

Ram Narain Vs. Dhan Raj

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Court : Rajasthan

Decided On : Jan-15-1986

Reported in : 1986WLN(UC)5

Judge : Mahendra Bhushan Sharma, J.

Appeal No. : S.B. Criminal Appeal No. 315 of 1977

Appellant : Ram Narain

Respondent : Dhan Raj

Disposition : Appeal dismissed

Judgement :

Mahendra Bhushan Sharma, J.

1. This appeal is directed against the judgment dated May 31, 1977 of the learned Judicial Magistrate, First Class, Merta. Under the aforesaid judgment the learned Magistrate in a complaint case which was tried as a warrant case, acquitted the accused respondent to the charge Under Section 325 IPC.

2. The accused respondent Dhanraj at the relevant time was serving as Sub-Inspector of Police and was posted as Station House Officer, Degana while Ramnarayan and others were suspected of having committed an offence Under Sections 323, 332 and 395 IPC and FIR No. 35/69 in relation to the occurrence

dated 24-8-1969 was registered in police station, Degana. Mr. Ram Narayan and others were wanted in that case and Dhanraj was after their arrest. The case of Ram Narayan the complainant is that when on 3-9-1969 they were sitting in the court of Munsif Magistrate, Merta in connection with the hearing of their bail application, the accused respondents with two constables Iqbal and Haridan came inside the court room before the arrival of the Presiding Officer, dragged them and took them under arrest. Ramnarayan and others were asked that they are being taken to the house of the Magistrate for remand. Ram Narayan gave out that he was not being taken there and it is alleged that the accused respondent gave a 'danda' blow to Ram Narayan as a result of which Ram Narayan received an injury, swelling the dislocation of left elbow joint. On X-ray being taken it was found that there was fracture head of radius with dislocation of elbow joint and no callus was seen. A complaint was filed by Ram Narayan against the accused respondent and two constables in the court of the Munsif Magistrate Merta but the learned Magistrate took cognizance of an offence Under Section 325 only against Dhanraj and so far as the two constables were concerned no cognizance was taken. Accused respondent was tried of the charge Under Section 325 IPC. The learned Magistrate found that there were two stories, one of the prosecution and the other of the accused as said earlier, the case of the prosecution was that the accused respondent Dhan Raj gave a lathi blow and caused the grievous injury on the left elbow of Ram Narayan whereas the defence theory was that when Ram Narayan and others, whom Dhanraj wanted to arrest wanted to come to the court of the learned Magistrate, Dhanraj wanted to arrest them and Ram Narayan ran for safety, fell on the stairs of the court room and thereby received the injury. Thus the defence theory was that the injury by Ram Narayan was received by a fall on the stairs of the court room and not by a 'danda' at the hands of Dhanraj. Learned Magistrate recorded the evidence of the parties including the statement of Dr. Munilal Sharma DW

3. The accused respondent also examined himself on oath as DW

4. Dr. M.L. Sharma had examined Ramnarayan first of all. The doctors who examined or X-rayed the injury could not be examined as they were not available but another doctor was examined to prove that the injury reports were in the hands

of the doctors who were not available. Dr. M.L. Sharma stated that when Ram Narayan came he gave out that he has received the injury by a fall and he noted the same in Ex.

3. The learned Magistrate after appraisal of the evidence and more so of the statement of Dr. M.L. Sharma DW 3 and the accused as DW 4 placed reliance on the defence theory and held that the possibility that Ram Narayan received the injury by a fall as the defence case appears to be more probable. Consequently he disbelieved the prosecution case and acquitted the accused.

3. The contention of the learned advocate for the complainant is that the finding of the learned Magistrate that the defence is more probable is not correct and the finding arrived at by him is perverse. He contends that there is no reason to disbelieve the statement of Ram Narayan who was supported by as many as 2-3 witnesses.

4. I have gone through the evidence on record. The learned Magistrate has referred to two documents, one Ex. P. 3 and the other Ex. P. 4. A perusal of those documents would show that the complaint was lodged before the Magistrate that beating has been administered to Ram Narayan and that he and others were dragged in the court room and were arrested. There was no mention that the accused respondent gave a blow by 'danda' on Ram Narayan and as a result there was a fracture on the elbow joint Thus it can be said that there were two stories before the learned Magistrate each of which was equally probable and the learned Magistrate on appraisal of the evidence placed reliance on the defence theory and acquitted the accused. The conclusion of the learned Magistrate cannot be said to be perverse.

5. In the result I do not find any merit in this appeal and it is hereby dismissed.