

(1981) 02 MP CK 0012

Madhya Pradesh High Court (Gwalior Bench)

Case No: None

Shankarlal and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

**Date of Decision:** Feb. 5, 1981

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 360
- Penal Code, 1860 (IPC) - 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 I 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 (P.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 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.