
(2000) 12 MP CK 0024

Madhya Pradesh High Court

Case No: Criminal Appeal No. 723/89

Surajlal and another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Dec. 6, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 374(2)
- Penal Code, 1860 (IPC) - Section 325, 34

Citation: (2001) 2 MPHT 350

Hon'ble Judges: Mr. Fakhruddin, J

Bench: Single Bench

Advocate: Shri S.L. Kochar, for the Appellant; Shri Dinesh Joshi, for the Respondent

Final Decision: Dismissed

Judgement

Fakhruddin, J.

The appellants have preferred this appeal against their conviction and sentence passed by Trial Court for the offence u/s 325/34, IPC.

2. Briefly stated, the prosecution case is that P.W. 1 Lalla's daughter Devnabai P.W. 5 was married to Nago Rao son of Surajlal, appellant No. 1 about four years before the date of occurrence, which is dated 8-1-1986. Nago Rao married second wife and turned Devnabai out of his house. Not only that when Devnabai wanted dissolution of marriage, amount was demanded. Devnabai, therefore, filed a case in Multai Court for maintenance. The case was fixed for 7-1-86 and thereafter it was adjourned to 9-1-86. The prosecution alleges that on 8-1-86 at about 4.30 p.m. while Lalla was going from village Bori to village Semariya for bringing witness Munshi on the way Surajlal, appellant No. 1 and Bhim, appellant No. 2 met, they stopped him and questioned him as to why he has filed the case. Surajlal gave a lathi blow on the head. Lalla fell down. Bhim was armed with axe. Surajlal and Bhim both mercilessly beat him as a result of which he sustained multiple injuries. They left him only when

they thought that he had died. After sometime, Chhotelal P.W. 2 passed on the way. Lalla called Chhotelal then made cries, his relations came, a bullock cart was also arranged and he was brought to village Rana Dongri. Information was sent to the villagers. Kishan Goli, Baiju Goli, his son and relation came. They were told about the incident. Report was lodged by him on 9-1 -86 at 6.15 in the morning. Crime was registered. He was sent for medical examination where he was examined by Dr. Vasudeo Majumdar P.W. 15. The report is Ex. P-18. Lalla had sustained as many as seventeen injuries. After usual investigation challan was filed. Appellants abjured the guilt and contended that they were falsely implicated. Prosecution examined witnesses. The Trial Court after considering the material on record, evidence of P.W. 1 Lalla duly corroborated by other evidence, convicted and sentenced the appellants.

3. Shri Kochar, learned counsel for the appellants assailed the conviction and sentence. While Shri Joshi, learned Panel Lawyer supported the conviction.

4. The first contention of Shri Kochar is that the FIR is ante dated and time. He has contended that on complainant's own showing he sustained injuries and became unconscious as such he was not in a position to report the matter. It was further contended that evidence of Lalla P.W. 1 is not reliable and conviction based on his evidence is not sustainable. In the facts and circumstances, therefore, the entire case is examined.

5. Evidence of P.W. 1 Lalla shows that so far as the F.I.R. is concerned, he has stated in Para 14, that he lodged the report and had signed it. He has further stated that in Multai hospital police had come, his statement was recorded and thereafter he was sent to Betul hospital. Statement of P.W. 1 Lalla is pertinent. He has stated that his daughter Devnabai was married to Nago Rao, she was kept nicely for two years but thereafter Nago Rao had married another wife and as such she was turned out. He has further stated, in Para 3 that because Surajlal wanted Rs. 3000/- for dissolution of marriage to which Lalla said that he had no money. On the other hand Devnabai filed case for maintenance. In Para 4 he has stated that he alongwith his daughter Devnabai had gone to Court. Case was adjourned to 9-1-86. On 8-1-86 he was going to village Semariya. He started at 3.00 O'clock. While he was on way Bhim and Surajlal met him. Surajlal had a lathi. Bhim had an axe. Surajlal inflicted lathi blows and Bhim inflicted blows from the back side of the axe. He was beaten mercilessly. Even the bones were broken. They had taken out his Pagdi and had teased a wood. Chhote came and he told about the incident to Chhote. Then other persons came who were told about the incident. He has stated in Para 15 about three months his treatment continued. In cross-examination, in Para 17, he has stated about the earlier events which had taken place. Even it has come in the evidence that her daughter Devna had lived with the other wife of Nago Rao. Lalla is not a literate man but can only sign. In spite of the lengthy cross-examination, there is nothing to discredit him. Certain omissions and minor variations are there which are but

natural and go to indicate the truthfulness of the witness. Chhote P.W. 2 met him in the way. Though he has been declared hostile, but has stated that he had seen Lalla on spot. He asked Lalla what had happened, who had stated that he was beaten and made indications about his beating but he could not follow. In Para 3 he has stated that he was not allowing him to go but with difficulty he could go to village and then could arrange bullock cart. Though this witness has been declared hostile, but the fact remains that Lalla was found injured, he complained that he was beaten and he was not leaving Chhotelal to go and Chhotelal could go with some difficulty. All this goes to show that incident had occurred and he was under impression in the circumstance that if Chhotelal will go he would die. Lalla fortunately survived. Devnabai P.W. 5 has stated that Nago Rao was her husband. Six years" before she was married to Nago Rao. After two years Nago Rao married Devbati. Devbati is living with him. Devnabai is living separately for four years and she had gone to Court. Munshi did not come, her father did not come and then Mangla told her that Lalla would not come as Suraj and Bhim had beaten him. From there she rushed and found Lalla on the railway station. Then he was taken to Betul hospital. This evidence of P.W. 5 goes to show that Lalla had gone to collect Munshi but he could not reach as he was beaten. Other evidence of Premlal P.W. 6 and Kishanlal P.W. 7 is there.

6. Medical evidence is very pertinent. The evidence of P.W. 1 Lalla is duly corroborated by the medical evidence. Dr. Vasudeo Majumdar, P.W. 15, who examined Lalla, found the following injuries on his person :

- (1) Lacerated wound 7.5 cm x 1 cm x bone deep over right temporal region of head.
- (2) Contusion left cheek 5 cm x 2 cm.
- (3) Contusion 7 cm x 2.5 cm right side of lower part of chest.
- (4) Contusion right wrist.
- (5) Contusion 6 cm x 2 cm left hand.
- (6) Contusion 3 cm x 1.5 cm right scapula.
- (7) Contusion 15 cm x 7 cm below injury 5.
- (8) Contusion 22 cm x 5 cm right upper part right shoulder.
- (9) Contusion 22 cm x 6 cm right side of back laterally and below to right scapular.
- (10) Contusion 12 cm x 2 cm left side of back oblique reaching to midline of 8-9.
- (11) Contusion 10 cm x 6 cm left ghaterel region.
- (12) Contusion 10 cm x 5 cm right genital region.
- (13) Abrasion upper lip left side 1/2 cm x 1/3 cm.

(14) Deformity left knee dislocation patella left abrasion 1 cm x 1/2 cm joint above left knee Ant. lower aspect.

(15) Abrasions 3 in number each 2 cm x 1 cm upper 1/3 front of right leg.

(16) Diffuse swelling & contusions right leg middle 1/3 Ant. & medial aspect 12cm x 6cm.

(17) Complaining severe back pain all over back.

Injury Nos. 1, 2, 4, 5, 6, 9, 12, 13, 16 are simple. So far as the injury Nos. 3, 7, 8, 10, 14 and 17 is concerned, X-ray was advised. The case was referred to Betul hospital. X-ray was conducted by Dr. Ramesh Chandra Mandlik, P.W. 13, the Radiologist, who found multiple fractures vide his report Ex. P-17 :

(1) Right hip shelter trochanteric,

(2) Left hand 5th metacarpal bone,

(3) Right lower chest 10 mms,

(4) Left knee Patella bone,

(5) Left spine no bony injury. The evidence thus shows that it is a case of merciless beating.

7. Shri Kochar, learned counsel submitted that sentence awarded is severe. He stated that the offence is of the year 1986. Fourteen years have passed. These persons have settled in their life. It is submitted that the sentence should be reduced to the period already undergone which is of four days. Learned counsel relied on [Pashora Singh and another Vs. State of Punjab](#), . The offence u/s 325, IPC is punishable for seven years and fine. The Apex Court in [State of Andhra Pradesh Vs. Polamala Raju @ Rajarao](#), has dealt with the matter regarding the imposition of sentence. The Court while holding that there is no reason to go against the legislative mandate and award any lesser sentence, observed that it is an obligation of the sentencing Court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence. The sentencing Court must hear the loud cry for justice by the society. Here, in the instant case, complainant Lalla is an unfortunate father of P.W. 5 Devnabai, who was married to as daughter-in-law of Surajlal appellant No. 1. He had married his son. It was his duty to see that she is properly kept. She was kept nicely for two years, but, thereafter, not only that she was ill-treated and beaten, but Nago Rao married another wife. She then lived with that other lady Devbati for eleven months. Thereafter, she was turned out. When she wanted dissolution of marriage, amount of Rs. 3000/- was demanded. Devnabai wanted maintenance which was her right. The case was fixed for 7-1-86 but was adjourned to 9-1-86. On 9-1-86 Munshi was to be examined. Lalla had gone to call the witness Munshi when he was mercilessly beaten. Such persons, in the opinion of this Court does not deserve any

leniency. In the opinion of this Court, they deserve to full punishment. In any case, sentence awarded is on lower side. Fine awarded is also on lowerside. No case for interference or for reduction of sentence is made out. The appeal fails and is dismissed.

8. Criminal Appeal dismissed.