

Sharvati Devi Vs. Shiv Kumar and anr.

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Court : Delhi

Decided On : May-10-1990

Reported in : 1990(2)Crimes685; 42(1990)DLT113; 1990(19)DRJ82

Judge : P.K. Bahri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397; [Indian Penal code, 1860](#) - Sections 325

Appeal No. : Criminal Reference No. 11 of 1979

Appellant : Sharvati Devi

Respondent : Shiv Kumar and anr.

Advocate for Pet/Ap. : R.L. Bhagat,; O.P. Soni and; Kamlesh Dutt, Advs

Judgement :

P.K. Bahri, J.

(1) This criminal revision is directed against a judgment of an Additional Sessions Judge, New Delhi, dated August 18,1978,by which he had accepted the appeal and acquitted respondent No. 1.

(2) The facts of this case in brief are that Public Witness . 1 Sharbati is the real sister of the wife of respondent No. 1, and they arc living in the neighborhood of

each other. On October 16, 1973, Public Witness I came to the Police Station and lodged Daily Diary Report No. 20 at about 7.15 P.M. wherein she mentioned that in the morning she had a quarrel with her sister Santosh, wife of respondent No. 1 and she was not having good relations with her earlier also and on that day at about 7.30 A.M. when she was talking with one Durgi that respondent No. 1 came there and had objected to putting of some fencing ; that Shiv Kumar respondent No. 1 gave her beating with fist blows and one brick blow. Public Witness 1 was got medically examined and the doctor (Public Witness 4) found some bruises present on the left gluteal region and right lower chest and left shoulder and found the abdomen to be soft. He advised X-ray and later on. a fracture of ninth rib on the left side was found and the injury opined to be grievous in nature as per medical report Ex. Public Witness 4/A. However, he could not say whether the injury to the rib was fresh one or old one. The Radiologist coming as Public Witness 7, however, in the cross-examination admitted that this fracture could be 3 to 4 days old although he termed the(r)aid fracture as 'fresh' but he clarified that by 'fresh fracture' he means that the fracture was caused within fourteen days. The challan was filed for the offence punishable under Section 325 of the Indian. Penal Code. The learned Metropolitan Magistrate believing the version given by Public Witness 1 and supported by her tenant-Shiv Shankar (Public Witness 5) had brought home the offence to respondent No. 1 but in appeal the learned Additional Sessions Judge found the verison of the projection doubtful and bad acquitted respondent No. 1.

(3) The learned counsel for the petitioner has read out the statements. of the witnesses before m(r) in detail and has argued that the Additional Sessions Judge was not right in disbelieving the version given out by Public Witness 1 and duly corroborated by Public Witness 5. In the Dd report it was indicated that Pw 5 and one Babu Lal had come to the spot on hearing the noise of the quarrel and they had intervened. The Additional Sessions Judge also found that presence of Durgi has been also indicated in the Fir but neither Durgi nor Babu Lal have been examined as witnesses. He found the statement of Shiv Shankar to be somewhat not credible as he had stated at one place that Pw 1 was lying on the ground when he had come to the spot The short question which arises for consideration is as to whether this Court should set aside the judgment of the Additional Sessions Judge

after appraising the evidence: The scope of revisional jurisdiction is very much limited. This revision is not filed by the State but has been filed by the aggrieved party- complainant. Unless and until it is shown that the view taken by the Additional Sessions Judge is perverse, it would not be proper for this Court to interfere with the judgment of the Additional Sessions Judge acquitting respondent No. 1 and directing the retrial of respondent No. 1 by exercising the revisional jurisdiction.

(4) In *Bansi Lal & Others v. Laxman Singh*, : 1986 CriLJ1603, the Supreme Court has, after referring to previous judgments on this point, clearly held that revisional jurisdiction is to be exercised only in exceptional case when there is glaring defect in the procedure or there is a manifest error on the point of law and there has consequently been flagrant miscarriage of justice. It was also held that mere circumstance that a finding of fact recorded by the trial court may in the opinion of the High Court be wrong will not justify the setting aside the order of acquittal. It was opined that if a finding of fact arrived at is a possible finding, the High Court would not be justified in interfering, with such a finding even though the High Court may be inclined to have a different view of the evidence. In the present case, there was a delay of about 12 hours in lodging the report to the police. Counsel for the petitioner has tried to explain the delay by- pointing out that in the MLC it has been recorded that there was a history of unconsciousness. So, he also pointed out to the testimony of Public Witness 1 wherein she mentioned that after she regained consciousness, she requested Shiv Shankar to take her to the police and to the hospital. Shiv Shankar was not a stranger. He was a tenant of Public Witness 1 and in case Public Witness 1 had become unconscious during the occurrence it is not understandable that Shiv Shankar would have gone away from the spot leaving Public Witness 1 lying unconscious alone. This story of Public Witness 1 having become unconscious appears to have been introduced only to explain the delay of 12 hours which occurred in lodging the FIR. It is also significant to mention that there is no positive evidence of the prosecution that the fracture which Public Witness 1 had suffered could not have been possible prior to the occurrence. The medical evidence is not quite supportive of version of the prosecution regarding the inflicting of this grievous injury at the hands of respondent No. 1. A suggestion was given although belatedly to Public Witness 1

that she had suffered a fall from the staircase 3 or 4 days prior to this occurrence and Dw 1 doctor was examined to prove this version although that version could not be given any credence as it was brought forward belatedly by the defense. However, the prosecution had to stand on its own legs to prove that this particular grievous injury was caused to Public Witness 1 by respondent No 1. The Additional Sessions Judge had given some reasons which could not be said to be perverse in arriving at a possible finding that this particular grievous injury was perhaps not caused by respondent No. 1. I do not think that it is a fit case for exercising revisional power to set aside, that finding and directing the retrial of respondent No. 1, particularly after elapse of 17 years from the date of the occurrence.

(5) I, hence, find no merit in this revision petition which I, hereby,dismiss.

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