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Court : Rajasthan

Decided On : Aug-25-1965

Reported in : 1967CriLJ1450

Judge : L.N. Chhangani, J.

Appellant : State

Respondent : Dhanpat and ors.

Advocate for Def. : Mr. Lodha

Judgement :

L.N. Chhangani, J.

1. This is an appeal by the State from the order of First Class Magistrate, Bhadra dated 14-8-1963, acquitting the respondents of offences under Sections 325 and 323, Penal Code.

2. The facts leading to this appeal may be briefly stated as follows:

The respondent Richhpal and injured Hari Singh P. W. 3 were students of the village School in village Ramgarh. The accused, respondent Dhanpat is the father of the accused-respondent Bichpal. On 30-4-1962 Hari Singh P. W 3 and the accused-respondent Richhpal were going to School at about 9 A.M. Haridngh drew a picture of a man on his slate Eichhpal questioned Hirisingh as to whose

picture he bad prepared. Hari Singh replied that he had prepared the picture of a person. Richhpal thereupon told him that it was the picture of his dead father, Richhpal having said so at once began to run away. Hari-singh tried to chase him. Richhpal collided with one boy Prithvi Raj in consequence of which he lost one of his teeth. This incident annoyed Richhpal's father and the members of his family.

Consequently on 1.5.1962 when Harisingh was returning from the jungle after easing himself the two accused-respondents assaulted him. Respondent Dhanpat threw him down and sat on his cheat. The respondent Richhpal held the injured Harisingh by hands. Dhanpat then gave a blow with a weight measuring one Sheer upon the face of Hari Singh and thus broke the teeth of Hari Singh. P. W. 5 Dhanraj, P. W. 6 Hansraj and P W 7 Juhar Mal arrived on the spot and rescued the injured Hari Singh and Harisingh was brought to his house. Hari Singh's father was not at his house and was away at his field. His younger brother was sent to call Hari Singh's father Puran P. W. 1. It appears that Prem Chand P. W. 8 Head Constable-in-charge of the Police Out Post, Fefana, happened to arrive in the village and Puran approached Prem Chand P. W. 8 and informed him of the offences having been committed against his son Hari Singh. Prem Chand recorded the statement of Puran and forwarded it to the Police Station, Nohar with a Constable Mukarabkhan with a request to register a case against the accused respondents.

In the meanwhile he himself commenced investigation. Mukarab Khan along with the injured Hari Singh arrived at the Police station by the morning train. The Station House Officer, Nohar registered a case and made an order handing over the investigation to Prem Chand. Injured Hari Singh was initially treated by Satyanand P. W. 4 at the village. Later on, he was sent to the Government dispensary, Nohar. Dr. S. N. Verma P. W. 9 examined him and noticed the fracture of the various teeth. He found grievous injuries on the person of the injured. After investigation the police submitted charge sheet against both the respondents for offences under Sections 325 and 323, Penal Code in the court of First Class Magistrate, Bhadra.

3. The prosecution examined nine witnesses in support of its case. Out of these nine witnesses, Harisingh P. W. 3 is the injured, Dhanraj P. W. S. Hansraj P. W. 6 and Juharmal P. W. 7 are the eye witnesses; P. W. 1 Puran is the first informant. Satyanand P. W. 4 is the 'Vaidhya' who initially treated Harisingh and P. W. 9 Dr. S. N. Verma is the medical officer who examined the injured Harisiugb and noticed injuries on his person and P. W. 8 Premchand is the investigating Officer.

4. The accused did not plead guilty and examined three witnesses, Gropal D. W. 1, Boshankhan D. W. 2 and Bajaram D. W. 3 in their defence.

5. The Magistrate after discussing the evidence led in the case acquitted the two respondents. The State has filed the present appeal challenging the order of the acquittal.

6. It will be convenient at the outset to briefly analyse the findings of the Magistrate. The Magistrate in the first instance stated the conclusion observing that in his opinion the offences under Section 325 read with Section 34, Penal Code, were not made out beyond reasonable doubt against the accused respondents. He then proceeded to state reasons for his above conclusion. In the first instance, he undertook what I am inclined to call 'examination of the general features of the case'.

Firstly, he took up the question of delay in lodging and the recording of the first information and discussed the matter under two heads firstly, delay on the part of Puran in reporting the matter to Premohand at 7 O' clock in the evening and consequently, the delay on the part of Premchand to convey the information to the Police Station, Nohar for proper recording of the first information report. Discussing the first head, the Magistrate observed that Puran stated that he could not leave for the Police Station by the 12 O'clock train inasmuch as some of the relations of. the accused had started negotiations for a compromise. Observing further that the complainant did not name any such relation, he discarded the explanation of the complainant. He further observed that there was no reason why after 12 O' clock the complainant did not leave on foot for the police station and waited till 7 O' clock when the Head Constable arrived in the village. These circumstances, observed the Magistrate, make the entire case doubtful

Discussing the second head, the Magistrate considered the conduct of the Head Constable Prem Chand in omitting to send the constable on foot in the night as highly objectionable and did not find any good reason for the delay. Discussing the matter under these two broad heads, he eventually recorded a conclusion that the delay was highly fatal to the prosecution case and the prosecution bad no explanation for the same.

7. The Magistrate then discussed the question of the competence of Premchand to hold an investigation. After referring to Section 156, Criminal P. C. he held that Premchand was not competent to initiate investigation. That he had completed almost the entire investigation before the receipt of the direction of the Station House Officer, Nohar, authorising him to carry on investigation. The Magistrate's eventual conclusion in this be. half is that the entire investigation was illegal and void and that no proceedings could have been taken against the accused respondents under Section 251-A, Criminal P. C. on the basis of such an unauthorised investigation.

Next, the Magistrate observed that the so. called investigation by Premchand was altogether false and suspicious and he relied upon the statements of the prosecution witnesses in support of this observation. He in this connection first took up the consideration of Ex. P. 5 memo prepared by the Held Constable Premchand showing the recovery of broken pieces of teeth alleged to have been produced before him by Puran. Referring to the contrary statements of Puran, Harising and Dhanraj which were in variance with Ex. P. 5, he concluded that Ex. P. 5 was a forged document. He went to the extent of observing that no accused could be convicted on the basis of investigation conducted by such an investigating officer. He went further and added that persons like Premchand cause obstruction in the administration of justice in. stead of rendering any aid in the administration of justice The Magistrate having held Ex. P. S forged on the basis of these statements proceeded in the next breath to hold that the recovery of the teeth from the spot could not be held established. He expressed the opinion that the witnesses made statements to that effect mechanically simply because teeth were broken on the spot and some pieces of teeth were produced in Court.

He then posed the question whether the teeth Were broken on the spot and whether any portion of the teeth fell at the place of the occurrence. Referring to the statement of Satyanand P. W. 4 and observing that only two teeth were fractured while three pieces of the teeth were recovered, he appears to decide that no tooth was broken at the time of the occurrence and fell on the spot. The Magistrate also referred to the statements of the witnesses as to the number of teeth broken. Referring first to the statement of Satyanand P. W. 4 who records that two teeth had been broken and then referring to the recital in the first information report that four teeth had been broken and the rest were loose, he ridiculed Premchand for the recital in the first information report. He also referred to the statements of other witnesses as to the number of teeth broken and concluded that the recital in the first information report about the teeth was altogether false and destroyed the value of the entire first information report.

The Magistrate then referred to the statement of Satyanand P. W. 4 that he was called by me next day and the statement of P. W. 6 Hansraj to the effect that he was examined two days after the incident and then referring to the police diary whether these witnesses' statements are shown as having been recorded on the 1st, he concluded that the investigation was improper, false and bogus. Th Magistrate then refers to the statement of Harisingh P. W. 8 that Premchand brought the teeth next day during the period between morning and the noon. He in. fen that the investigation showing that the injured was produced in the Hospital at 10 O'clock in the morning and was medically examined, is bogus. He then sums up the position as follows:

An illegal and false investigation weakens the pro. Mention case completely and creates serious doubt that A false case has bean bolstered up against them.

He then considered the evidence of Dr. S. N. Verma P. W. 9 and recorded a conclusion that the medical evidence and the injury report were wholly unreliable.

8. After the discussion of the general features of the case, the Magistrate undertook the examination of the eye-witnesses. Discussing the evidence, he discarded the evidence of P. W. 3 Harisingh and Dhanraj P. W. 5 with a mere observation that Harisingh was the injured and Dhanraj P. W. S was his relation.

He of course discussed in some manner the evidence of Hansraj P. W. 6 and Juharmal P. W. 7 and rejected the evidence treating Hansraj as a chance witness and Juharmal as having been declared hostile by the prosecution. On the basis of findings summarised above, the Magistrate recorded an order of acquittal.

9. The learned Deputy Government Advocate very seriously criticised the conclusions of the Magistrate with regard to the general features of the case. He also contended that the discussion of the prosecution evidence was not satisfactory and the prosecution evidence was rejected on wholly insufficient and inadequate grounds. The learned Deputy Government Advocate took serious objections to the observations made by the Magistrate against the investigating officer and the Dr. S. N. Verma P. W. 9.

10. Mr. Lodha appearing for the respondents-supported the judgment of the trial Magistrate. He contended that even though some of the conclusions of the Magistrate as regards the general features were worded in exaggerated language but on a cumulative consideration of the evidence as a whole and the facts and the circumstances of the case, the order of acquittal does not call for an interference. He also in this connection relied upon the principles laid down with regard to the dealing of appeals against acquittal.

11. Now so far as the principles dealing with the appeal against acquittal are concerned, they have been settled by a series of decisions of Supreme Court which have now become quite familiar. The principles emphasis the need of a cautious approach by the appellate Court in view of the initial presumption of innocence gaining strength from the order of acquittal and the need of slowness in interfering with the order of acquittal. All the same, the jurisdiction of the appellate Court to review the entire evidence and to arrive at its own conclusion of facts stands clearly recognised. In dealing with this appeal. I will be guided by the principles referred to above.

12. I now propose to examine the conclusions of the Magistrate on the general features of the case.

13. Taking up the question of delay first, its will he proper to recall the material facts. The incident took place at about 6 A. M. in the morning on let May 1962. The injured was a young boy below 13 years, His father was not at the village and he had to be called from the field. The complainant could have left for the Police Station by the train which was available at 12 noon, but he did not leave for the police station as the relations of the accused had started negotiations for the compromise. The Magistrate bad not. accepted the explanation given by the complainant on the ground that he did not names any particular relation who started the negotiations for compromise. I regret, I am unable to agree with the view taken by the Magistrate. In his statement recorded as first information report, he bad given this explanation for the delay. Even as a witness he made a statement that as some persons intervened for a compromise he could not leave for the police station. There has been no pointed cross-examination to discredit the witnesses' statements in the fir at information report or in Court.

The Magistrate in these circumstances was foardly justified in ignoring the explanation given by the informant Puran. The Magistrate has not expressly indicated how the prosecution availed of this delay for either bolstering up a false case Or twisting facts to sustain the prosecution of the accused. Considering that Puran, the father of the boy, was not at the village and some time was naturally taken to obtain first-aid for the boy and the rustic simplicity of the complainant and Puran's explanation that the accused's relations started negotiations, it will be hardly proper and desirable to blame Purau for not leaving the village for the police station by the 12 O'clock train.

Secondly, the Magistrate was also hardly justified in finding fault with the prosecution for an omission to send some persona on foot to the Police Station, Nohar. It was the month of May and in this part of Rajasthan and in this month, it is not customary to travel in the noon hours. Besides, I cannot accept as a proposition of law that delay in lodging the first information report must necessarily be fatal to the prosecution case. Delay can only be a factor which has to be taken into consideration while appreciating the prosecution evidence but I am quite unable to hold that the delay must necessarily be fatal to the prosecution case and that the case of the prosecution should be doubted on this ground.

14. Proceeding further, I think that the Magistrate adopted a wholly unjustified and unnecessarily strict attitude in finding fault with the Head Constable Premchand for omission to send the constable in the night to the police station for recording the first information report. Puran approached him at about 7 O'clock in the evening. He recorded his statement. The police station was at a distance of twelve miles from the village although according to the complainant's counsel it was even more than twelve miles distance. The constable along with the injured left in the early morning by the morning train. There could be no point to gain in directing the constable to leave the village in the night and to reach the police station at about mid-night. By availing of the train, he could safely arrive at the police station on the next day in time. It is also significant that Premchand was not questioned as to why he did not think it proper to send the constable in the night on foot. In my opinion, the Magistrate was not at all fair in condemning the investigating officer on this aspect of the case. In this view of the matter, I entirely disagree with the conclusion of the Magistrate that the delay should be taken as fatal to the prosecution case. There has been no inordinate and unjustifiable delay so as to affect the merits of the case.

15. The conclusion of the Magistrate that the investigation by Head Constable Premchand was wholly unauthorised and cannot be the basis of proceedings against the accused-respondent under Section 231.1, Criminal P. C., is also erroneous in law. The Magistrate relied upon Section 156, Sub-section (1) of the Criminal P. C., which roads as follows:

An officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court, having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provision of Chap. 15 relating to the place of inquiry or trial.

and he concluded that no police officer other than an officer-in-charge of the police station was competent to conduct investigation. In my judgment he was wrong in considering Section 156, Sub-section (1) in isolation. It will be useful in this connection to refer to a few statutory provisions for arriving at a correct conclusion. Section 157, Criminal P. C., empowers a police officer-in-charge of the police

station to depute a subordinate officer to investigate the case. Under Section 168, Criminal P. C., the subordinate officers conducting investigation are required to report the result of such investigation to the officer-in-charge of the police station who eventually submits the final report.

Sub-section (2) of Section 156 clearly provides that no proceedings of a police officer in any such case shall, at any stage, be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. Under the scheme disclosed by these provisions it is reasonable to infer that irregularities in the conduct of investigation are not intended to vitiate the trial before the Courts, The Magistrates are expected to decide cases on the evidence produced before them and the fact that the evidence was initially disclosed to a particular investigation officer cannot be of material importance.

In support of this conclusion, I may refer to certain observations of the Supreme Court in H. N. Bishbnd v. State of Delhi : 1955 CriLJ526 . The Supreme Court had an occasion to consider provisions of Prevention of Corruption Act providing that investigation shall not be conducted by police officers below a specified rank and held that the provisions are mandatory and not directory and that the investigation conducted in violation thereof bears the stamp of illegality. In spite of this conclusion and even though Section 156, Sub-section (2} could not be invoked, the Supreme Court further held that if cognizance is in fact taken, on a police report, vitiated by the breach of the mandatory provision, the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice.

In another case, State of Uttar Pradesh v. Bhagwant Kishore : 1964 CriLJ140 also the Supreme Court observed that conviction cannot be set aside on the ground of some irregularity or illegality in the matter of investigation : there must be a sufficient nexus, either established or probabilized, between the conviction and the irregularity in the investigation.

16-22. In the present case, Premchand was incharge of the Police Outpost, Fefana. He recorded the first information report and forwarded it to the Police Station, Nohar, and in the meanwhile, he commenced investigation. Eventually,

the Station House Officer, Police Station, Nohar also authorised him to carry on investigation. No question was put to Premchand as to how he started investigation, and whether he was authorised to conduct investigation. Nothing was also brought out in cross-examination as to how the investigation by Premchand caused prejudice to the accused-respondents. The Magistrate did not at all display a correct attitude in empbasising the alleged want of competence on the part of Premchand to hold investigation and to approach the case with some kind of bias on this score. [After further scrutinising the conclusion of the Magistrate the judgment proceeded :]

23. The above discussion of the conclusions of the Magistrate on the general features of the case clearly indicates that the Magistrate did not make a judicial and balanced approach to the case. He approached the case with some set formulas as to the effect of delay and as to the effect of irregular investigation and recorded exaggerated and extremely worded conclusion, and approached the ease with initial mistrust, and this approach has vitiated his decision. The administration of justice is a very responsible and sacred task and should not be attended to in a light hearted manner. The Magistrates should avoid what is sometimes called the pleaders craft of approaching the case as if an exercise in mathematics for the failure in which the poor litigants must suffer. While they are expected to consider all relevant factors their chief desire should be to penetrate the core of the problem.

The Magistrate should not make fetish of ratiocination but should take aid from intuition experience and common sense, and should be guided by a sense of justice which can be acquired only by reason tested with experience and experience developed with reason. In considering the principle of benefit of doubt to the accused also the Magistrate should have a proper appreciation of the principle. It has to be borne in mind that the prosecution usually relies upon a number of acts although the chief and primary fact is as to the guilt of the accused. Ignoring cases where reasonable doubt may arise with regard to the whole case there may be cases where reasonable doubt may arise with regard to any one or more of the facts. The proper course in such cases is only to treat those particular facts against the prosecution and to consider all facts for or against the

prosecution and then arrive at a correct conclusion on the totality of the facts and the circumstances of the case and should not permit doubts about few facts to warrant a verdict of not guilty.

24-31. In the present case, the Magistrate has completely disregarded the above principles. He unnecessarily emphasised the delay in lodging the first information report and treated the delay as fatal to the prosecution. He also went to the extent of holding that irregular investigation made the entire case doubtful. Without properly weighing the evidence he recorded conclusion to the effect that investigating officer prepared a forged recovery memo Ex P-5 and that the Doctor made a false injury report and gave false evidence. I am entirely unable to agree with the conclusions of the Magistrate on the general features of the case. [After considering the evidence his Lordship concluded :]

32. On a critical consideration of the evidence and the circumstances of the case, it has been clearly proved beyond all manner of doubt that the injured Harisingh was assaulted by Dhanpat and that Dhanpat gave a blow upon the face of the injured Harisingh in consequence whereof Harisingh lost some of his teeth. 80 far as this accused, respondent (Richhpal) is concerned, the only case against him is that he held Harisingh-by hands when Dhanpat was sitting on the chest and was dealing a blow. Richhpal is a child of about eight years and I do not feel inclined to accept that he had any criminal intention to aid his father in the commission of the offence under Section 325, Indian Penal Code. Considering his age and the subordinate part imputed, I do not feel inclined to convict him and he is exonerated.

33. In the result, the appeal is accepted, acquittal of Dhanpat is set aside and he is found guilty under Section 825, Indian Penal Code and is convicted of the same. Considering the question of sentence, I find that the incident took place in the year 1962 and more than three-years have passed. The dispute arose over a petty-quarrel between the two school students. and Dhanpat as a father of one of the two students, exceeded the reasonable limit and sought to punish the other boy. He is responsible for inflicting one blow upon the face of the injured which resulted in the loss of teeth. In these circumstances, after such a long interval of time, I do

not propose to send the respondent Dhanpat to jail. Since the sentence of imprisonment is obligatory under Section 325, Indian Penal Code, [sentence him to imprisonment till the rising of the Court in addition to a fine of Rs. 300 The respondent Dhanpat is given one month's time to pay the fine. If he does not pay the fine, he will undergo imprisonment for a period of three months.

Richhpal the other accused-respondent is ex-erated.

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