State of M.P. Vs Balwant Singh

Criminal Appeal No. 201/95

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: March 28, 2002

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 378#Evidence Act, 1872 â€" Section 3#Penal Code, 1860 (IPC) â€" Section 304, 323

Citation: (2002) CriLJ 2589 : (2002) 3 MPHT 289 : (2002) 4 MPLJ 218

Hon'ble Judges: S.L. Kochar, J; N.K. Jain, J

Bench: Division Bench

Advocate: G. Desai, Dy. Advocate General, for the Appellant; P.K. Saxena and Rawaka, for the Respondent

Final Decision: Partly Allowed

Judgement

S.L. Kochar, J.

Being aggrieved by the judgment and finding dated 24-10-94 passed by the Second Addl. Sessions Judge, Khargone in Sessions Trial No.

198/90 acquitting the respondent for the murder of Jaipalsingh. The State has preferred this appeal.

The prosecution case in nut-shell before the Trial Court was that at 9.00 P.M. oh 1-5-90, the complainant Narayansingh resident of Village

Pokhar was lying on a cot and his nephew (Brother''s son) Jaipalsingh was also lying on another cot. At that juncture, the respondent, who was

residing in front of their house, came over there having a Kharalia (a wooden log used in bullock-cart for support of luggage) and dealt a blow

which landed on the head of Jaipalsingh. In intervention by Narayansingh, he too was given a blow causing simple injury on his left palm. On cries

being raised by Narayansingh, his son Kalu and many other persons had assembled there to whom the matter was disclosed by the complainant

and his son. The respondent had assaulted the deceased on account of some previous verbal dispute took place between them before two-three

days.

The proseuction has examined Narayansingh (P.W. 1), Kalusingh (P.W. 3) and Dhapubai (P.W. 4) as eye-witnesses of the incident. The learned

Trial Court has acquitted the appellant while disbelieving the evidence of all the three eye-witnesses on the basis of some contradictions in their

Court-statements with the case-diary statements as well as the contradictions occurring in their statements recorded in the Court. Narayansingh has

been disbelieved on the ground that he is an old person of 75 years and he was not able to identify the assailant because of darkness. Kalusingh

(P.W. 3) has been disbelieved mainly on the ground that his version is at variance with the statements of his father Narayansingh and Dhapubai,

and as a matter of fact neither Kalusingh nor Dhapubai had witnessed the incident, but they reached the spot later on. At that time, the respondent

was not present on the scene of occurrence. Dhapubai (P.W. 4) has been disbelieved mainly on the ground that her name and presence does not

find place in the First Information Report (Ex. P-1) lodged on the next day.

We have heard Shri G. Desai, learned Deputy Advocate General appearing for the appellant/State and Shri P.K. Saxena, learned Senior Counsel

with Shri Rawaka for the respondent and perused the entire record.

The First Information Report (Ex. P-1) was lodged on 2-5-90 at 7.45 A.M. The distance of police station from the place of occurrence is 10

Kms. whereas the incident had taken place on 1-5-90 in the night at about 9.00 P.M. As such, there was no delay. Even then it is mentioned in the

First Information Report by the complainant that because of fear of thieves in the night he did not report the matter the same night. On the next day

early in the morning, the deceased was taken to the police station in unconscious condition.

The First Information Report (Ex. P-1) was lodged by Narayansingh (P.W. 1) and his version in the Court is duly corroborated by the First

Information Report as well as the medical evidence given by Dr. R.N. Rajarwal (P.W. 10). He found only one external injury, a lacerated wound

on the left side of head caused by hard and blunt object. Thereafter, he was referred to the X-Ray Department. The deceased died on 4-5-90. In

the post-mortem report (Ex. P-12), there were fractures of temporal and frontal bones. The complainant Narayansingh was also examined the

same day of lodging of the report and as per his version the doctor has found simple injury at his left hand 3 CM x 1 1/2 CM accused by hard and

blunt object. Narayansingh acquired the status of an injured witness. His version has been duly corroborated by the statement of his son Kalusingh

(P.W. 3) who has stated that in the night at 9.00 PM, he was taking his night-meals, his father was sleeping on a cot and the deceased was also

sleeping by the side of his father on another cot. The respondent came to his father. His father raised alarm on which, he reached over there and

ousted Balwantsingh from their house. In the First Information Report and the statements of P.W. 1 as well as P.W. 3, we find no such

inconsistency or glaring defect on the basis of which Narayansingh (P.W. 1), an injured witness having no axe to grind against the respondent, who

was residing just in front of his house, which is clear from the spot (Ex. P- 2) to disbelieve this injured witness for the purpose of identification of

the respondent Balwantsingh and for his act of causing solitary blow on the head of deceased,

Learned Counsel for the respondent has vehemently argued that this is an appeal against acquittal and when two views are possible, the view taken

by the Trial Court should not be disturbed. According to P.W. 1, he could not identify the person in the darkness. He further submitted that since

the name and presence of eye-witnesses Dhapubai (P.W. 4) is not mentioned in the First Information Report, she is a got up witness and her

testimony was rightly rejected by the Trial Court.

The Supreme Court in Ramaphupala Reddy and Others Vs. The State of Andhra Pradesh, has held as under :--

The scope of an appeal against the order of acquittal has been the subject of some controversy in Courts for a long time. But that controversy is

now settled by the decision of this Court in Sanwat Singh and Others Vs. State of Rajasthan, . In that decision this Court summarised the legal

position thus :--(1) An Appellate Court has full powers to review the evidence upon which the order of acquittal is found; (2) the principles laid

down in Sheo Swamp''s case 61 Ind App 398 : AIR 1932 SC 227 (2), afforded a correct guide for the Appellate Court''s approach to a case

disposing of such an appeal; (3) the different phraseology used in the judgments of this Court such as : -- (a) ""substantial and compelling reasons"",

(b) ""good and sufficiently cogent reasons"", (c) ""strong reasons"" are not intended to curtail the undoubted power of an Appellate Court in an appeal

against acquittal to review the entire evidence and to come to its own conclusion but in doing so it should not only consider every matter on record

having a bearing on the questions of fact and the reasons given by the Court below in support of its order of acquittal but should express the

reasons in its judgment which led it to hold that the acquittal was not justified. To these tests we may add, as laid down by this Court in several

decisions that the Appellate Court should also bear in mind the fact that the Trial Court had the benefit of seeing the witnesses in the witness-box

and the presumption of innocence is not weakened by the order of acquittal. If two reasonable conclusions can be reached on the basis of the

evidence on record, the Appellate Court should not disturb the findings of the Trial Court. Thus, there is nothing basically wrong in the approach

adopted by the High Court. It considered the evidence on record on the basis of human probabilities and tested the evidence given by the

witnesses by various methods known to law.

Applying therefore, the aforementioned test as laid down by the Supreme Court, we are of the view that the testimony of the injured witness

Narayansingh (P.W. 1) is fully reliable for causing the injury by the respondent to the deceased on his head. His version further finds corroboration

from the medical report regarding his injury and the injury sustained by the deceased. Narayansingh"s (P.W. 1) statement is duly corroborated by

the statement of Kalusingh (P.W. 3) who was taking his meats and came out immediately after hearing the alarm. Mehtabsingh (P.W. 6) has also

specifically stated that on the same night the deceased Jaipalsingh was brought to his house on a cot by witnesses Narayansingh, Kalusingh and

other villagers. At that juncture, he asked Narayansingh about the incident whereupon Narayansingh disclosed the name of the respondent for

causing the injury. This witness has also testified that because of fear of thieves in the night, they did not go to the police station for lodging the

report. Ramsingh (P.W. 7) who is the resident of the same locality also reached after hearing the cries and saw that Kalusingh (P.W. 3) was

turning out the respondent Balwant from his house. He went inside the house and saw the deceased Jaipalsingh lying injured on the cot. He

questioned Narayansingh about his injury, on which, Narayansingh disclosed the name of the respondent by causing injury to the deceased by

Kharalia (wooden log). This witness also stated that because of fear of thieves in the night, they did not go to the police station for lodging the

report. These are the independent witnesses and no cogent reasons have been assigned by the Trial Court for disbelieving their testimony.

The Supreme Court in Paresh Kalyandas Bhavsar Vs. Sadiq Yakubbhai Jamadar and Others, held that ""Mere interestedness is not a ground to

reject the evidence of the eye-witnesses particularly those who were injured"".

In the case of Nadodi Jayaraman and Others Vs. State of Tamil Nadu, the Supreme Court held that ""As a mere fact that evidence of some

witnesses was found unsafe for conviction per se is not aground for rejection of whole of their testimony. The maxim ""falsus in uno falsus in

omnibus"" cannot mechanically be applied"". In the case in hand, the Trial Court, though having chance to watch the demeanour of the witnesses

failed to consider and appreciate the evidence of aforesaid witnesses in its proper perspective which is completely in line with the First Information

Report and the question of identification of the assailant by Narayansingh could not have been arisen because, Balwantsingh-respondent was

residing just in front of his house and the signature of Narayansingh in the First Information Report is also clearly indicating that he was not such a

weak and infirm person as considered by the Trial Court to disbelieve his testimony for the purposes of identification.

We, therefore, are of the considered view that the learned Court below has committed a grave error in rejecting the testimony of eye-witnesses

Narayansingh who himself has sustained the injury on his person duly corroborated by the First Information Report as well as the statement of

Kalusingh (P.W. 3), medical evidence and aforesaid eye-witnesses.

Now the question would arise for causing solitary blow without aiming at head by the respondent he could be held responsible for what offence ?

It is a case of solitary blow given by the respondent on a very trivial issue without any undue advantage and without trying for causing further injury

to the deceased, the offence would not travel more than u/s 304 (Part II) of the Indian Penal Code.

Now, we come to the question of sentence. The appellant is on bail. He remained in jail during the course of trial and after conviction for some

period. For the offence u/s 304 (Part II) of the Indian Penal Code, there is no mandatory requirement of imposing minimum jail-sentence. In view

of the mitigating circumstances, we deem it just and proper in the interest of justice and looking to the young-age of the appellant at the time of

incident i.e., 20 years according to the charge-sheet and the nature of incident, to sentence the respondent to the period already undergone and a

fine of Rs. 10,000/-. No useful purpose will be served to send the respondent again in jail after about 12 years of the incident. Learned Counsel

for the respondent informed this Court that at present if he is sent to jail, his whole family would be uprooted because now he is a married person

having responsibility of his wife, children, old mother, father and brothers.

We, therefore, allow this appeal in part. The respondent is found guilty of the offence u/s 304 (Part II) of the Indian Penal Code for causing

culpable homicide not amounting to murder of deceased Jaipalsingh and u/s 323 of the Indian Penal Code for causing simple injury to

Narayansingh (P.W. 1), and he is sentenced to the period already undergone by him and a fine of Rs. 10,000/- (Rupees Ten thousand). Out of this

amount a sum of Rs. 8,000/- shall be paid to the L.Rs. of deceased Jaipalsingh as compensation.

The respondent is granted two months time from today to deposit the amount of fine. He shall appear before the Trial Court on 10-4-2002 to hear

the result of this appeal. In default of payment of fine, the respondent shall suffer R.I. for five years. On deposit or payment of fine, his bail-bonds

shall stand discharged.