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Shankarlal and Another Vs State of Madhya Pradesh

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Feb. 5, 1981

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 360
Penal Code, 1860 (IPC) â€" Section 324, 325, 342

Citation: (1982) CriLJ 254 : (1981) 26 MPLJ 736

Hon'ble Judges: A.R. Naokar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

A.R. Navkar, J.

This is a revision against the order passed by the Sessions Judge, Guna in Criminal Appeal No. 123 of 1979, on 8-1-1980, which arose out of an

order of conviction recorded by the Judicial Magistrate, First Class, Chachoda, convicting the petitioners u/s 324 of the I. P. C, sentencing

petitioner No. 2 to four months'' rigorous imprisonment and releasing petitioner No. 1 on execution of bond of Rs. 1,000/-for six months u/s 360

of the Criminal p. C, in Criminal Case No. 24(5 of 1975.

The facts giving rise to this revision are that the petitioners were tried for the offences Under Sections 325 and 342, IPC, on the allegations that

they wrongfully confined the complainant Laxman and caused him grievous injuries. The case put .forward by the prosecution is that on 8-8-1975

at about 6.00 p. m. the complainant Laxman (brother of the petitioner Shankarlal) was coming back to his house after cut-ing grass. On the way,

petitioners met him and assaulted him. The complainant Laxman lodged the first information report about this incident on 10-8-1975 at 100 p. m.

at the Police Station, Kunbhraj.

The defence of the petitioners was that there were strained relations between them and the complainant for the last twenty years on account of

agricultural land. They have not. committed any offence and have been falsely implicated.

On behalf of the prosecution, Dr. V. K. Jain (P.W. 1) Laxman (P.W. 2), Dr. C. S. Sharma (P.W. 3), Dharmraj (P.W. 4) and others were

examined. The Court found that the incident took place on 8-8-1975 at 6.00 p. m. The distance between the place of the occurrence and the

police Station is only seven miles. But, the first information report was not lodged immediately, but it was lodged after two days. It is submitted in

the petition that the explanation given by the complainant for this delay is false and cannot be accepted. I may mention here that the cause for the

delay as given by the complainant is that on the day when the incident took place, it was raining and, therefore, he could not make the report

earlier. Much stress was laid on this fact by the learned Counsel for the petitioners and it was contended by him that if the delay in lodging the first

information report is not explained properly, it will show that the first information report is not the correct version of the incident, but after taking

into consideration all the facts. It was lodged with an intention to implicate the petitioners. I will consider this submission when J decide the matter

on merits.

The trial Court has held on the basis of the statement of the Doctor that the petitioners have committed an offence u/s 325 IPC. Further it was

stated that Laxman (P.W. 2) is a truthful witness and. therefore, it has accepted the evidence given by Laxman IP.W. 2) who also is an injured

person. Lastly, it has given benefit u/s 360 of the Criminal P. C. to petitioner No. 1. because his age is sixty years.

In my opinion, the explanation given for lodging the first information report after two days is a lame excuse. It has not come in the evidence of the

complainant himself that it was not possible for him to reach the police Station which was at a short distance of seven miles from the place of

incident, immediately and he had to wait for about two days to reach the police station. The result of filing the first information report late is that no

reliance can be placed on the report which is lodged after an inordinate delay. It clearly shows that the complainant along with his witnesses,

thought over the matter and after seeing that the appellants are on inimical terms with them, they might have included their names in the first

information report. Curiously enough, the Prosecution has not examined the Investigating Officer in this case. If he would have been examined, the

accused party could have cross-examined on the point of delay. This clearly has prejudiced the defence of the petitioners. Further, the alleged

weapons of offence were also not recovered from any of the petitioners. Therefore, there is no direct evidence to connect the petitioners with the

alleged offence through the weapons of offence. Added to the.-;e facts. Laxman (P- W. 2) has admitted in his evidence that the relations between

the petitioners and Laxman are strained and these strained relations between the parties existed for the last so many years. If all these facts are

taken into consideration, in my opinion, it cannot be held that the petitioners were rightly convicted as having taken part in the alleged incident.

One more fact, I may mention here and that is that there are two witnesses who have become hostile and they have supported the story put

forward by the petitioners. The evidence of the hostile witness cannot be rejected outright because the prosecution has declared him hostile. If truth

can be taken out from the statement given by the hostile witness, the Court is competent to consider it.

Because of this, differing from the trial Court, I hold that the prosecution "had not proved their story beyond reasonable doubt that the appellants

have committed the crime.

Therefore, the result is that the revision is allowed. The conviction and sentence are set aside. Petitioner No. 2 is already on bail. His bail bonds

shall stand discharged. Bail bonds furnished by petitioner No. 2. as ordered by the trial Court shall also stand discharged.