
(2005) 05 RAJ CK 0044
In the Rajasthan High Court
Case No : Criminal Appeal No. 560 of 1999

Abdul Zabbar and Another	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 15-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 324

Citation : (2005) 4 RLW 2395

Hon'ble Judges : Shiv Kumar Sharma, J; J.R. Goyal, J

Bench : Division Bench

Advocate : Biri Singh Sinsinwar, N.C. Choudhary, S.S. Hasan, Kamendra Sihag and Abdul Wahid Naqvi, for the Appellant; Brahmanand Sandhu, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellants, three in number, were placed on trial before the learned Special Judge, Special Court (Communal Riots and Man Singh Murder Case) Jaipur in Sessions Case No. 1/1997. Learned Judge vide judgment dated September 7, 1999 convicted and sentenced the appellants as under:

1 Abdul Mannan, (2) Afzal and (3) Abdul Zabbar:

Under Section 302/149 IPC:

Each to suffer imprisonment for life and fine of Rs. 5000/-, in default to further suffer six months simple imprisonment.

Under Section 324/149 IPC:

Each to suffer rigorous imprisonment for one year.

Under Section 148 IPC:

Each to suffer rigorous imprisonment one year.

Under Section 449 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs. 1000/-, in default to further suffer three months simple imprisonment.

All sentences were directed to run concurrently.

2. The prosecution case as unfolded during trial is that on December 9, 1992 informant Satya Narayan (PW.7) submitted a written report with the Police Station Malpura stating therein that on the said day at 11.15 AM an unruly mob came from the side of Hathai and members of the mob started throwing stones towards the house of informant. Few members of the mob entered the house from back side and attacked the informant. Afzal, Mehboob, two brothers of Noor Tractorwala, Syed Zabbar Ahmed Tractorwala, Abdul Mannan, Hanif, Islam, Bada Bhaiya were the members of the mob armed with knives, Pharsi, Sword and Lathis. They inflicted injuries with Sword, lathis and Pharsis on the person of Govind Narayan, the father of informant. Hari Narayan, the uncle of the informant was also beaten up with Sword and Pharsi. Govind Narayan and Hari Narayan were recovered to the hospital where they were declared dead. Police Station Malpura registered a case under Sections 147, 148, 149, 452,, 336 and 302 IPC and investigation commenced. Initially on completion of investigation charge sheet was filed only against accused Hanif and Mehboob. Learned Special Judge (Communal Riots & Man Singh Murder Case) Jaipur proceeded with the trial of the case bearing Sessions Case No. 1/1994 and acquitted Hanif and Mehboob vide judgment dated August 12, 1997. The investigating officer thereafter filed another charge sheet against three appellants and two other accused Firoz and Anwar. The Learned trial Judge vide order dated March 21, 1998 discharged co-accused Firoz and Anwar. The trial against the three appellants was however proceeded. Charges under Sections 449, 149, 302 alternatively 302/149 and 324 and 324/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 7 witnesses. In the explanation u/s 313 Cr.P.C., the appellants claimed innocence and examined four witnesses in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the arguments of learned Counsel for the appellants and learned Public Prosecutor and gone through the entire evidence on record. Before we deal with the contentions raised, it will be appropriate to take stock of the injuries sustained by the deceased.

4. As per postmortem report (Ex.P-4) deceased Hari Narayan sustained following ante mortem injuries:

1. Lacerated wound 3" x 2/10" inj. bone deep-depressed of left parietal bone-bleeding placed obliquely.

2. Lacerated wound 3 1/2" x 2/10" with depressed of Rt. parietal bone post and

ant. With bleeding and brain matter coming out of it.

3. Incised wound 3" x 2/10" x 1/2 on Lat. Aspect of left upper fore arm near shoulder joint placed obliquently going downward with bleeding.

The cause of death in the opinion of Doctor Chandra Prakash (PW.2), who performed autopsy on the dead body, was neurogenic shock due to injury to vital organ brain.

5. As per postmortem report (Ex.P-5) deceased Govind Mahajan sustained following ante mortem injuries:

1. Incised wound 4" x 2/10" inj. bone deep cutting bone and membrane of brain and brain matter coming out going vertically going 1/2" into brain matter both hemispheres placed obliquely in the middle of scalp with bleeding present both edges and margin were sharp.

2. Lacerated wound 3" x 1/4" inj. Bone deep (torn) of bone on the middle of upper fore head placed obliquely going towards Rt. side above eye brow with echynosis of Rt. eye with depressed of bone Rt. frontal bone.

3. Bleeding from Rt. internal ear.

The cause of death in the opinion of Doctor Chandra Prakash (PW.2), who performed autopsy on the dead body, was haemorrhage and neurogenic shock due to brain injury and bleeding all the inj.

6. Informant Satya Narain (PW.24) vide injury report (Ex.P-7) sustained following injuries:

1. Incised wound 1/2" x 1/10" on the post aspect of Rt. middle finger near nail bed.

2. Incised wound size 3/4" x 1/10" x 1/4" on Lat. aspect of Rt. hand in between the Index finger and thumb.

3. Bluish black bilister size 1/4" x 1/10" on the post of left Index finger middle.

4. Abrasion size 1/10" x 1/10" on the post aspect of left hand at the base of middle finger with swelling in an area 1" x 1" around of it.

5. Abrasion size 1" x 1/2" on the post aspect of left fore arm 2" above wrist joint.

6. Abrasion size 1" x 1/2" x 1" x 3/4" on the lat. Aspect of left upper forearm 2" below shoulder joint.

7. The super structure of the prosecution case is founded on the testimony of Mahesh (PW.4), Kanhaiya Lal (PW.5) and Satya Narayan (PW.7). A look at the judgment dated August 12, 1997 rendered in Sessions Case No. 1/94 demonstrates that while acquitting co-accused Hanif and Mehboob, learned trial Judge disbelieved the evidence of Mahesh, Kanhaiya Lal and Satya Narayan and observed that they were not the witnesses of sterling worth. The said judgment

of learned trial Judge was affirmed by the High Court. Placing reliance on the judgment of learned trial Judge, it is contended on behalf of the appellants that since the evidence of Mahesh (PW.4), Kanhaiya Lal (PW.5) and Satya Narayan (PW.7) did not inspire confidence qua the co-accused Hanif and Mehboob it could not be relied upon against the appellants. The contention of learned Counsel for the appellants is that acquittal of co-accused Hanif and Mehboob in separate trial is a relevant fact and the judgment dated August 12, 1997 rendered Sessions Case No. 1/94 is admissible in evidence.

8. We find no merit in these submissions. In our opinion a person could be convicted of aiding and abetting an offence even though the principal offender had been acquitted on the same evidence in the earlier trial. The outcome of an earlier trial is irrelevant and inadmissible since it is the opinion of another judge in a different trial. In *Hui Chi ming v. R* (1991) 3 All England Law Reports 897) it was held that in the absence of some exceptional feature, such as the effect of an acquittal on the credibility of a confession or the evidence of a prosecution witness, evidence of the outcome of an earlier trial arising out of the same transaction was irrelevant and therefore inadmissible since the verdict reached by a different jury, whether on the same or different evidence, in the earlier trial amounted to no more than evidence on the opinion of that jury. Moreover, a person could properly be convicted of aiding and abetting an offence even though the principal offender had been acquitted. Accordingly the trial judge had rightly excluded the evidence of the principal offender's acquittal of murder and conviction of manslaughter.

9. That takes us to the evidence of the eye witnesses examined at the trial. Coming to the testimony of Mahesh (PW.4) we notice that in his examination in chief he deposed that a mob of around 70 persons of muslim attacked the house of Govind Narayan, but he could identify only Mehboob, Hanif and Zabbar. He however could not identify Afzal and Mannan. In his cross examination Mahesh stated that he did not narrate the incident to anybody for 5-7 days. He did not go to jail or other place for the purpose of identification of accused. Kanhaiya Lal (PW.5) deposed that a mob of 60-70 persons belonging to Muslim community entered the house of Govind Narayan. He could identify Afzal, Kadir, Islam, Bada Bhaiya, two brothers of Noor Tractorwala, Zabbar Tractorwala, Mannan, Hanif and Mehboob. In the cross examination he however stated that he did not narrate the names of these persons to police. Satya Narayan (PW. 7) in his deposition stated that a mob of 60 persons attacked the house. Afzal, Mota Lakhara, Hanif, Mehboob, Zabbar Ahmed Tractorwala were the members of the mob. He could not say as to who inflicted the injury on his person. This witness was declared hostile by the prosecution. He could not identify Abdul Mannan in the court. Having closely scrutinised the evidence of Mahesh, Kanhaiya Lal and Satya Narayan we are of the opinion that element of consistency is missing from their testimony. A thorough and scrupulous examination of the facts and circumstances of the case leads to an irresistible and inexplicable conclusion that the prosecution has not established the charge levelled against all the three accused

by producing cogent, reliable and trustworthy evidence. Testimony of Mahesh (PW.4), Kanhaiya Lal (PW.5) and Satya Narayan (PW.7) is ambulatory and vacillating and it is not safe to rely upon. Variations, infirmities, additions and embellishments in the evidence of these witnesses are of such nature that could undermine the substratum of the prosecution case. The prosecution could only able to establish that an unruly mob of Muslims attacked the house of deceased but it could not prove beyond reasonable doubt that the three appellants were the members of unruly mob and they inflicted injuries. On examination of testimony of these three witnesses Mahesh (PW.4), Kanhaiya Lal (PW.5) and Satya Narayan (PW.7) from the point of view of trustworthiness we find it untruthful. Learned trial judge in our opinion did not properly appreciate the prosecution the evidence and committed illegality in convicting and sentencing the appellants.

10. For these reasons we allow the instant appeals and set aside the judgment dated September 7, 1999 of the learned Special Judge Shri G.C. Sharma, Communal Riots & Man Singh Murder Case, Jaipur, in Sessions Case No. 1/1997. We acquit the appellants Abdul Zabbar, Afzal and Abdul Mannan of the charge under Sections 148, 302/149, 324/149 and 449 IPC. The appellant Abdul Mannan is on bail, he need not surrender and his bail bonds stand discharged. The appellants Abdul Zabbar and Afzal, who are in jail, shall be set at liberty forthwith, if not required to be detained in any other case.