
(1997) 02 MP CK 0014

Madhya Pradesh High Court

Case No: Criminal Appeal No. 1296 of 1994

Mantram Rawat and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Feb. 24, 1997

Acts Referred:

- Penal Code, 1860 (IPC) - Section 97

Citation: (1998) 2 J LJ 313 : (1997) 2 MPLJ 7 : (1997) 3 RCR(Criminal) 657

Hon'ble Judges: A.K. Mathur, C.J; S.K. Kulshrestha, J

Bench: Division Bench

Advocate: S.L. Kochar, for the Appellant; G.S. Ahluwalia, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

S.K. Kulshrestha, J.

The appellants have preferred this appeal against their conviction for offence u/s 302 read with Section 34 of the Indian Penal Code and sentence of imprisonment for life as also Under Sections 323 and 323/34, Indian Penal Code and sentence of R. I. for six months under each count to each of the appellants by the judgment dated 7-9-1994 of the learned Third Additional Sessions Judge, Raipur, passed in Sessions Trial No. 302/93

The appellants were indicted for the said offences for intentionally causing death of Kejuram son of Nanku Rawat on 7-3-1993 at about 9.00 a.m. in village Alesur and for voluntarily causing hurt to Kashiram, Radheshyam, Mathurabai, Kalabai and Saraswatibai in furtherance of their common intention.

Prosecution story, in brief, was that there was dispute between the two parties concerning property. On the date of the incident, the appellants armed with lathis came to the place where Kejuram had gone to ease himself and assaulted him.

When the members of the family of Kejuram intervened to save Kejuram, the accused persons also belaboured them. The report of the incident was lodged at Police Station Kharora, District Raipur, and offence was registered. Inquest was held and the body was forwarded for post mortem examination as also the other victims were sent for examination of the injuries on their person and treatment. Blood stained and plain earth samples were seized and weapons were seized on the basis of information furnished by the accused. Clothes of accused Mantram and Mantri suspected to be having blood stains were also seized and the seized articles were sent for examination to the Forensic Science Laboratory, Sagar. Report of Laboratory confirms presence of blood on the Lathi, Baniyan and trousers seized from the accused Mantram and shirt and Lungi seized from the accused Mantri. After completion of investigation, charge-sheet was filed against the appellants.

Accused denied the charges. Mantram and Mantri raised a plea that they have been assaulted by deceased Kejuram and the prosecution witnesses while accused Mahesh pleaded alibi and Mantram, false implication. All the accused thus pleaded that they were innocent. The learned trial Court, however, found the appellants guilty and convicted and sentenced them, as stated above.

The learned counsel for the appellants has not disputed that the deceased Kejuram died a homicidal death. There is even otherwise ample evidence to prove that the deceased Kejuram had received injuries, which fact finds confirmation from the testimony of P. W. 11 Dr. D. N. Bijve, who had performed autopsy on the dead body and had found injuries as recorded by him in the post mortem report Ex.P-12. According to the opinion of the doctor, the death was due to coma and depression of respiratory centre as a result of injuries to the chest and brain of the deceased. The ocular testimony also confirms the deceased having been assaulted and having died as a result of the injuries. The contention of the learned counsel, however, is that the F.I.R. Ex.P-19 was a fabricated document and the entire investigation was tainted, thus, demolishing the very foundation of the prosecution case and, further, the prosecution having failed to explain the injuries of the accused, it had suppressed the genesis of the incident and it was patent in any case that the appellants had acted in exercise of right of private defence. The learned counsel for the State has, however, supported the judgment of the trial Court and has submitted that the witnesses having themselves been injured in the very incident, greater value deserves to be attached to their testimony and the conviction was well founded.

Eye-witness account has been rendered by P.W. 1 Radheshyam, P.W. 2 Saraswatibai and P.W. 7 Kashiram, while P.W. 3 Jhagdu and P.W. 4 Kanhai have not supported the prosecution. P.W. 1 Radheshyam is the son of the deceased, P.W. 2 Saraswatibai is the daughter of the deceased and P.W. 7 Kashiram is the son of the deceased. The three eye-witnesses being closely related, their evidence requires greater scrutiny and circumspection.

P.W. 1 Radheshyam has deposed that while his father had gone in the open to ease himself, the appellants assaulted him with sticks and on hearing the alarm raised by his father, he along with Kashiram, Mathurabai, Saraswatibai and Kalabai rushed towards the field of Sukharam, in which they noticed all the accused persons belabouring Kejuram. He further states that on seeing him, the accused persons turned to him and Kashiram and assaulted them with lathis. Even Mathurabai, Kalabai and Saraswatibai were not spared. He further states that they fled and they witnessed the incident from the cattle-shed of Amru Gontia. It was only when the accused persons left the place that he along with Kashiram went there and found his father lying dead. P.W. 2 Saraswatibai has also given the same narration as P.W. 1 Radheshyam and so is the case with P.W. 7 Kashiram. Kashiram was examined by P.W. 11 Dr. D. N. Bijve, who had found two lacerated wounds on his head, one lacerated wound on frontal region and contusion on left arm and given report Ex.P.-13. Radheshyam was also examined by P.W. 11 Dr. D. N. Bijve and bruise was found on his left scapular region while a lacerated wound was found on scapula and on left temporal area. The report Ex.P.-14 has duly been proved by this witness. Mathurabai was also examined and as per the certificate Ex.P.-15, she had sustained a contusion on her left thigh caused by blunt object. Likewise, the injuries of Kalabai have been duly recorded in Ex.P.-16 and of Saraswatibai in Ex.P.-17. Saraswatibai had sustained a bruise on left forearm. It is, thus, clear that presence of these witnesses in or about the place of occurrence of the incident finds corroboration from the injuries noticed on their person by the doctor shortly after the incident. Significant aspect, however, is that the foundation of the prosecution case is the F.I.R. Ex.P.-19 said to have been lodged at the police station at 2.30 P.M. on 7-3-1993, the date of the incident which had taken place at about 9.00 A.M. The distance of the police station from the place of incident is 14 Kilometers. However, the F.I.R. has not been proved through the maker thereof, namely, Kashiram (P.W. 7). Kashiram has admitted that Mathurabai had already reached the police station and lodged the report before he had reached the police station. According to his statement in cross-examination, he had been brought by police to the police station, where his mother had already lodged the report. This aspect has also been admitted by other eye witnesses, namely, P.W. 1 Radheshyam and P.W. 2 Saraswatibai. In paragraph No. 3 of his statement, P.W. 1 Radheshyam has admitted that before the police came to the village and took him and Kashiram to the police station, their mother Mathurabai had already reached the police station and lodged the report. All the three witnesses are unanimous on the point that Mathurabai who is their mother, had rushed to the spot on hearing the alarm and had herself been belaboured in the incident in question, which fact finds confirmation from the evidence of P.W. 11 Dr. D. N. Bijve. Mathurabai has not been examined to show whether or not actually she had lodged any report with regard to the incident. It is unbelievable that Mathurabai having received injury in the same transaction in which, according to the prosecution, her husband had been mercilessly assaulted and her sons and

daughter had also received injuries, would not unfold the incident to the police immediately on reaching the police station. The Investigation Officer P.W. 12 Jawahar Mishra has denied that Mathurabai had already lodged the report. The prosecution has chosen to prove report Ex.P.-19 through the Investigating Officer without proving the same through P.W. 7 Kashiram, who had lodged the report. Presence of Mathurabai at the police station is very significant in the face of the testimony of the eye-witnesses P.W. 1 Radheshyam, P.W. 2 Saraswatibai and P.W. 7 Kashiram that she had already lodged the report at the police station. Thus, no sanctity can be attached to the report Ex.P.-19, which has been treated to be the First Information Report in this case and more so, when the same has not been proved through the maker thereof, namely, P.W. 7 Kashiram.

Learned counsel for the appellant has referred to the decision of the Supreme Court in [Marudanal Augusti Vs. State of Kerala](#), in which their Lordships of the Supreme Court have held that the entire fabric of the prosecution case would collapse if the F.I.R. is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence. Reference has also been made to the decision of the Supreme Court in [State of Andhra Pradesh Vs. Punati Ramulu and others](#), that where the Investigating Officer has deliberately failed to record the F.I.R. and had prepared the F.I.R. after reaching the spot after due deliberations the investigation is tainted and it would be unsafe to rely on such tainted investigation. In the present case, it is admitted by P.W. 1 Radheshyam and P.W. 7 Kashiram that the Police had come and taken them to the Police Station and Mathurabai had already reached the Police Station and lodged report. It is, therefore, clear that on learning about the incident obviously from Mathurabai, the investigating agency had come into motion and reached the spot and after they had brought these two eye-witnesses, Ex.P.-19 was recorded, to which no sanctity should be attached firstly, because it cannot be treated to be F.I.R. and secondly, it was not even proved through maker thereof. Apparently, the report was brought into being after deliberations with the prosecution witnesses, and implicit reliance cannot be placed on the testimony of partisan witnesses P.W. 1 Radheshyam, P.W. 2 Saraswatibai and P.W. 7 Kashiram, especially when P.W. 1 Radheshyam and P.W. 7 Kashiram were also instrumental to the creation of Ex.P.-19. It is not possible to believe the investigating officer P.W. 12 Jawahar Mishra that Mathurabai had not made any report at the Police Station, as it is unthinkable that Mathurabai would not disclose to the police the incident having herself received injury in the same.

In the present case, the accused have also received injuries. As admitted by P.W. 12 Jawahar Mishra, S.I., he had sent the accused persons for medical examination along with requisitions Exs. D-4 and D-5. The Doctor P.W. 11 D. N. Bijve in his cross-examination has admitted having examined the accused Mantram and having given his report Ex.D-4. According to P.W. 1 Dr. D. N. Bijve, on the very day, the accused Mantram had been examined by him at 1.00 p.m. and he had found a

lacerated wound 2" x 1/4" x 1/4" on his scalp, a lacerated wound on right parietal region 1 1/2" x 1/2" x 1/4", a lacerated wound on left parietal region 2" x 1/2" x 1/4" and lacerated wound on left upper eyelid and one lacerated wound behind left ear. According to the Doctor, these injuries were caused by hard and blunt object within four hours of his examination. Likewise, a lacerated wound was noticed on right side scalp 2 1/2" x 1/2" x 1/4" on occipital region of Mantram and another lacerated wound on his scalp, as recorded by the Assistant Surgeon, of the same duration. This shows that even before the F.I.R. Ex.P-9 was filed at 2.30 P.M. on the same day, these accused were sent for examination and had in fact been examined by the Doctor. This lends further assurance to the fact that the investigation had commenced even before the F.I.R. Ex.P-19 was recorded and the investigation could have commenced only upon learning about the incident from MATHURABAI who had already reached the Police Station. The second significant aspect that emerges from the injuries sustained by the two appellants is that the prosecution has not explained how these appellants received injuries. The eye-witnesses have denied that these persons were assaulted and have denied the injuries as well. It is settled law that it is open to the accused to demonstrate even from the evidence brought on record by the prosecution that even if the said evidence was believed, it was clear that the accused had acted in the exercise of the right of private defence. Non-explanation of the injuries of the accused in such a situation also acquires greater significance as one of the consequences of such non-explanation is that it makes it probable that the accused may have acted in the exercise of right of private defence. Case set up by the injured accused before the trial Court was that they had been belaboured by the deceased and the prosecution witnesses. The absence of any explanation from the prosecution about how the accused persons came to receive such substantial injuries, further lends assurance to the fact of their having been so assaulted. Thus, on one side, while such non-explanation of the injuries of the accused clearly shows that the genesis of the incident has been suppressed, on the other, it creates doubt about the prosecution case. Reference may be made to the decision of the Supreme Court in [Lakshmi Singh and Others Vs. State of Bihar](#), in which their Lordships have laid down three inferences flowing from such non-explanation of the injuries of the accused :- (i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and (iii) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case. In the present case, such non-explanation not only makes the origin of the incident obscure, it is also followed by tainted investigation by suppression of information furnished to the Police by Mathurabai and creation of F.I.R. Ex.P.-19. The defence of the injured appellants is clear and is rendered probable on account of non-explanation of their injuries and, in any case, all these factors cast a serious

doubt about the sanctity of the prosecution case, of which the appellants deserve benefit.

In the result, we find ourselves unable to sustain the conviction of the appellants and set aside the same. The appellants are acquitted of the charges against them and are directed to be set at liberty forthwith, if not required in connection with any other matter.

The appeal, thus, stands allowed. The appellants shall be released forthwith, if not required in connection with any other matter.