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Court : Delhi

Decided On : Aug-10-1987

Reported in : 1987(3)Crimes316; 33(1987)DLT193; 1988(14)DRJ181

Judge : Malik Sharief-ud-Din, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 325

Appeal No. : Criminal Review Appeal No. 60 of 1987

Appellant : Chand Ram

Respondent : Lal Chand and anr.

Advocate for Pet/Ap. : Y.S. Rana and; P.S. Rana, Advs

Judgement :

Malik Sharief-ud-Din, J.

(1) This Criminal Revision is directed against an order of Metropolitan Magistrate, Delhi dated 31st January, 1987 by which he has acquitted the respondents of charge under Section 325/34 Indian Penal Code . The case was sent to the court on a police report and the aggrieved petitioner had applied to the District Magistrate to file acquittal appeal which was declined. It is in these circumstances that the present Revision against this order of acquittal was filed by the aggrieved complainant.

(2) Slating briefly the case of the petitioner is that on 6th of August 1982 at about 4.30 P.M. at village Bajitpur within the jurisdiction of police station Narela, the respondents in prosecution of their common intention voluntarily caused grievous injuries on the person of the petitioner namely Chand Ram by use of lathies. This incident took place when the petitioner on his return from his duty found the respondents grazing cattle in his field. On his objection the respondents are stated to have assaulted him resulting in a number of injuries one of which was supposed to be grievous. This matter was reported to the police at 5.30 P.M. on the same day by the complainant and was entered in the daily diary of the police station at Seriall No. 17. On the same day the petitioner was referred to the police hospital where seven injuries were noticed on his person and he was referred to Jai Prakash Narain Hospital for further examination. The record does not reveal as to why this reference was thought necessary. There is a cryptic document which has been allegedly scribed by Dr. R. Pandey of the Jai Prakash Narain Hospital on 27th of August, 1982 in which the word 'grievous' has not been scored out meaning thereby that the injury was grievous. This document has been marked as PW-5/A and it makes no mention of the injury regarding which the opinion has been given. The formal F.I.R. came to be registered on 27th of August 1982, the date when the medical report regarding the nature of injuries was received from Jai Prakash Narain Hospital.

(3) Apart from formal witnesses the prosecution has examined Chand Ram complainant and has also examined PWs 1 and 4 Ram Mehar and Karam Vir respectively in support of the complainant's version. The learned Trial Magistrate very seriously suspected the veracity and credibility of these two alleged eye-witnesses and has not relied on their testimony as the learned trial magistrate felt that their presence at the scene of incident was very doubtful. This opinion of the learned Magistrate is based on the ground that there is substantial contradiction in the testimony of these two alleged eyewitnesses and their conduct is most unnatural. The learned Magistrate also discarded their testimony on the ground that their names were not mentioned in the F.I.R. Mr. Y.S. Rana, learned counsel for the petitioner has urged that non-mention of the eye-witnesses in the F.I.R. is immaterial and that in any case it is not fatal. Reliance is placed by him on Nahar Singh v. State of Haryana, . I am, however, not in agreement with Mr. Y.S. Rana.

In Criminal cases observations are made in the light of the peculiar facts and circumstances of a particular case. The case (supra) is obviously distinguishable from the case with which I am dealing. In the present case PWs 1 and 4 have categorically stated that they are the persons who intervened in the quarrel rescued the petitioner and escorted him to his village. It is very strange that the complainant made no mention of their presence when he lodged the FIR. It may not be necessary to do so in all cases but in the light of the peculiar facts and circumstances of this case non-mention of the witnesses so sympathetic to the complainant in the F.I.R. does assume importance. The matter assumes additional importance in view of the fact that till a supplementary statement of the petitioner is recorded he is silent about the witnesses who had seen the incident. It appears that after 27th of August, 1982 when a formal F.I.R. was registered the need for supporting witnesses was felt and these two persons were brought in the picture. That apart there are serious discrepancies between these eye-witnesses to which pointed reference has been made by the learned Trial Magistrate. On the circumstances and facts of this case it is absolutely impossible to place any reliance on the testimony of these two eye-witnesses.

(4) The learned Trial Magistrate has further observed that the non-examination of the medical expert is also a factor which ought to be taken into consideration in this case. The reasons advanced for this may be faulty but if the conclusions are substantially correct and are not perverse, there is hardly any scope for interference. As I have indicated a list of seven injuries has been given by the doctor of the police hospital who examined the petitioner first. That doctor was never examined and the injuries were not proved. The report of the Jai Prakash Narain Hospital does not indicate the injury which was categorised as grievous. It only shows that the printed word 'grievous' had not been scored out, thereby meaning that the injury was grievous. The court is left to guess as to what that injury was. Dr. Pandey of the Jai Prakash Narain Hospital who is supposed to have issued this medico legal injury report Ex. PW-5/A has not been examined. In his absence, PW-5 Record Keeper of the hospital was examined as according to him. Dr. Pandey was no more in the hospital. This in fact, is secondary evidence which in the circumstances of this case could not be seriously objected to and in the absence of Dr. Pandey the court has rightly permitted the prosecution to lead

this evidence. That, however, does not take the court anywhere as the certificate itself does not indicate the injury which was categorised as grievous. It is, therefore, of no assistance to the prosecution. There is no proof as such to the effect that the petitioner had suffered a grievous injury or even a simple injury. The trial court, therefore, in my view was perfectly justified in dismissing the case and acquitting the respondent. Apart from what has been stated above, I must make it clear that this is a revision against the acquittal. This court will be justified in interfering only in case the view of evidence taken by the trial court is perverse and shocking. Normally if the trial court has taken a reasonable view of the evidence this court will refrain from interfering even if equally an opposite and reasonable view of the evidence can be taken. In my view the assessment of the evidence made by the trial court is not all unreasonable or perverse. The result is that this Revision fails and is dismissed.