
(2010) 08 AHC CK 0072
In the Allahabad High Court
Case No : Criminal Revision No. 1873 of 1987

Dinesh Chandra Pachauri

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 313
Penal Code, 1860 (IPC) — Section 147, 149, 307, 324, 395

Citation : (2011) CriLJ 544 : (2011) 8 RCR(Criminal) 430

Hon'ble Judges : Ram Aautar Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Aautar Singh, J.—This criminal revision has been directed against the judgment and order dated 2.9.1987 passed by VI Additional Sessions Judge, Kanpur in S.T. No. 318 of 1986 State v. Ashok Kumar and Ors., under Sections 147/440, 324/149, 307/149/ 395 & 307 I.P.C., P.S. Panki, District Kanpur Nagar, by which the Respondent Nos. 2 to 6 have been acquitted of the charges levelled against them.

2. I have heard Shri B.N. Singh, learned Counsel for the revisionist and learned A.G.A. for Respondent No. 1 on this revision and perused the record. None has appeared on behalf of Respondent Nos. 2 to 6 to oppose this revision.

3. The learned Counsel for the revisionist has contended that the learned Sessions Judge has committed illegality in holding that the F.I.R. is highly delayed and the complainant in consultation with his counsel explained the delay in lodging the F.I.R. by disclosing the facts that the police of the said police station with a view to screen the offenders did not lodge the report and consequently he had to send his application to S.S.P., Kanpur Nagar, on the basis of which the F.I.R. was lodged and the case was investigated. It is further contended that the learned Sessions Judge has not taken into consideration the material facts of non existence of any report lodged by accused persons, while

they attempted to conceal the real story but the learned Sessions Judge recorded findings in routine manner. The accused persons in their statements recorded u/s 313 of Code of Criminal Procedure failed to state that they caused injuries to the complainant in their self defence, meaning thereby accused persons did not take plea of self defence.

4. The learned Counsel for the revisionist has also contended that the learned Sessions Judge has acquitted the accused persons merely on the ground that the prosecution failed to explain the injuries of the accused persons, but he did not take into consideration, the time of medical examination of the complainant and the accused persons. The complainant and accused persons were medically examined during the interval of one hour and accused persons were taken to the hospital by the police constable after the examination of the complainant. The learned Sessions Judge did not record the findings to this effect that accused persons received the injuries during the course of same transaction. Unless it has been found by the court below that the injuries of the accused persons were result of the same transaction, the Sessions Judge could not give the benefit of non-explanation of the injuries by the prosecution. Moreover, it is not the law of criminal jurisprudence that in every case where the injuries are of trivial in nature, it is bounden duty of the prosecution to explain the injuries of the accused persons, but the learned Sessions Judge has not considered this aspect of principle of law. It has further been contended that the motive for commission of offence is important one and the Hon'ble Supreme Court in so many cases has held that in absence of any cogent motive the whole prosecution story cannot be thrown away and the learned Sessions Judge has committed gross illegality in appreciation of evidence.

5. The reliance has been placed on behalf of the revisionist on decision of Hon'ble Apex Court rendered in *Raj Pal and Anr. v. State of Haryana* (2007) (2) JIC 821 : AIR 2007 SCW 2643, wherein the following principles of law as given below has been laid down.

20. While there is no absolute rule that merely because the prosecution has failed to explain the injuries on the accused ipso facto the prosecution case should be thrown out, the non- explanation of the injuries on the accused is certainly an important circumstance which has to be taken into consideration by the Court in deciding whether the benefit of doubt should go to the accused. In *Bishna @ Bhiswadeb Mahato and Others Vs. State of West Bengal*, the entire law on the point has been discussed in great detail, and hence it is unnecessary to repeat it here.

21. The injuries on the accused include an injury on the head, which is a vital part of the body. Ordinarily self-inflicted injuries are on non-vital parts. The injury on the head of the accused Jai Pal required stitches. It is difficult to believe that this was self-inflicted. Moreover, in the present case, as noticed above, there are very important discrepancies in the prosecution version. It is true that minor discrepancies will not necessarily lead to the rejection of the prosecution case,

but when there are major discrepancies and unexplained injuries on the accused it is an important factor to be taken into account.

6. The learned Counsel for the revisionist has also relied on decision of Bishna @ Bhiswadeb Mahato and Others Vs. State of West Bengal, wherein the Hon''ble Apex Court has laid down the principle relating to injury of the accused, which is reproduced below:

52. The fact as regards failure to explain injuries on accused vary from case to case. Whereas non-explanation of injuries suffered by the accused probabilises the defence version that the prosecution side attacked first, in a given situation it may also be possible to hold that the explanation given by the accused about his injury is not satisfactory and the statements of the prosecution witnesses fully explain the same and, thus, it is possible to hold that the accused had committed a crime for which he was charged. Where injuries were sustained by both sides and when both the parties suppressed the genesis in the incident, or where coming out with the partial truth, the prosecution may fail. But, no law in general terms can be laid down to the effect that each and every case where prosecution fails to explain injuries on the person of the accused, the same should be rejected without any further probe. (See Bankey Lal and Others Vs. State of U.P., and Mohar Rai and Bharath Rai Vs. The State of Bihar,

7. A perusal of the record goes to show that the revisionist complainant Dinesh Chandra Pachauri lodged an F.I.R. at PS. Panki with this allegation that he had a Kachcha hut in which he used to tie his buffalo and goats and earlier to 23.6.1985 he started to construct a room over the said land of hut. On 23.6.1985 at about 10.30 a.m. in the day, while the work was in progress, the accused Ashok Kumar, Ram Gopal, Jamuna Prasad, Ram Kishore sons of Badri Prasad and Manoj Kumar son of Ram Kishore as well as Badri Prasad son of Raja Ram reached the spot and started to abuse and beat the complainant and also demolished the wall. The accused persons also took away three spades, two buckets, two taslas and one aluminimum dibba and during this incident wrist watch fell down, which was also taken away by Jamuna Prasad. Manoj had given a teeth bite on the chest of the complainant and on left side of back. The accused persons also tried to strangulate the complainant with the help of angauchha with this warning that he would be killed. The complainant then raised alarm at which his brothers Sri Kishan Pachauri, Ramesh Chandra Pachauri, Ganesh Shanker and Pramod reached the spot, at which the accused persons "fled away from the spot. The complainant went to lodge a F.I.R. at police station but instead of lodging his F.I.R., he was arrested by the police under Sections 107/116 of Code of Criminal Procedure, however, he was sent for medical examination to Kalyanpur Hospital and thereafter he was released on bail. The complainant then sent an application to the S.S.P., Kanpur Nagar, on the basis of which the F.I.R. was lodged and investigation was conducted and on completion of investigation the police submitted charge-sheet. Thereafter the accused persons were committed to the Court of Sessions for trial. The learned Sessions

Judge framed the charges under Sections 147, 440, 324 read with Sections 149, 307 I.P.C. read with Sections 149, 395 and 307 I.P.C., to which they pleaded not guilty and claimed to be tried.

8. It further transpires from the record that in order to prove the charges against the accused, the prosecution examined P.W.1 Dinesh Chand Pachauri,; PW.2 Ramesh Chand, P.W.3 Ganesh Shanker, P.W.4 Constable Ram Sumer Verma, PW.5 Dr. V.K. Srivastava and PW.6 S.I. Lallooji Dubey in all. In view of medical evidence, 14 injuries including lacerated wound, abraded contusion and other types of contusion were found on the body of P.W.1 Dinesh Chand Pachauri. The doctor also examined the injuries of accused Manoj Kumar on the Same day and found lacerated wound, contusion and traumatic swelling on his body. He also examined accused Ashok Kumar on the same day and found six injuries including lacerated wound and contusions on his body. The doctor proved injuries of accused persons in his cross-examination.

9. The learned trial court also observed that the injuries of accused Manoj Kumar and Ashok Kumar could not be said to be self inflicted which were also found quite serious in nature and the accused persons had also been taken to hospital by same constable but still the complainant or any other witness did not attempt to explain the above injuries caused to the accused persons and instead of it they stated that no injury was inflicted by them nor they had seen above injuries on their person, while they had been taken to hospital along with him. The learned trial court observed that this prosecution evidence would lead to the conclusion that they did not want to tell the truth and they made every effort to conceal the real and correct version of the occurrence.

10. The learned trial court also observed that if was found to be proved on the basis of evidence on record that application (F.I.R.) was drafted in consultation with the lawyers after the complainant was released on bail. The contents of such type of F.I.R. could not said to be true version of prosecution story.

11. It transpires from the record that P.W.5 Dr. V. K. Srivastava also examined accused Manoj Kumar brought by constable Munna Singh of P.S. Panki on 23.6.1985 and found following injuries on his person.

1. Lacerated wound 2 1/2" x 1/2" x bone deep on the left side of head 3" above the left ear. It was bleeding and oblique.
2. Contusion 3" x 1 1/2" on the back of the left ear colour red.
3. Traumatic swelling 2" x 1" on the right shoulder joint.

Dr. V.K. Srivastava also examined accused Ashok Kumar on the same day and found following injuries on his person.

1. Lacerated wounds 1" x 1 1/4" x bone deep on the left side of forehead 1 1/2" above the right eyebrow. The margins of the wound were erased and laceration and the bleeding was present.

2. Lacerated wound 1/2" x 1/10" x skin deep on the left side of head 5" above the left ear. The injuries were oblique and bleeding.

3. Contusion 4" x 1" on the middle of the right arm on the outer side colour red.

4. Contusion 1 1/2" x 1" on the left forearm upper part on the back side colour red.

5. Contusion 6" x 1" on the back of the left shoulder colour red.

6. Contusion 2" x 1" on the left side of back colour red. All the injuries were simple and caused by blunt weapon and were fresh. The doctor has proved these injury reports as Ext. Kha. 1 and Kha.2.

12. The medical evidence found on record leads to the conclusion that the complainant also caused injuries to above accused persons, namely, Manoj Kumar and Ashok Kumar, who sustained injuries on their head and forehead, which were found vital parts. These injuries of Manoj Kumar and Ashok Kumar cannot be said to be self inflicted because in normal course no one would sustain injuries on his own vital parts. These injuries sustained by above accused persons are found serious in nature and these accused persons were also brought by the same constable to hospital for their medical examination, but the prosecution failed to explain these injuries of the accused persons. All the prosecution witnesses categorically stated that no injuries were caused to above accused persons nor they had seen the said injuries on their person, while they had been taken to hospital along with the complainant for medical examination. This type of attitude of the complainant leads to the conclusion that he did not want to tell the truth in the court and he tried to conceal the real and correct prosecution story. Under these circumstances the prosecution version has not been proved beyond, all reasonable doubts, when injuries of the, accused persons have not been explained by the prosecution witnesses. The learned trial court has rightly disbelieved the prosecution story, because the prosecution witnesses have not come with clean hands and put a different story than what, in fact, happened.

13. In several cases where the prosecution has failed to explain the injuries on the person of the accused, two results would follow, (i) either the evidence of the prosecution witnesses is untrue or (ii) that the injuries on the person of the accused probabilities the plea of self defence taken by the accused persons. In such event the benefit of doubt would go to the accused and the prosecution story cannot be believed as it has been produced in court.

14. The learned trial court has rightly observed that motive is very important ingredient which is missing in this case of physical assault, while no motive has been alleged by the prosecution either in written report or in the evidence. The entire evidence on record and circumstances would further lead to the conclusion that the prosecution has failed to prove the charges against the accused persons on the basis of evidence on record beyond all reasonable doubts. The findings

recorded by the trial court cannot be said to be perverse. The trial Court has not committed any illegality or irregularity in passing the judgment and order in this case.

15. Consequently, this revision lacks merit and is dismissed.