

Nihal Singh Vs State Of Madhya Pradesh

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: July 12, 2018

Acts Referred: Indian Penal Code, 1860 " Section 34, 294, 323, 324, 442, 443, 452, 458
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 " Section 3(1)(x)
Code Of Criminal Procedure, 1973 " Section 161

Citation: (2018) 3 MPWN 61

Hon'ble Judges: Vivek Agarwal, J

Bench: Single Bench

Advocate: Sudha Shrivastava, B.P. Singh Chauhan, Nihal Singh

Final Decision: Allowed

Judgement

1. It is the contention of the counsel for the appellant that as per the prosecution story, incident had taken place in the intervening night on 25.04.2008

and 26.04.2008 when as per version recorded in the FIR, two persons; namely, the present appellant and his brother deceased Gajendra Singh had

entered into their house at night and had abused the complainant and his family members that they belong to Scheduled Caste community and had

beaten them with sword and stick causing severe injuries.Ã, FIR (Ex.P/4) was recorded registering Crime No. 324/2008 by the Police Station

Kotwali, District Vidisha under the provisions of Sections 452, 294, 323, 324 and 34 of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act 1989 (hereinafter shall be referred to as Atrocities Act).

2. During the trial, one of the accused Gajendra Singh died, therefore, order of conviction has been recorded only against the present appellant under

the provisions of Section 324 of IPC, wherein he has been sentenced with one year's R.I. and under Section 458 of IPC, wherein he has been

sentenced for five years' R.I. and fine of Rs. 3000/-. In default of fine further R.I. of one month. It is submitted that he was acquitted under the

provisions of Section 323, 294 of IPC as well as 3(1)(x) of Atrocities Act.

3. Learned counsel for the appellant submits that this a case of false implication with glaring contradictions in the testimony of the witnesses and

appellant has been falsely accused of house-breaking and of causing injuries to the complainant party. It is pointed out that as per the FIR (Ex.P/4),

which was recorded by Udham Singh (P.W.4), at night he had heard voice of somebody calling his son and when he had opened the doors then the

present appellant alongwith his brother Gajendra had entered into his house. Appellant was holding a sword and Gajendra Singh was wielding a

Danda. They abused them with castiest remarks and hurled other abuses and thereafter, Nihal Singh had caused injury with a sword, whereas

Gajendra Singh had hit him with a stick on the left knee and head, whereas his wife had sustained injuries in the fingers of left hand and left cheek. It

is mentioned that this attack was caused due to old enmity.

4. Learned counsel for the appellant has read the statement of Gulabbai (P.W.1) and has pointed out when her family was sleeping then somebody

pushed the door of their house and hurled abuses. When their guest Balram had opened the door of the house, then Gajendra Singh and Nihal Singh,

who are staying in their neighbourhood, had entered into their house hurling abuses on her and her husband. In her statements Gulabbai (P.W.1) has

stated that both the accused persons were carrying sword and Farsa in their hand. It is pointed out that this is the first contradiction in the statement

given by Gulabbai (PW.1), inasmuch as, as per the FIR appellant was holding sword and other accomplice was holding a stick. Then it is pointed out

that as per the FIR door was opened by Udham Singh, whereas as per the statement of Gulabbai (PW.1) door was opened by Balram.

5. It is further submitted that Gulabbai (PW-1) deposed that she has sustained injuries of a sword in her palm, rear side of her head, eyes and ears and

the persons had ran away after accomplishing to the incident and thereafter she had gone to the Police Station Kotwali to report the matter alongwith

her brother and her husband. It is pointed out that she has not reported that any injury was caused by any of the accused persons to Balram or to her

son Rajesh. It is also pointed out that as per the MLC (Ex.P/2) injuries caused to this witness Gulabbai (PW.1) were simple in nature caused by hard

and blunt object.Ã, There is no mention of any injury being caused by sword, which is a sharp cutting object. It is further submitted that it is an

admitted position that there was no electricity connection in the house and there was no public electricity pole in front of the house. She has also

admitted that she is not aware about the date of the incident and further in cross-examination she has admitted that in fact 5-6 persons had attacked

their house and 4-5 persons had entered into their house. It is pointed out that this is the material omission, inasmuch as in the FIR there is mention of

trespassing by only two persons in the house. Thus, benefit of doubt should be given to the present appellant, inasmuch as Gulabbai (P.W.1) is not a

reliable witness and also appears not to be an eye witness but a planted witness to the incident.

6. Learned counsel for the appellant has also read the statement of Rajesh (P.W.2), son of the author of the FIR. This witness had submitted that

because of fear he had ran away in the colony. It has also been deposed by him that door was opened by his maternal uncle Balram, which is

contradictory to the version of Udham Singh (P.W.4), who had expressed that door of the house was opened by him. It is further pointed out that

Rajesh has also deposed that several persons had attacked their house and four persons were standing outside their house and he could only recognize

Nihal Singh and Gajendra Singh and Gajendra Singh and four persons had entered into their house and had started beating them. In his

cross-examination, he has admitted that prior to his court statement, no statements were recorded by the police.

7. Udham Singh (P.W.4) has deposed that 5-6 persons had come to his house and Nihal Singh got the doors opened and had entered into his house

and he had beaten his son Rajesh with a sword and stick. This is a change in the version because Udham Singh (P.W.4) has deposed that Nihal Singh

was wielding a sword and other persons were standing outside the doors, whereas in the FIR he has mentioned that Nihal Singh and Gajendra Singh

entered and Gajendra was holding a stick. In para 3, it has been mentioned that his wife, son Rajesh and brother-in-law Balram as well as he himself

were attacked by sword, whereas Rajesh was not examined by any doctor and no MLC was carried out. Balram and Gulabbai sustained simple

injuries caused by hard and blunt object as can be seen from Ex.P/1 and P/2. It is further pointed out that Udham Singh (P.W.4) has mentioned before

the Court that the incident was seen by Jitendra Rajput and one Shri Yadav, who are living in the neighbourhood but are not willing to depose but this

fact was not disclosed in the FIR.

8. Learned counsel for the appellant has drawn attention of the Court to the spot map (Ex-P/5), which shows that incident had taken place at spot-A

and in the neighbourhood there is shop of Jitendra Rajput. On the other hand there is house of one Somat Ahirwar and across the Gali, there are

houses of Barfi Bai, Hemraj and Panditji. Police has not recorded the statement of any independent witness though there is house of Somat Ahirwar

belonging to the same community in the immediate neighbourhood

9. It is also pointed out that this witness has also admitted that he is not aware about the date and month of the incident. There is another contradiction,

inasmuch as in para 5, he has admitted that the door of the house was opened by his son Rajesh, whereas in the FIR he had reported that he had

himself, opened the door of his house. In para 6, there is an admission that prior to the present incident there was an incident of beating between

Nihal Singh and Gajendra Singh with brothers-in-law of the complainant Udham Singh, namely; Ghanshyam and Prem Singh. It is further submitted

that Dr. Sudhir Jain (P.W.3) in para 4 of his cross-examination has admitted that injured persons could have sustained such injuries due to fall from

motor cycle on a stony-place having broken glasses.

10 Learned Public Prosecutor on the other hand submits that incident has taken place and it is not a case of false acquisition. It is pointed out that FIR

was lodged immediately after the incident at 1.00 a.m. It is also submitted that there is a tendency to exaggerate and therefore if some of the

witnesses have narrated that there were 5-6 persons who had attacked their house, then that exaggeration should be brushed aside, inasmuch as such

regional tendency cannot be used to record any finding in favour of the appellant. It is also submitted that in the MLC of Udham Singh (P.W.4), there

is an incised wound over the knee and therefore, it is apparent that story of attack with sword cannot be discarded. It is further submitted that old

enmity has not been proved and therefore, it cannot be said to be a case of false acquisition. In view of such submissions, learned Public Prosecutor

prays for maintaining the conviction as has been handed over by the learned Special Judge, Atrocities, Vidisha.

11. After going through the evidence and the documents, which are available on record, few things are apparent. Statements under Section 161 of

Cr.P.C. were not recorded for Udham Singh and Balram. No independent witnesses from the neighbourhood were examined. It has been admitted by

all the witnesses that they had old acquaintance with the appellant and another co-accused, who has died, because they are residents of same colony.

Another material fact, which has been admitted by all the prosecution witnesses, who have been cross-examined as eye witnesses, is that they

admitted the fact of old enmity with the present appellant. It is also admitted by Udham Singh (P.W.4) that an incident had taken place between the

appellant and his brother on one hand and his brothers-in-law Ghanshyam and Prem Singh on the other hand. The injuries, which have been described

have not been corroborated with medical evidence. Except for a minor simple injury, there is no grave injury caused by any sharp cutting weapon.

12. There is improvisation and inconsistency in the prosecution story, inasmuch as in the FIR, Udham Singh (P.W.4) has mentioned that he had

opened the door when his son was called by somebody, whereas in the deposition he has mentioned that door was opened by his son Rajesh, whereas

other two witnesses Balram and Gulabbai have deposed that door was opened by Balram, which establishes that Gulabbai and Balram are not eye

witnesses.

13. There is another contradiction, inasmuch as Gulabbai has deposed that 5-6 persons had come at night. This is corroborated by Rajesh (P.W.2) and

Udham Singh (P.W.4) but no reason has been given for not giving their details in the FIR. Prosecution has not given any reason for not examining any

independent witnesses. Further when there is no source of light, as has been admitted by the witnesses, either in the house of the complainant or on

the street outside, then how they could recognize the appellant in darkness is the grey area, which is not been explained by the prosecution. Dr.Sudhir

Jain (P.W.3) has admitted that such injuries, which are of simple in nature, could have been caused by falling from motor cycle.

14. There is another contradiction that in the FIR it is mentioned that Nihal Singh and Gajendra Singh had entered in the house, whereas in the

deposition Gulabbai (P.W.1) has submitted that all the persons had entered their house, whereas Udham Singh (P.W.4) has mentioned that only Nihal

Singh had entered into his house and others were standing outside the house.

15. In view of such facts and also admission of Gulabbai (P.W.1), Rajesh (P.W.2), and Udham Singh (P.W.4) about old enmity with the appellant and

further admission of Udham Singh (P.W.4) that two days prior to the present incident, an incident of beating had taken place between the present

appellant and his brothers-in-law Prem Singh and Ghanshyam, the prosecution has failed to prove the case beyond doubt and therefore, the accused

person is entitled to benefit of doubt. Prosecution has failed to make out a case of house trespassing/lurking house trespassing so to constitute an

offence under Section 442 or 443 of IPC. Similarly, prosecution has failed to prove the charge of voluntarily causing hurt by dangerous weapons or

means specially when neither any sword has been seized nor any stick has been seized from the possession of the appellant or his brother. In view of

such facts, prosecution has failed to prove the case as developed by them and the whole story is doubtful. Prosecution witnesses have presented a

very contradictory picture and their testimony is not corroborated by the medical evidence on record. False accusation on account of previous enmity

cannot be ruled out. Hence, the appeal is allowed and the appellant is acquitted from the charges. Appellant is in jail. He be released forthwith if not

required in any other case.