

Narendra Singh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-25-1989

Reported in : 1990(1)WLN389

Judge : N.C. Kochar, J.

Appeal No. : S.B. Criminal Appeal No. 394 of 1981

Appellant : Narendra Singh and ors.

Respondent : State of Rajasthan

Judgement :

N.C. Kochar, J.

1. Narendra Singh, Girraj, Nanva and Ram Murti (the appellants) were prosecuted in case FIR No. 120 dated 13-11-1976 of the Police Station, Roopwas, District Bharatpur and were tried by Shri Dharam Chand Additional Sessions Judge, Bharatpur, who vide judgment dated 31st August, 1981 convicted appellants Narendra Singh, Nanva and Ram Murti Under Sections 452, 323 and 342, IPC and sentenced each of them to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 250/- on each count. The fourth appellant Girraj was convicted Under Sections 452, 342 and 325, IPC and was sentenced to undergo rigorous imprisonment for a period of six months on first two counts and for a period of one year Under Section 325, IPC, besides paying a sum of Rs.

250/- as fine on each count. The prosecution story was as under;

2. Appellant Narendra owed some money to PW 2 Maniram. At the instance of appellant Narendra, Maniram had also advanced some amount to appellant Girraj. Maniram and Narendra had their Khaliyans side by side and on 11-11-1976, they were working in their Khaliyans. Maniram told Narendra that his ground-nut crop was ready and he should arrange to pay the amount due from him and should also see that Girraj also paid back to Maniram the amount taken by him. He suggested that Narendra should give him the ground-nut in exchange of the amount due from him and from appellant Girraj and thereupon was exchange of hot words between the two, Narendra threatened to see Maniram and on the evening of 12-11-1976, he brought some of his relations to his house. Next morning when Maniram was leaving for his field, he was invited to the Khaliyan of Narendra to smoke Biri. Maniram went to Narendra's Khaliyan and before he could lit the Biri, Lathi blow was struck on his head by Nanva and, thereafter, the other three appellants besides Darav Singh and Omwati, the father and wife respectively of appellant Narendra Singh started giving beatings to Maniram with the weapons with them. They pulled Maniram by legs and tied his hands with the help of a rope. On hearing the alarm raised by Maniram, his brother Ramkhilari, his wife Lachho and many other residents of the village got attracted to the scene of occurrence. On seeing Lachho, the appellants and their above said two companions left Maniram and moved towards Lachho with a view to give beatings to her and as such Maniram ran away and entered his own house. The appellants and their two companions followed Maniram in his house and after giving beatings to him there brought him to the house of Narendra. In the house of Narendra, Maniram was given further beatings and was tied down with the help of a rope and was kept confined, till PW 5 Patram and some villagers came there and rescued him. Maniram was removed to Roopwas Hospital, where he was examined by the Dr. Hariprasad Gupta (PW 8), who found following injuries on his person:

(1) Lacerated wound 1' x 1/4' x 1/4' on the right side of head 3' above the right ear and obliquely extended;

- (2) Lacerated wound 1' x 1/4' x 1/4' on the left side of head 2-1/2' above the left ear and obliquely extended;
- (3) Abrasion 1' x 1/2' on the right side upper lip just near the nose;
- (4) Bruise with swelling with tenderness 3' x 3' size of the bruise and swelling of the right side face extending, from lower borders of the right mandible to the right temporal region and from nose to right, ear on the right side face, bruise extending obliquely;
- (5) Lacerated wound with swelling 1/2' x 1/2' and swelling of the upper lip right side on the inner side of the upper lip;
- (6) Lacerated wound 1/2' x 1/2' on the inner side of the right cheek at the level of 1st molar tooth;
- (7) Bruise 3' x 1' left side face extending from angle of the mouth towards the left temporal region;
- (8) Bruise 6' x 1' on the left scapular region and obliquely extended;
- (9) Bruise 6' x 1' on the left side back 3' below the injury No. 8 and obliquely extended;
- (10) Bruise 3-1/2' x 1' on the left side back 2' below the injury No. 9 and obliquely extended;
- (11) Bruise 5' x 1' on the left side back 2' below the injury No. 10 and obliquely extended;
- (12) Bruise 6' x 1' on the right side scapular region and obliquely extended;
- (13) Bruise 5' x 1' on the right side back and obliquely extended;
- (14) Bruise 2' x 1' on the right side chest at the level of 2nd intercostal region;
- (15) Bruise 3' x 1/2' on the left side chest 1' above the left nipple;

- (16) Bruise with swelling tenderness 3' x 1' on the left fore-arm posterior aspect centrally and Obliquely extended. Swelling extending from elbow joint to wrist joint;
- (17) Abrasion 1' x 1/4' on the left index finger posterior aspect;
- (18) Abrasion 1' x 1/4' on the right arm central and front aspect;
- (19) Abrasion 1/2' x 4/2' on the right elbow joint;
- (20) Abrasion 1-1/2' x 1-1/2' an the tight fore-arm posterior and central aspect;
- (21) Abrasion 1/2' x 1/2' on the posterior aspect of right band;
- (22) Bruise 3' x 1' on the left hip and oblique extended;
- (23) Abrasion 2' x 1' on the left hip joint;
- (24) Bruise 3' x 1' on the left thigh under and posterior aspect and obliquely extended;
- (25) Bruise 3' x 2' on the right hip and obliquely extended;
- (26) Abrasion 1/2' x 1/2' right leg lower and front aspect;
- (27) Swelling with tenderness, Swelling extending from left toward left lateral melloollus to the knee joint.'

3. Dr. Gupta got injury No. 27 X-rayed and found a fracture of left fibula bone. He opined that all the injuries had been caused by blunt weapon and except injury No. 27, which was grievous in nature, the injuries were simple. After getting Maniram admitted in the Hospital, his brother Ramkhilari went to Police Station, Roopwas and lodged report Ex.P/1, on the basis of which formal FIR (Ex.P/5) was recorded at about 7.30 p.m. on 13-11-1976. The case was investigated by PW 9 Shri Nihal Singh, who after completing the investigation, filed the challan against the appellants and against Darv Singh and Omwati, before the learned Judicial Magistrate who committed the case to the Court of Sessions, where charges Under Sections 147, 452, 342 and 307 read with Section 149, IPC were framed against all of them. In support of its evidence, the prosecution examined

Ramkhilari, Maniram, Smt. Lachho, Ram Singh, Patram, Dr. Man Singh, Nawab, Dr. Hariprasad Gupta and the I.O. as PW 1 to PW 9 respectively. When examined Under Section 313, Cr, PC, all the six accused-persons denied the allegations against them and stated that they had been falsely implicated Omwati and Maniram stated that on the morning of 13-11-1976 at about 4 a.m. Omwati was sleeping in side the room of her house and her husband Narendra was sleeping in the Verndah outside it and at that time, Maniram entered the room of Omwati and tried to commit rape on her person and when she raised alarm. Narendra came there and Narendra and Maniram grappled, with the result that both of them received injuries. Dr. Hariprasad Gupta and Head Constable Pothi Prasad were examined as DW 1 and DW 2 respectively. After hearing the learned Counsel for the parties, vide the impugned Judgment, the learned trial court acquitted Darav Singh and Omwati and convicted and sentenced the appellants as noted above. Feeling aggrieved, the appellants have come up in appeal.

4. I have heard the learned Counsel for the parties and have perused the record of the learned trial court.

5. The first contention raised by Mr. A.S. Chaturvedi, the learned for the appellants, is that the learned trial court erred in disbelieving the defence version that Maniram had entered the room of Omwati in the early morning of 13-11-1976 and when he tried to commit rape on the person of Omwati, she raised alarm, hearing which Narendra came there and Narendra and Maniram grappled with each other with the result that both received injuries. He contended that this version is supported by fact that the injuries were found on the person of Narendra as well as his wife Omwati and that the report of this incidence was lodged in the Police Station, but no action was taken by the Police.

6. In order to support the defence version, Dr. Hariprasad Gupta was examined to prove injury report Ex.D/6 in respect of Omwati and injury report Ex.D/7 in respect of Narendra. According to Dr. Hariprasad Gupta, he had examined Omwati on 14-11-1976 and had following injuries on her person:

1. Abrasion 3' x 1/4' on the left breast, upper aspect obliquely;

2. Abrasion 2-1/2' x 1/4' on the left breast, upper aspect just near the injury No. 1;
3. Abrasion 2-1/2' x 1/4' on the right breast upper aspect;
4. 4' x 1/4' on the left thigh;
5. Abtasion 3-1/2' x 1/4' on the right thigh;
6. Bruise 3' x 1' on the le/t thigh upper and post aspect;
7. Bruise 3' x 1' on the left thigh central and post aspect.

7. This report further shows that according to Dr. Gupta, these injuries were simple in nature and had been caused by blunt weapon within a period of thirty six hours. Ex. D/7 shows that on 14-11-1976, Nareodra was examined by Dr. Gupta, who found following injuries on his person;

1. Bruise 3' x 1' on the right thigh front aspect;
2. Abrasion 1/4' x 1/4' on the right foot near toe;
3. Bruise 1' x 1/2' on the left palm just near the middle finger.

8. This report further shows that these injuries were opined to be simple in nature having been caused with blunt weapon within thirty six hours.

9. If in fact the injuries on the person of Maniram had been caused while Maniram and Narendra grappled with each other, it could not have been possible for Maniram to receive twenty seven injuries mentioned above and noted in injury sheet Ex.P/4 specially when minor three injuries mentioned in Ex.D/7 were found on the person of Narendra Similarly, it has not been the case of defence that any force was used by Maniram and there was a struggle between Maniram and Omwati before Omwati raised alarm. There was thus no occasion for Omwati to have received the injuries mentioned above. The Doctor has admitted that the injuries above said found on the person of Omwati and Narendra could have been self inflicted. More over, PW 5 Pat Ram who admittedly rescued Maniram and brought him outside the house of Narendra has specifically stated that no body

told him that Maniram had entered the house of Narendra with a view to commit rape on the person of Omwati and that he had never beard any such thing. The learned trial court, therefore, rightly concluded that defence version is not correct and false report had been lodged in the Police Station by Narendra about the incidence.

10. From the record I find that the finding of the learned trial Court that the appellants had entered the house of Maniram and had taken him from there to the house of Narendra cannot be upheld. As noted above, the case of the prosecution is that when Maniram was given beatings at the Khaliyan of Narendra, he raised alarm, hearing which his wife Lachho and others had come to the spot and the appellants left Maniram and went toward Lachho to assault her and as such Maniram ran away from the spot and entered his house. Presence of Lachho is mentioned neither in the FIR nor in the statement of Ramkhilari, the brother of Maniram, who appeared as PW 1, and who deposed that when Maniram entered the house, his wife Lachho was already present there. According to PW 3 Lachho, she had gone to the Khaliyan on hearing the noice and her husband had run away from the spot and had entered his house, but before she reached her house, he had been taken away from his house to the house of Narendra. According to Maniram and other prosecution witnesses, after Maniram had entered his house, the appellants had gone there and had assaulted him before taking him to the house of Narendra According to Ramkhilari, he and Maniram had been residing in the same house and the house of Narendra is adjacent to their house and the distance between the Khaliyan of Narendra, where the occurrence took place and the house of Maniram was about 50 paces. If in fact, Lachho was present at the Khaliyan and had followed Narendra and appellants to her house, it can't be believed that Maniram had been taken away from his house to the house of Narendra after he had been given beatings in his own house and before the arrival of Lachho. According to the statement of Ramkhilari when Maniram entered his house, the only thing done by Narendra was to bring a pitcher full of water and break it on the bead of Maniram According to Narendra, he was given beatings with lathies in the room and was brought and thrown in the court-yard of his own house where a pitcher full of water was brought and broken on his bead. According to Maniram, Ramkhilari and other witnesses, hands of Narendra were

tied at the Khaliyan and he ran away towards his house while his hands were so tied. This part of the statements of the witnesses was found missing in their statements recorded by the Police Under Section 161, Cr. PC. No dragging injury was found on the person of Maniram to show that he was dragged from his own house to the house of Narendra and during their statements in the Court, Maniram and Narendra have deposed that he was carried from his house by the appellant and no portion of his body touched the ground. This statement did not find mention in the FIR or in the statements of the witnesses recorded by the Police Under Section 161, Cr. PC. It is not disputed that no injury has been found on the person of Narendra, which could have been caused if in fact a petitioner full of water had been broken on his head. Even the I.O., in his cross-examination has admitted that his investigation showed that the appellants had not committed the offence Under Section 452, 9 IPC. Considering the contradictions in the statements of the witnesses and the absence of medical evidence, besides, the statement of the I.O., I am of the view that the learned trial Court erred in coming to the conclusion that after running from the Khaliyan Maniram had entered his house and the appellants had followed him there and had taken him from his house to the house of Narendra. No other infirmity is found in the judgment of the learned trial Court. The findings in the judgment in regard to Maniram having been given beatings by the appellants, are fully supported by the ocular as well as documentary evidence mentioned above.

11. Mr. Chaturvedi has contended that the appellants are first offender and considering the fact that the occurrence took place about thirteen years ago, it will be in the interest of justice to give to the appellants the benefit of probation. There is nothing to show that any of the four appellants had committed any offence prior to the date of occurrence. The incidence took place on 13-11-1976. Appellant Narendra and Maniram are not only residents of same village but are neighbours and in my view, if benefit of probation is given to the appellants, there is every possibility of no such incidence being repeated in further. I am, how ever, of the view that benefit of probation should not be given to the appellants unless they compensate Maniram, who had received injuries in the occurrence.

12. Consequently, while setting aside the conviction of the appellants Under Section 452, IPC and maintaining their conviction as recorded in the judgment of the learned trial Court in respect of other offences, I direct that each of the four appellants should be released on probation, subject to his executing a bond in the sum of Rs. 2,000/- with one surety in the like amount to the satisfaction of the learned trial Court undertaking to keep peace and be of good behaviour for a period of one year from the date of execution of the bond and to come and receive sentence at any time within that period if directed by the Court and also subject to the condition that each one of the appellants deposits in the learned trial Court a sum of Rs. 501/- to be paid as compensation to Maniram who received injuries in that incidence. The appellants should also send information to Maniram by registered post A.D. in regard to the deposit having been made. They are granted two months time from today to execute the bond and to deposit the amount in question, besides sending the necessary information by registered post A.D.

13. The appeal is allowed to the extent mentioned above and stands disposed of.