

State Vs. Vyas Chander and ors.

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Court : Jammu and Kashmir

Decided On : Apr-07-2008

Reported in : 2008(2)JKJ8

Judge : J.P. Singh, J.

Appellant : State

Respondent : Vyas Chander and ors.

Advocate for Def. : Mr. B.B. Kotwal

Disposition : Appeal dismissed

Judgement :

J.P. Singh, J.

1. Aggrieved by Chief Judicial Magistrate Jammu's Order of January 18, 2002 acquitting the respondents of the charges framed under Sections 324/323/34 RPC, the State has come up in an appeal to this Court.

2. The prosecution had alleged that complainant had come to the shop of Vyas Chander respondent to purchase a 'Hero' bicycle and had told him to keep the bicycle ready which he would purchase for Rs. 1400/- on his way back. The complainant, on his return to the respondent's shop after about 15-20 minutes, had noticed that the respondent had not fitted quality accessories to the bicycle. He

therefore told respondent No. I to remove the pillion seat which had been shown to be costing Rs. 100/-. The complainant, despite respondents removing the pillion seat had not agreed to purchase the bicycle and when he started to come out of the shop, respondent No. I started abusing him. His son Pardeep Kumar who was accompanied by his another son whose name was not known to the complainant had attacked him with fists and blows. Pardeep Kumar had hit him with a tyre rod on his head. The Doctor had found the complainant to have received injuries with a sharp edged weapon.

3. The respondents were charged under Sections 324/323/34 RPC and on their seeking trial, the prosecution had been directed to lead its evidence in the case.

4. The prosecution had examined PWS-Raj Kumar Complainant, Sanjeev Kumar & Gopal Dass, his sons and Harnam Singh who had been stated to have accompanied the complainant to the shop of the respondents, besides Dr. Ramesh Khajuria.

5. Mr. B.S. Salahia, learned Additional Advocate General appearing for the appellant-State submitted that learned Chief Judicial Magistrate had misappreciated the evidence and committed an error of law in acquitting the respondents merely on the ground that he had found some contradictions in the version given by the witnesses in their statements under Section 161 of the Code of Criminal Procedure.

6. Mr. B.B. Kotwal, learned Counsel for the respondents, on the other hand, justified the acquittal of the respondents on the ground that the prosecution evidence, when read as a whole would demonstrate that the prosecution case was full of unexplained contradictions and unworthy of credence.

7. I have considered the submissions of learned Counsel for the parties and examined the records of the case.

8. The initial version of the complainant as reflected in the F.I.R indicates that the complainant had not accused respondent No. I of beating him and all that he had said about him was that he had called him names. Complainant had further stated

that he did not know the name of other son of respondent but could only identify him. The police however does not appear to have conducted the test identification parade in this behalf during the course of the investigation. Raj Kumar complainant had, however, while appearing in the Court, stated that Vyas Chander had exhorted Pardeep Kumar to kill him and on his exhortation, Pardeep Kumar had brought a tyre rod from the shop which was sharp edged from one side and had hit him on the head. This version of the witness that Vyas Chander had exhorted Pardeep Kumar to hit his father. According to him Pardeep Kumar had hit Raj Kumar when Subash Chander had caught hold of him and had been beating him. Harnam Singh another witness too does not narrate anything about Vyas dander's having exhorted Pardeep Kumar to hit the complainant while he was leaving. During his cross examination he had changed the complexion of his earlier statement by saying that it was Subash Chander accused who had caught hold of the complainant and Vyas Chander and Pardeep Kumar had hit him with tyre rod from behind. Gopal Dass, the other son of the complainant had given altogether different version that all the three accused had started beating his father with fists and blows.

9. According to all these witnesses none had come on spot.

10. Learned Chief Judicial Magistrate had found the prosecution evidence robe suffering from material contradictions as the story projected by the prosecution witnesses in the Court was an exaggerate version of the occurrence which they had projected in their statements under Section 161 of the Code of Criminal Procedure. Story of exhortation projected by the prosecution during the currency of the trial was no where to be found either in the F.I.R or in the statements recorded during the investigation of the case.)

11. Learned Chief Judicial Magistrate had found the prosecution story to be doubtful additionally because the witnesses of the locality had not been produced by the prosecution. Non-production of Investigating Officer too had weighed with the learned Magistrate as a circumstance for not believing the prosecution story.

12. The site plan of the occurrence indicates that the occurrence had taken place in a bazaar and the shop where the occurrence had been alleged to have taken

place was surrounded by other shops. None from the locality had however been examined either during the investigation or by the prosecution case.

13. Learned Chief Judicial Magistrate had thus considered it fit not to rely on the statements of the highly interested witnesses who were none else than the sons of the complainant and a chance witness who was a co-tenant with the complainant in a house at Bakshinagar.

14. Judgment of acquittal may be interfered with only if there was overwhelming evidence available on records proving the guilt of the accused.

15. The view taken by the learned Magistrate in the present case, was certainly one of the views which could be taken in the case in view of the infirmities which the learned Magistrate had noticed in the prosecution evidence and its case.

16. There is always a presumption that the accused was innocent unless proved otherwise. This presumption becomes stronger when the accused earns an acquittal.

17. The High Court would thus be loath to interfere with an order of acquittal unless however there was overwhelming evidence on records hinting at nothing except than the guilt of the accused.

18. In view of various shortcomings in the prosecution case and the contradictory version projected by the complainant and the other prosecution witnesses, I do not find the present case to be fit one where acquittal of the respondents need interference.

19. This acquittal appeal therefore lacks substance. It is, accordingly, dismissed.