

State Vs. Gopal

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Court : Rajasthan Jodhpur

Decided On : Jul-31-2015

Appellant : State

Respondent : Gopal

Judgement :

STATE OF RAJASTHAN VS. GOPAL (S.B.CRIMINAL LEAVE TO APPEALNO.170/15) 1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

STATE OF RAJASTHAN VS. GOPAL (S.B.CRIMINAL LEAVE TO APPEAL NO.170/15) Dated :

31. 7.15. HON'BLE MR.JUSTICE SANGEET LODHA Mr. A.S.Rathore, Public Prosecutor.

1. Heard learned Public Prosecutor and perused the record.

2. This leave to appeal u/s. 378 Cr.P.C. has been filed by the State, aggrieved by the judgment and order dated 1.4.15 passed by the Additional Sessions Judge, Shahpura in Sessions Case No.94/09, acquitting the accused- respondent of the charges for the offences under Sections 307, 325, 324, 323 read with Section 34 IPC.

3. Precisely, the prosecution case is that on 23.6.09, the informant-Ram Kishan submitted a written report (Ex.P-1) at Police Station, Shahpura, with the allegations that while his father Ugma s/o Bholu Gurjar, resident of Kansa Khera was engaged in planting thor (a cactus like shrub) at his STATE OF RAJASTHAN VS. GOPAL (S.B.CRIMINAL LEAVE TO APPEALNO.170/15) 2 bara, Gopal s/o Lalu and Balu s/o Deva with axes in their hands came there and with an intention to kill, assaulted him and inflicted injuries. It was alleged that one leg and one hand of informant's father were cut and the injuries were inflicted on head as well. It was alleged that on his niece Sewala raising hue and cry, Uda s/o Mangu and Devkishan s/o Mangu came at the place of occurrence and thereafter, the accused fled away.

4. On the information being received as aforesaid regarding the incident, the police registered the FIR and the investigation commenced. The accused were arrested. On the basis of the information supplied by the accused, the axes were recovered from the accused Gopal and Balu vide memo of recovery Ex.P-5 and Ex.P-29 respectively. The accused were examined by the Medical Officer, Government Satellite Hospital, Shahpura and the injury report (Ex.P-20) was prepared. After completion of the investigation, the police filed the charge sheet against the accused Gopal and Balu for offences under Sections 307, 325, 325/34, 324, 324/34 and 323 IPC. The matter was committed to the Sessions, which later came for trial before the Additional STATE OF RAJASTHAN VS. GOPAL (S.B.CRIMINAL LEAVE TO APPEALNO.170/15) 3 Sessions Judge, Shahpura. The accused-Balu died during the trial and therefore, the proceedings against him was dropped. The charge was framed against the accused Gopal for offences under Sections 307, 325, 324, 323 read with Section 34 IPC, who denied the charges and claimed trial.

5. The prosecution in support of its case produced as many as 17 witnesses and produced documentary evidence Ex.P/1 to P/30. The statements of the accused Gopal were recorded under Section 313 Cr.P.C, wherein he denied his involvement in commission of the crime. No witness was examined in defence, however, the statement of Ramkishan recorded by the police under Section 161 was exhibited in evidence on behalf of the accused as Ex.D-1.

6. The learned trial court after appreciation of the evidence on record, arrived at the finding that all the eye witnesses of the incident including the family members of the injured have turned hostile and there are material contradictions in the statements of injured-Ugma and therefore, the charges against the accused are not proved beyond doubt. Accordingly, the accused-respondent has been acquitted of the charges for offences under Sections STATE OF RAJASTHAN VS. GOPAL (S.B.CRIMINAL LEAVE TO APPEALNO.170/15) 4 307, 325, 324, 323 read with Section 34 IPC.

7. Learned Public Prosecutor contended that the statements of the injured-Ugma (PW5) do not suffer from any such contradictions so as to discard his evidence altogether. Learned Public Prosecutor submitted that the occurrence of the incident and the injuries suffered by Ugma stand proved from the deposition of the prosecution witnesses and the injury report (Ex.P-22) and thus, the trial court has seriously erred in acquitting the accused- respondent.

8. I have considered the submissions of the learned Public Prosecutor and perused the evidence on record.

9. It is to be noticed that Smt. Sewala (PW2) has expressed her ignorance about the incident occurred and was declared hostile. She has further stated that Ramkishan was not present at the site at the time of alleged occurrence. Uda (PW3) has denied his presence at the place of occurrence and also denied that the axe was recovered from the accused-Gopal in his presence. Devkishan (PW6) has also turned hostile and denied to have seen the incident occurred. That apart, other two witnesses Sukhdev (PW-10) STATE OF RAJASTHAN VS. GOPAL (S.B.CRIMINAL LEAVE TO APPEALNO.170/15) 5 and Satyanarayan (PW-11), examined as eye witnesses, also turned hostile. Ramkishan (PW-1) has also denied to have seen the incident rather, stated that he had seen Gopal and Balu fleeing away from Bara. Thus, none of the eye witnesses has supported the prosecution case.

10. The injured-Ugma (PW-5) has stated that Balu and Gopal were having stick and axe respectively in their hands. He stated that the injury was caused by axe on his waist and his hand and leg were also broken. In the examination of chief, he

has stated nothing about the presence of Sewala at the place of occurrence, however, in the cross examination, he has stated that Sewala was present at the time of occurrence. As per the injury report and the deposition of the Medical Officer Dr.Ashok Jain, no injury was caused to the accused on the waist by sharp edge of the axe and except one injury on the left leg caused by sharp weapon, all other injuries are reported to have been caused by blunt weapon whereas, in his statement, Ugma (PW5) has stated that the accused had caused 4-5 injuries by axe and there is no indication therein regarding any injury being caused by blunt weapon. As per the injury STATE OF RAJASTHAN VS. GOPAL (S.B.CRIMINAL LEAVE TO APPEALNO.170/15) 6 report, the injury was caused on the shoulder and ear as well but Ugma (PW5) has not deposed regarding any such injury being caused. In this view of the matter, after due examination of the evidence on record, taking into consideration the fact that all the eye witnesses have turned hostile and the statement of the injured-Ugma suffers from material contradictions and is not in consonance with the medical evidence, the trial court has committed no error in acquitting the accused of the charges levelled.

11. No case for grant of leave to appeal is made out.

12. The criminal leave to appeal is therefore, rejected. (SANGEET LODHA),J.

Aditya/

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