on crown (vertex) just to right side head.

(2) Contusion-- - 5 cm 3 cm on posterior aspect of right wrist and proximal part of ha

(3) Contusion-- 10 cm x 3 cm on anterior aspect of right side chest.

(4) Contusion-- 5 cm x 2 cm on mid anterior of left thigh.

There were fractures of his left parietal bone and shaft of ulna of his right hand.

8. Parwat Singh (P.W. 4) has deposed that incident took place at 12 noon and according to him accused Mukesh was armed with an axe and Ramdayal was having a lathi. They were causing injuries to Gendalal (P.W. 5). He has further

deposed that accused Mukesh dealt an axe blow on his left hand. He lodged the report (Ex. P-8). In cross-examination he has stated that he does not know why this incident of Marpeet took place. He has admitted that the name of his daughter is Mamtabai and she is living with him after his marriage. He has denied the suggestion that his brother Kashiram had seen accused Mukesh talking to Mamtabai and therefore, he went to the house of accused Mukesh with three persons to cause injuries to Mukesh and his father. He has further admitted that he is facing trial under Section 307, IPC and in that case Kashiram, Gendalal (P.W. 5) and Madan are also accused. He has categorically stated that there was only one incident. Gendalal (P.W. 5) has corroborated the testimony of his uncle. He has also denied the suggestion in cross-examination that he himself and Parwat Singh (P.W. 4) were the aggressors and caused injuries to Mukesh and his father.

9. The accused has not adduced any oral evidence in this case. He has, however, produced copy of the FIR in the counter case Ex. D-1 and the medical reports mentioned above.

10. It is thus clear from the above narration that injuries sustained by Ramdayal who is father of appellant Mukesh were more serious in nature than the injuries sustained by Parwat Singh (P.W. 4) and Gendalal (P.W. 5). One of the injuries of accused Ramdayal was on his head and that was 11 cm x 1 cm. There was a fracture in that injury. Therefore, injuries of accused Mukesh and his father cannot be said to be minor or insignificant and cannot be ignored lightly. The injuries sustained by accused Mukesh and his father Ramdayal have not been explained by the prosecution witnesses. The view taken by the Trial Court that both sides sustained injuries in two separate incidents is not correct. As mentioned above the prosecution witnesses have also stated that there was only one incident which took place near the house of accused Mukesh. That is borne out from the FIR (Ex. P-9) also. The plea of private defence has been set up in the cross-examination of the prosecution witnesses. The question is whether his plea is reasonable and probable.

11. Failure to explain minor or insignificant injuries on the persons of the accused is not fatal to the prosecution case. Similarly, where on a consideration of the entire evidence it is found that the accused party was the aggressor the non-explanation of the injuries of the accused does not adversely affect the prosecution case. The same result would follow if the prosecution has proved all the ingredients of the offence beyond reasonable doubt by cogent, clear and reliable evidence. A fortiori if the injuries sustained by the accused persons are of serious nature which were sustained in the same incident then it is expected that the prosecution must explain those injuries. It is seen sometimes that the injuries of the accused are more in number and far more serious then the prosecution is obliged to explain those injuries because failure to do so might render the competing defence version more reasonable and probable. The genesis and origin of the incident may be left in doubt in such a case and that in turn may render the prosecution case as a whole reasonably doubtful. The plea of self-defence of the accused persons may get probablised if it is not shown by the prosecution how they received those injuries in the same incident. The preponderance of probability may tilt in favour of the defence and that may create a reasonable doubt in the prosecution case. It is well settled where the right of private defence is pleaded by the accused and the evidence is adduced to support such plea or the material is brought on record in the cross-examination of the prosecution witnesses which may not be sufficient to establish the right of private defence positively on the touchstone of 'preponderance of probability' but which may create a reasonable doubt above the existence of an essential ingredient of the offence, in such a case the prosecution cannot be said to have proved the offence beyond reasonable doubt or with reasonable certainty.

12. A few recent decisions of the Supreme Court may be cited. In *Ayodhya Ram v. State of Bihar*, (1999) 9 SCC 139, it has been held : 'The prosecution is not bound to explain each and every injury on the accused persons irrespective of the nature of the injury and in respect of some minor injury on the accused, if no explanation is offered by the prosecution, the prosecution would not fail on that score'.

13. In *Takhaji Hiraji v. Thakore Kubersingh Chamansing*, (2001) 6 SCC 145, the law on this point has been recapitulated by the Supreme Court. It has been laid

down that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the Court has to be satisfied of the existence of two conditions : (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

14. In *Padam Singh v. State of U.P.*, (2000) 1 SCC 621, it has been further held : When the prosecution does not explain the injury sustained by the accused at about the time of the occurrence or in the course of occurrence, the Court can draw the inference that the prosecution has suppressed the genesis and origin of the occurrence and has, thus, not presented the true version. Where the evidence consists of interested or inimical witnesses, then non-explanation of the injury on the accused by the prosecution assumes greater importance.

15. In *Rajender Singh v. State of Bihar*, (2000) 4 SCC 298, it has been held by the Supreme Court that ordinarily the prosecution is not obliged to explain each injury on an accused even though the injuries might have been caused in the course of the occurrence, if the injuries are minor in nature, but at the same time if the prosecution fails to explain a grievous injury on one of the accused persons which is established to have been caused in the course of the same occurrence then certainly the Court looks at the prosecution case with a little suspicion on the ground that the prosecution has suppressed the true version of the incident. However, if the evidence is clear, cogent and creditworthy then non-explanation of

the injury on the accused ipso facto cannot be a basis to discard the entire prosecution case.

16. Recently in *Kashiram v. State of M.P.*, AIR 2001 SC 2902, it has been observed by the Supreme Court that if on the material available on record a preponderance of probability is raised which renders the plea taken by the accused plausible then same should be accepted and in any case a benefit of doubt should deserve to be extended to the accused.

17. In the present case on consideration of the totality of the evidence on record it is found that the plea taken by the appellant is more reasonable and probable. His father has sustained grievous injuries in this incident which have not been explained by the prosecution witnesses. The injury received by the appellant has also not been explained by them. The incident took place near the house of the appellant. It appears that Kashiram saw appellant Mukesh talking to Mamtabai and then he with three other persons entered into the house of appellant Mukesh and caused injuries to him and his father. In such a situation appellant Mukesh had the right of private defence of person to cause injuries to Parwat Singh (P.W. 4) and Gendalal (P.W. 5). On comparison of the injuries on both the sides, it can be gleaned that the prosecution party was the aggressor and for that reason the members of that party have been charge-sheeted by the investigating agency under Section 307, IPC.

18. In the result, this appeal is allowed. Conviction and sentence are set aside and the appellant is acquitted of the charge under Section 326, IPC.