
(1997) CriLJ 2466

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Appeal No. 383 of 1992

State of M.P.

APPELLANT

Vs

Rajesh and Others

RESPONDENT

Date of Decision: Dec. 5, 1996

Acts Referred:

Penal Code, 1860 (IPC) " Section 307, 324, 335, 34

Citation: (1997) CriLJ 2466

Hon'ble Judges: Shambhoo Singh, J; R.D. Shukla, J

Bench: Division Bench

Advocate: G. Desai, for the Appellant; Jaisenga, for the Respondent

Judgement

R.D. Shukla, J.

Appeal is directed against the judgment and order dated 19-5-92 of the 1st Addl. Sessions Judge, Shajapur passed in

S.T. No. J 78/91 whereby accused-respondents have been acquitted of offences punishable Under Sections 307/34 and 324/34 of IPC for having

committed attempt to murder of Jagdish and for having caused simple injuries by dangerous weapon to Babulal in pursuance of common intention

of their all on 23-4-91 at 9 p.m. in village Jhanker.

2. The prosecution story in brief is that accused Rajesh and Ajaykumar both are sons of accused-respondent Shivnarain. D.W. 2 Urmtladvi is the

wife of Shivnarain.

P.W. 2 Jagdish and P.W. 4 Rameshchandra are real brothers. It appears accused persons own a video hall and probably entertain persons.

On the date of incident i.e. 23- 4-91 at about 9 P.M. Jagdish was urinating in front of and at the junction of the house of Mariaklal" and accused

Shivnarain. The same was objected to by Shivnarain. It is alleged that Shivnarain abused Jagdish by mother and asked his sons Rajesh and

Ajaykumar for assaulting. Accused Rajesh, Ajaykumar and their mother w/o Shivnarain and one daughter of Shivnarain came out. Babulal Soni

from the side of Jagdish had also come on the spot. Rajesh exhorted Ajay Kumar who caused stab wound to Babulal Soni and Rajesh caused

stab wound on the abdomen of Jagdish. Accused persons thereafter left the place of incident and went to their house.

Police Sub-Inspector P.K. Sharma (PW 5) received a cryptic telephonic message about the incident and recorded the same in Rojnamcha Sanha

No. 1021 dated 23-4-91 vide Ex. P/11 and came to village Jhonkar. Matter was reported by Jagdish on the same night at about 9.45 P.M. who

registered an offence Under Sections 307/34 vide Crime No. 0/91 Dehati Nalishi was sent to Police Station for registration of the offence.

Shri Sharma (PW 5) referred Jagdish and Babulal Soni for medico-legal examination with a letter of request vide Ex. P/8 and P/9 and made further

inquiry vide Ex. P/10 about the injuries.

3. Shri M.S. Sekhawot, Station House Officer (PW 9) registered the same with Crime No. 46/91 vide Ex. P/17. Shri Sekhawot reached the spot

on 24-4-91, prepared site-map Ex. P/6. There were blood marks on the pant and underwear of Babulal Soni. The same were seized vide Ex. P/7.

Ashokkumar produced one Kurta. The same was seized vide Ex. P/18. Accused Shivnarain was arrested on 30-5-91 vide Ex. P/19. Accused

Ajaykumar was arrested on 3-6-91 vide Ex. P/14. Ajaykumar gave information about knife vide Ex. P/15 and thereafter produced it from his own

house owned by his father Shivnarain. The same was seized vide Ex. P/16. Thereafter the investigation was done by Shri P.K. Sharma (PW 5).

Shri P.K. Sharma on 23-4-91 seized one Baniyan from Jagdish who was admitted in Ujjain Hospital vide Ex. P/5.

4. Dr. S.K. Soni (PW 11) examined Jagdish on 23-4-91 at about 9.45 P.M. and found following injuries : --

Performing wound size 2" x 1", depth not probe on the right side of abdomen 4" above and lateral to the umbilicus on right side. The injury was

caused by sharp edged and pointed weapon. He prepared Report Ex. P/8 and referred the patient to District Hospital, Ujjain.

5. Dr. Satyendra (PW 13) operated Jagdish on 24-4-91 at about 1.30 A.M. on the same night and found stab injury 1½ x 1½ going deeper in

the stomach. He was operated. During operation collection of blood was found in the peritonium cavity at Greater omentum. Size 3" x 2". There

was haemotoma at terminal ileum measuring 4" x 3". The bleeding points were stitched and closed. He prepared Report Ex. P/22. Injured

Jagdish was discharged from hospital on 2-5-91.

6. Dr. Soni (PW 11) examined Babulal also on the same day and found stab wound size 2" x 1" depth up to bone on the buttock near the iliac

crest. Injury was simple. He prepared report Ex. P/9-A.

Dr. Soni further opined about the injury of Jagdish that the same was dangerous to life "vide Ex. P/10".

7. After investigation accused persons were prosecuted who denied the guilt and pleaded false implication. Accused persons further pleaded that

the complainant party was aggressor. They assaulted and caused injuries to them inside their house and Video Hall.

8. Learned trial Judge has disbelieved the prosecution story and acquitted all of them. Hence this appeal.

9. The contention of learned counsel for State-"Appellant" is that prosecution witnesses have wrongly been disbelieved. They stand corroborated

from prompt FIR and medical reports. Minor contradictions have been highlighted and witnesses have been disbelieved on wrong grounds. It has

also been submitted that the accused party never lodged any report about the incident and tried to prove assault by accused persons; by examining

interested witnesses.

10. As against it, learned counsel for respondents-accused has submitted that the prosecution witnesses have rightly been disbelieved.

The second contention of learned counsel for respondents is that the provocation was caused by Jagdish by urinating in front of the house of Shivnarain despite objection.

11. Injuries were neither grievous nor were sufficient in the ordinary course of nature to cause death.

12. We were taken to the evidence on record. The fact of presence of injuries on Jagdish and Babulal having been seriously challenged and rightly

so; as that stands proved apart from the evidence of injured persons, police officer Shri P.K. Sharma; from the evidence of Dr. S.K. Soni and Dr.

Satyendra (PW 13). The injury on the body of Babulal was simple in nature and was caused by sharp edged weapon.

Injury found on the body of Jagdish as stated and proved by Dr. S.K. Soni and Dr. Satyendra were grievous in nature as the abdomen was

opened, operated, wound was stitched, repaired and the bleeding points were closed. Though, of course, the same cannot be said to be sufficient

in the ordinary course of nature of cause death; especially in the absence of any statement of the like by the doctors.

13. P.W. 2 Jagdish (injured) has stated that while he was urinating in front of and in corner of house of Manaklal, the same was objected to by

accused-respondent Shivnarain Gupta who abused him by mother and called his sons Rajesh and Ajaykumar. Meanwhile, Babulal Soni also came

there. Ajaykumar stabbed Babulal on the exhortation of Rajesh and Rajesh stabbed this witness on the abdomen. He has further stated that he was

examined by doctor in the hospital and was re-ferred to hospital at Ujjain where he was admitted, operated and discharged after 9. 10 days. This

witness has admitted during cross-examination that he has got Bathroom and lavatory in his house, but despite that he came for urination on the

corner and junction of the houses of Shivnarain and Manaklal and that was objected. He has further admitted that accused Shivnarain has a

window opening towards the lane where he was urinating. However, he could not say as to whether some girl or woman was present near the window.

This witness denied the suggestion that he entered the house of Shivnarain and caused injuries to Ajaykumar and Rajesh. He further denied the suggestion of Babulal's sustaining injury during mutual fight.

14. This witness stands corroborated from the evidence of other injured (Babulal) (PW 3), A.S.I. P.K. Sharma (P.W. 5), Dr. S.K. Soni who

examined him immediately and Dr. Satyendra (PW 13) who conducted operation on his abdomen. Thus, in our opinion, the fact of causing of

injury to him by accused Rajesh stands proved beyond reasonable doubt.

15. P.W. 3 Babulal has (sic) story and stated that Ajay stabbed him on the buttock. He has also stated about the exhortation made by Rajesh to

Ajaykumar for causing injury to him. This witness also stands corroborated from the evidence of two doctors and from the evidence (sic)

considered opinion, therefore, the causing of stab wound by Ajaykumar stands proved beyond reasonable doubt.

16. P.W. 4 Rameshchandra has stated that Ajaykumar and Rajesh came with knife in their hands on call by their father Shivnarain. Rajesh stabbed

Jagdish on the abdomen and Ajaykumar stabbed Babulal on the buttock. This witness does not say about the exhortation by Rajesh to Ajaykumar

for causing injury.

17. P.W. 6 Ashokkumar has also given similar story and stated that Shivnarain objected on the urination by Jagdish, abused him and thereafter

called his sons Rajesh and Ajaykumar who came with knife in their hands. He confirms the fact of causing of stab wound to Babulal on buttock by

Ajaykumar and stab wound on the abdomen of Jagdish by Rajesh. Thus, two injured witnesses Jagdish and Babulal stand corroborated from the

statement of these two witnesses i.e. Rameshchandra (PW 4) and Ashok Kumar (PW 6).

18. Learned trial Judge has disbelieved the story mainly on the ground that the report lodged by accused persons has not been investigated and the

fact of assault, pelting of stones and injuries to accused persons have not been inquired.

We would therefore, examine credibility of the defence witnesses adduced in the case.

19. D.W. 1 Rajendrakumar has been examined as to the report lodged by Rajcsh but that was a report lodged on 14-10-90. This incident is

dated 23-4-91 and therefore, earlier report has got no relevancy in this case and, therefore, this observation is clearly wrong that the report lodged

by accused persons in the case was not inquired into.

20. D.W. 2 Urmiladevi, wife of accused Shivnarain and mother of Rajesh and Ajaykumar, has stated that these, persons ransacked their shop and

caused injuries to Rajesh and Ajaykumar. No injury on the body of Rajesh and Ajaykumar has been proved from medical evidence.

If the injuries were caused to Rajesh and Ajay Kurnar they could very well apply to the Magistrate for their examination but they failed to do so.

Therefore, this story of assault and causing of injury appears to be afterthought. Even otherwise Urmiladevi is an interested witness and she could

not be relied on this point.

21. D.W. 3 Babu Shah has simply stated that nearly 5-7 persons were present in front of the house of Manaklal and there was some sound of

commotion. Some persons were hurling abuses. Evidence of this witness takes us nowhere.

22. D.W. 4 Kishorekumar, Administrator of Gram Panchayat, has stated about disconnection of water-pipe from the house of Shivnarain but that

has nothing to do with the present dispute. It appears Laxminarain is M.L.A. and is probably the relation of complainant party and the allegations

are that disconnection was done at the instance of Laxminarain. Though we do not accept this contention, however, even if this contention is

accepted it makes no difference on the fact of causing of injuries by Rajesh and Ajaykumar.

23. D.W. 5 Homsingh, Constable, has been examined regarding the report lodged in the Police Station on 28-8-90. That was not found to be (sic)

and therefore, the case was filed. His evidence is of no value. Even if the inquiry on the basis of earlier report was suppressed or refused will have

no bearing here in this case.

24. D.W. 7 Dilip Gupta, probably a journalist has stated that in the month of April, he received telephonic information from Ajaykumar that nearly

8-10 persons have pelted stones in their (Ajaykumar's house) house and has damaged his scooter. This witness has not stated that he received

information about alleged ransacking of the house on 23-4-91 (The date of incident of this case) and therefore, the evidence of this witness also

does not take us anywhere.

25. D.W. 8 Babulal has stated that in fact Jagdish and Babulal (injured persons) came with knives in their hands. Jagdish tried to stab Ajaykumar

who twisted the knife and in the scuffle Jagdish sustained injury on the abdomen. Babulal Soni tried to assault Rajesh who ran away towards the

back side. He further states that five-six other persons had come with Dharia and Farsii They also followed Rajesh and Ajaykumar. He has further

stated that Rajesh and Ajaykumar went inside the hall and bolted it and thereafter Jagdish and Babulal came back along with persons. This

person is a chance witness. He has given no reason as to why he came to village Jhonkar on that day. He appears to be a got up witness. The

story stated by this witness has not been put to prosecution witnesses during cross-examination.

26. D.W. 9 Mohan has given similar story as stated by Babulal. He is also a resident of village Amona and is a chance witness and he can also

therefore, be not relied. No suggestion about his presence was given to injured persons.

27. D.W. 10 Kundanlal has stated that he met Rajesh in the police-up. Rajesh had sustained injury on the head. It was bleeding. He further stated

that Rajesh told him that complainant party assaulted and caused injury to him.

28. In the absence of any medical report the fact of presence of the injury on the body of Rajesh cannot be accepted.

29. D.W. 11 Ajaykumar (accused-respondent) has tried to support the contention of the defence that Jagdish, Babulal (injured persons) and 5-7

other persons armed with deadly weapons came to the Video Hall where he was sitting along with his brother Rajesh, mother and sister. Jagdish

tried to stab him and, therefore, he twisted his hand. Jagdish thereafter went out-side. He further states that Babulal tried to stab Rajesh who left

the place and ran away towards back-side of the house. He has further stated that he passed telephonic message that the brother-in-law of

Laxminarain Patel, M.L.A., Jagdish, Indar and Babulal have assaulted and ransacked their Video Hall. No such report has been produced in the

Court. Rajesh and Ajay Kumar has sustained no injury. No medical evidence has been adduced. No copy of telephonic message, if entered in

Rojnamcha has been produced.

30. If Rajesh and Ajaykumar have sustained injuries they could, as observed in earlier paras, lodge a written report in the Police Station. They

could bring this fact to the notice of the Magistrate. They could file application for medical examination.

They appear to be intelligent and persons with means and, therefore, they could file complaint as well. In such a situation the whole prosecution

story could not be rejected over board merely on the ground of allegations of political rivalry and undue influence caused by some M.L.A.

31. In our considered opinion, therefore, the finding of learned trial Judge is perverse. Learned trial Judge failed to appreciate the fact of presence

of injury on the body of persons of complainant party i.e. Jagdish and Babulal.

32. Learned counsel for the respondents has submitted that there has been over-righting in the name of accused persons in the document Ex. P/ 2

Dehati Nalishi and in the statement of witnesses recorded by the Police-Officer Dehati Nalishi (Ex. P/2) was lodged by Jagdish (one of the injured

person) No question as to the discrepancy occurring in Ex. P/2 has been asked from Jagdish on this point. Jagdish has very clearly stated that he

was stabbed at the abdomen by Rajesh. An injured person would be last person to implicate a person falsely by leaving the real culprit.

Similarly other injured i.e. Babulal (PW. 3) has also very clearly stated that Ajaykumar caused stab wound to him and the knife so used landed at

the buttock and, therefore, merely because there is some overwriting in Ex. P/2 the whole prosecution story cannot be disbelieved. Initials of Shri

P.K. Shanna finds place over the words "Ajay" and "Rajesh".

33. In view of above that discrepancy was not sufficient to reject the evidence of two witnesses; especially when they stand corroborated from

other evidence including medical evidence and the finding of learned trial Judge to that extent is perverse.

34. Though it is true that while dealing with appeal against acquittal the Court should be slow in disturbing the finding of fact if it is found otherwise

probable and is not perverse and based on rejection of material evidence.

35. We are also aware of the following principle laid down by the apex Court of this country :--

There is no manner of doubt that the Court of appeal is required to take into consideration the reasons given by the trial Court in basing a judgment

of acquittal, very carefully and if such reasonings are consistent with the evidence, as a matter of prudence, the Court of appeal should not interfere

with the order of acquittal, by reappreciating the evidence and taking some other view. But if the reasonings given by the trial Court are contrary to

the weight of evidence, the Court of appeal would be justified in discarding the same in exercise of its appellate jurisdiction.

... .. Goverdhan Raoji Ghyare Vs. State of Maharashtra,

36. In our considered opinion, learned trial Judge failed to appreciate the fact of presence of injury on the body of Jagdish and Babulal and further

failed to appreciate the medical evidence adduced in the case and therefore, the finding deserves reversal which we reverse and hold that accused

Rajesh stabbed Jagdish on abdomen and Ajaykumar stabbed Babulal on buttock.
Exhortation made by Rajesh to Ajaykumar for causing injury

having not been supported by independent witness cannot be relied.

37. Similarly, Rajesh and Ajaykumar must have arrived on the spot on hearing the exchange of hot words between Shivnarain and Jagdish and,

therefore, the fact of calling them for causing injuries remains shrouded in doubt.

38. Thus, in our opinion, Rajesh is guilty of causing grievous injury by dangerous weapon to Jagdish and Ajaykumar is guilty of causing simple

injury by dangerous-weapon to Babulal.

39. The next point that arises for determination is as to what offence is made out. There is no evidence to show that the injury was sufficient in the

ordinary course of nature to cause the death. The injury has been caused during exchange of hot words between Shivnarain and Jagdish and

therefore, the intention of murder cannot be inferred.

40. However, the fact of provocation caused by Jagdish stands proved in the case. Jagdish has got lavatory, urinal and bath room in his house but

despite that he came for urination in front and in the corner of the house of Shivnarain. The same was objected by Shivnarain. Jagdish persisted

and there was exchange of hot words. That was not a place which could be used as a urinal and, therefore, Shivnarain was perfectly justified in

objecting to it.

41. If a person urinates (definitely by opening his private organ) in front of the house of other person occupied by members of the family including

women folk, the owner of such house has got a right to object and if a person persists in using that place as urinal this would amount to causing of

provocation. Thus, Rajesh caused injuries to Jagdish on such provocation. He is, therefore, entitled to the benefit of causing injury on provocation

and his act would, therefore, be covered u/s 335 of IPC but the same benefit is not available to Ajaykumar who caused injury to Babulal.

42. Section 335 of IPC reads as follows:

Voluntarily causing grievous hurt on provocation. --

Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous

hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may

extend to four years, or with fine which may extend to two thousand rupees or with both.

The words ""if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who have the

provocation"" is very important.

Its plain reading would clearly show that this benefit is available against a person who gave provocation and not against a by-stander or inter-

venor. Here in this case Babulal has given no provocation. He was simply an intervenor and, therefore, Ajaykumar has no right to cause injury to

him. He would, therefore, be held guilty for causing simple injury by dangerous weapon to Babulal while is punishable u/s 324 of IPC.

43. As a result we allow the appeal partly. The acquittal of accused respondent Shivnarain from all charges is wholly upheld and is affirmed. The

acquittal of accused-respondents Rajesh and Ajaykumar u/s 307 of IPC is also upheld; but accused Rajesh is held guilty and convicted u/s 335 of

IPC, for causing grievous injury to Jagdish on provocation and accused Ajaykumar is held guilty and convicted under. Section 324 of IPC for

voluntarily causing simple injury by dangerous weapon to Babulal.

44. Sentences in the case shall be passed after hearing either the accused-respondents or their counsel.

Later on 6-12-1996.

45. Learned counsel heard on punishment.

46. Accused-respondent Ajaykumar was arrested on 3-6-1991 and was released on bail vide Order dated 14-6-91. Thus, he remained in jail for

about 12 days. Accused-respondent Rajesh was arrested on 25-4-91 and was released on bail vide Order dated 14-6-91. Thus, he remained in

jail for about 45 days. Accused persons are young in age. Incident happened about 5 years before. They may have settled in life. It would not be

proper to send them back to jail after lapse of many years.

47. As a result accused Ajay Kumar is sentenced to imprisonment for a period already undergone i.e., for 12 days and a fine of Rs. 3000/-; in

default of payment of fine he shall suffer imprisonment for nine months.

48. Accused-respondent Rajesh is sentenced to imprisonment of the period already undergone i.e. about 1½ months and fine of Rs. 2000/- in

default of payment of fine he shall suffer imprisonment for eight months.

49. The fine amount if recovered Rs. 2000/- shall be paid to injured Babulal Soni as compensation. No compensation to Jagdish because the

provocation was caused by him.

50. Accused-respondents shall appear before the C.J.M. Shajapur on or before 18th December, 1996 for depositing the amount of fine or for

serving the sentences of imprisonment in lieu of fine.