

Suraj Mal Vs. State

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Court : Rajasthan

Decided On : Jan-19-2010

Reported in : 2010CriLJ1583

Judge : Deo Narayan Thanvi, J.

Appellant : Suraj Mal

Respondent : State

Advocate for Pet/Ap. : Ms. Abhilasha Bora

Disposition : Petition allowed

Judgement :

ORDER

Deo Narayan Thanvi, J.

1. This is a revision petition against the judgment of the learned Additional District and Sessions Judge No. 2, Jodhpur dated 6-5-1994 whereby while acquitting the petitioner under Section 326, IPC, convicted him under Section 324, IPC and was released under Section 4 of the Probation of Offenders Act.

2. Charge against the accused-petitioner was that on 29-5-1998, in the night at 10.30 p.m. accused-petitioner inflicted simple and grievous injuries with sharp edged weapon on the person of Abdul Razak, near Rahul Motors, Chopasni Road,

Jodhpur. The report of the incident was lodged by Mohd. Ibrahim. The police investigated the case. Medical examination of the injured was conducted and after investigation, challan was filed under Sections 326 and 324, IPC. The learned Magistrate framed charges against the accused-petitioner accordingly to which he pleaded not guilty. Prosecution examined eight witnesses. Statement of accused was recorded Under Section 313, Cr.P.C. He produced two witnesses. After hearing the arguments, the learned Magistrate convicted the accused-petitioner under Section 324, IPC with one year's rigorous imprisonment and to pay a fine of Rs. 500/-, in default of payment of fine to undergo two months imprisonment. He was also convicted under Section 326, IPC with two years' rigorous imprisonment and to pay a fine of Rs. 1,000/- in default of payment of fine to undergo two months' imprisonment. In appeal, the learned Additional District and Sessions Judge No. 2, Jodhpur, acquitted the accused under Section 326, IPC. However, conviction under Section 324, IPC was maintained but granted probation to the accused-petitioner, against which this revision petition has been filed.

3. Ms. Abhilasha Bora, learned Counsel for the petitioner submits that it is a case of no evidence and purely on the basis of the testimony of the injured and the doctor who has proved only the signature of the Medical Jurist on the injury report, conviction has been recorded. According to the learned Counsel for the petitioner, there were two eye-witnesses Ibrahim and Mohd. Rahuf and out of these two eye-witnesses, Ibrahim was not produced and Mohd. Rahuf, who has been said to be the eye-witness, is not a reliable witness because the injured has stated in the cross-examination that he came later on. According to the learned Counsel, the injuries are also not proved as the injured says in his statement that blood came out and fell on the ground but the I.O. has stated in evidence that no blood was found on the site. The learned Counsel has urged for acquittal under Section 324, IPC.

4. Per contra, the learned Public Prosecutor has supported the judgment of the trial Court.

5. I have read the evidence and gone through the record of the case. A perusal of the judgments of both the Courts below would show that the injury report has not

been proved which is required to be proved under the Indian Evidence Act. In this case, the conviction has been recorded on the basis of evidence of the injured Abdul Razak P.W. 4 and eye-witness Abdul Rahuf P.W. 5 and injury report Ex. P/6 and Ex. P.7, said to have been proved by Dr. N.S. Kothari P.W. 8. Dr. N.S. Kothari P.W. 8 has given the statement that signatures 'A' to 'B' on Ex. P/6 and Ex. P/7 are of P. Dayal. This doctor has not proved the contents of the documents, i.e. injury report whereby an inference can be drawn that all the injuries were found on the person of the injured. In absence of it, a written document cannot be said to be proved by virtue of Section 67 of the Indian Evidence Act.

6. Now remains the testimony of injured and two eye-witnesses. Out of these two eyewitnesses Ibrahim was not produced as he died but Abdul Rahuf P.W. 5 was produced who supported the incident by stating that he saw the incident. But, if his statement is looked into the light of the testimony of injured Abdul Razak P.W. 4, who has stated in the last lines of the cross-examination that the accused-petitioner Surajmal left before the arrival of Mohd. Rahuf and Ibrahim. This statement of the injured clearly reveal that Mohd. Rahuf and Ibrahim were not eye-witnesses but they reached later after the incident. The trial Court has totally misread this evidence.

7. In addition to it, injured Abdul Razak stated that there was lot of blood on the site which came out from his hand and finger and the blood was also on the clothes. But, the I.O. Sohan Singh P.W. 7 has clearly stated in the cross-examination that there was no blood on the site. Thus, there is no other independent evidence to corroborate the testimony of injured Abdul Razak.

8. In criminal trial, particularly in injury cases, Court can base its conviction on the testimony of the injured provided it is sterling worth and is coupled with the medical evidence. But, in this case, neither the testimony is corroborated by the medical evidence nor the statement is sterling worth on the presence of blood at the site and presence of eye-witnesses. In these circumstances, the conviction has been recorded totally on surmises ignoring the basic principles of appreciation of evidence in a criminal trial and proof of a document. This leads to the conclusion that no offence is made out against the accused-petitioner even under

Section 324, IPC.

9. Consequently, this revision petition is allowed. The judgment of the learned Additional District and Sessions Judge, No. 2, Jodhpur convicting the accused-petitioner under Section 324, IPC is set aside and is acquitted of the charge levelled against him. He is on bail. His bail bonds stand cancelled.

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