

Madan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-15-1987

Reported in : 1987(2)WLN468

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Cr. Revision Petition No. 249 of 1982

Appellant : Madan

Respondent : State of Rajasthan

Disposition : Application dismissed

Judgement :

Guman Mal Lodha, J.

1. This is a criminal revision under Section 397 Cr. P.C. against the judgment dated 6-10-1982 of the Additional Sessions Judge, Jhalawar in Appeal No. 32 of 1982.

2. On 19-12-1972 a complaint was lodged by one Kanhiram alleging that on 15-12-1972 at about 5.00 p.m. when he was drawing water by CHARAS Madan his son-in-law started beating his daughter Shanti. Kanhiram went there and tried to appease Madan. Madan waved his Kulhari and injured the right cheek of Kanhiram and another accused Shiv Lal inflicted an injury by the butt of the gun on

the back of the Kanhiram which made him fall down. Madan inflicted an injury by Kulhari on the nose of Kanhiram and kept on beating him by the blunt side of his Kulhari so he became unconscious. After this complaint the investigation was done and ultimately the challan was filed. The accused has been convicted under Section 326, Indian Penal Code.

3. The principle submission of counsel for the petitioner Madan M. Garg who appeared and argued earlier and Mr. Jain who later on repeated his argument is that in fact Madan received injury and for that purpose Kanhiram has already been convicted in a cross case for Sections 323 and 324, I.P.C. and probation has been granted. It was argued that in view of this Madan acted in self defence and no offence is made out. It was also argued that theory of free fight has been wrongly invented by the two courts below. It was also argued that the story put up is absolutely false and concocted and for that purpose false evidence has been created and false site plan has been prepared.

4. The learned Public Prosecutor vehemently opposed the revision application. According to him the revisional jurisdiction cannot be converted into appellate jurisdiction for the purpose of re-appreciation of the evidence like original court or appellate Court. It was pointed out that Madan is the son in law and Madan gave injury by axe on the nose which is a vital part of the father-in-law. It was pointed out therein both the cases as would be obvious the main question and the issue arose was that Madan wanted to forcibly take his wife the daughter of Kanhaiya, when she resisted then force was used. The cries of which attracted Kanhaiya.

5. I have carefully gone through the record referred to by the learned Counsel for the parties and have also given a thoughtful consideration to the rival contentions of the learned Counsel for the parties. There is no doubt in my mind that the appreciation of the evidence by the both the courts is justified and correct. There is no reason to disbelieve the statement of Kanhaiya and his daughter against Madan in addition to others. The medical evidence corroborated it.

6. Now the question is whether in the right of private defence alleged by Mr. Jain such injuries could be caused I am of the opinion that Madan could not treat his wife as chattel and as per the statement of Shanti, Madan wanted to take her

forcibly. No person and no citizen under the Constitution of India, can be allowed to forcibly take his wife even though she may be a married wife.

7. That being so, if on the resistance by Shanti the petitioner Madan Lal wanted to use force or used force that too Madan cannot claim right of private defence, but it is the other way. Shanti and his parents could resist Madan from doing so and if Madan on account of that started beating by an axe Madan cannot be allowed right of private defence.

8. It is true that Madan received injuries. That was obvious & natural phenomena when after causing injuries to father-in-law and that too by an axe, who simply intervened, Madan could not have been rewarded or praised for that. Whatever it may be the finding of the lower court that it was a case of free fight later on appears to be correct and justified.

9. Mr. Jain invited my attention to the judgment of this Court 1987 Rajasthan Cr. Cases 57 in which it has been according to Mr. Jain pointed out that the duty of the prosecution is to explain the genesis and the origin of the occurrence and further the injuries of the accused. If the prosecution fails to do so then various types of inferences can be drawn, In fact this is the decision of Hon'ble Supreme Court : 1976 CriLJ1736 Laxmi Singh v. State of Bihar.

10. On a thoughtful consideration of the discussion in this above case and also the judgment of : 1971 CriLJ20 in which the delay in filing complaint is required to be explained, I am of the view that the present one was a case where the father of the girl received injuries from none else but his own son-in-law and placed him in that situation there was bound to become hesitation in filing a complaint and if there has been delay on that count, it is very natural and explanation is also very natural.

11. That fact that medical examination was done little later is of no avail and consequence, because it is the duration of injuries which is totally with the time and date of occurrence.

12. In view of the above, I am of the opinion that there is no serious infirmity which can be said to be fatal in the analysis of the evidence by both the courts. The conviction has been recorded on the basis of will considered opinion and of a thoughtful analysis of the entire evidence and the state of law. Consequently, I have got no hesitation in confirming the conviction. Learned Counsel lastly submitted that the accused should be released on the sentence of imprisonment already undergone. The learned Counsel for the State vehemently opposed this request on the ground that firstly the accused tried to forcibly take his wife from father's place and secondly when it was resisted who cried and father came to her rescue then the accused used a weapon like axe and gave blows on the face of his father-in-law on account of which he sustained injuries on nose and head etc. In such circumstances the learned Public Prosecutor urges that the leniency shown would be mis-placed.

13. I have given a thoughtful consideration to this aspect of the matter also. The accused has been convicted under Section 326 I.P.C. The sentence of imprisonment has already been reduced by the appellants court and in the facts and circumstances of the case it would be misplaced leniency to reduce it any more. Consequently, the revision application is dismissed.