
(2011) 03 RAJ CK 0066

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 287 of 1995

Hari Singh

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 228(1), 313
Penal Code, 1860 (IPC) — Section 307, 324, 325, 326, 34

Citation : (2011) 3 Crimes 276

Hon'ble Judges : Kailash Chandra Joshi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kailash Chandra Joshi, J.—This criminal revision petition has been filed against the judgment of the learned Special Judge, NDPS Cases, Jodhpur dated 14.09.1995 passed in Criminal Appeal No. 22/1995, by which the learned appellate court dismissed the appeal of the present Petitioner while affirming the judgment of conviction and order of sentence dated 20.07.1995 passed by learned Chief Judicial Magistrate, Jodhpur in Criminal Case No. 224/1983, whereby the learned trial court convicted Petitioner Hari Singh for the offence u/s 326 IPC and awarded the sentence of two years" rigorous imprisonment alongwith a fine of Rs. 2000/- and in default of payment of fine, further to undergo three months" simple imprisonment.

2. The incident in this case happened as early as on 16.07.1982, when it is alleged that injured Smt. Bhagwati, the wife of the Petitioner, sustained injuries on her body including a grievous injury on her hand. She was admitted in a private hospital and then she was moved to Mahatma Gandhi Hospital, Jodhpur, where statement of her brother Arjun Singh was recorded by the Investigating Officer. Earlier the statement of Smt. Bhagwati was recorded by Shri Jethmal, Incharge Out Post Jaswant Sarai Police Station Sardarpura and later on the Station House Officer of the Police Station Mathania recorded her statement. On

the basis of that statement of Smt. Bhagwati, police registered a case bearing First Information No. 47/1982 u/s 307 and 326 IPC. After usual investigation, charge-sheet was filed in the court of Munsif and Judicial Magistrate, Osian against three persons including the present Petitioner u/s 307, 326, 325 and 324 IPC and the case was committed to the court of Sessions. The learned District and Sessions Judge, Jodhpur remanded the case for trial to the learned Chief Judicial Magistrate, Jodhpur u/s 228(1) CrPC.

3. Accused-Petitioner Hari Singh was charged for the offence u/s 324/34, 325/34 and 326 IPC and Devaram and Smt. Chuki were charged for the offence u/s 324/34, 325/34 and 326/34 IPC. After examination of the prosecution witnesses, the learned trial court examined the accused u/s 313 Code of Criminal Procedure while putting the incriminating evidence adduced against them for their explanation. The accused in their defence examined D.W.1 Jethmal. After hearing both the parties, the learned trial court acquitted Smt. Chuki and Devaram from the charges levelled against them and by the judgment and order dated 20.07.1995 convicted accused-Petitioner Hari Singh for the offence u/s 326 IPC and awarded sentence to him as indicated above. The learned appellate court while affirming the judgment of conviction and order of sentence, dismissed the appeal of the present Petitioner and being aggrieved of that, the present revision petition has been filed.

4. While assailing the judgment of the learned trial court and learned Appellate Court, counsel for the Petitioner contended that the learned trial court in its judgment at Page 8 appreciated that P.W. 12 Dharmendra Sharma who stated in his cross examination that injuries on the amputated hand were not caused by sharp edged weapon because the bones were found broken in irregular manner and he further stated that the injury on the hand was caused by blunt weapon but the learned trial court presumed that there might have been some interruption by someone.

5. Learned Counsel for the Petitioner further contended that it was not stated in the First Information Report that the injury was caused to Bhagwati by present Petitioner Hari Singh and she while improving her earlier version i.e. in the later statement recorded u/s 161 of the Code of Criminal Procedure she stated that Hari Singh caused the injury by "JHARBAR" whereas in first version recorded by the police it has been stated by Bhagwati that she sustained injury from the belt of water machine and learned Counsel for the Petitioner further stated that the statement of PW 1 Bhagwati has not been corroborated by any of the witnesses and all the other witnesses were declared hostile and Dr. Jagdish Jugtawat who observed that the injuries on the body of P.W. 1 Bhagwati has not been examined during the course of trial and further learned trial court also came to the conclusion that amputated hand which was recovered from the well cannot be said to be the right hand of P.W. 1 Bhagwati. Learned Counsel for the Petitioner also contended that Investigating Officer who recovered amputated right hand has not been examined and further the recovery of weapon has not been proved by the

Investigating Officer, therefore, in these circumstances when there is material improvement in the statement of injured and the same has not been corroborated by any of the witnesses, the testimony of the injured complainant cannot be believed. Learned Counsel for the Petitioner cited the judgment of Hon"ble Supreme Court in the matter of Dr. Sunil Kumar Sambhudayal Gupta v. State of Maharashtra reported in 2011 Cri.L.J. (SC) 705 in support of his argument. Wherein the Hon"ble Apex Court held that complainant in the FIR and in the statement recorded u/s 161 of the Code of Criminal Procedure has not disclosed certain facts to examine the prosecution case first time before the court such version is liable to be discarded and also held that the omission which amount to contradictions in material particulars i.e. go to the root of the case/ materially affect the trial or core of the prosecution"s case render testimony of the witness liable to be discredited.

6. Per contra learned Public Prosecutor vehemently defended the judgment of learned trial court as well as of the appellate court.

7. I have pondered over the arguments advanced by both the parties and also perused the evidence recorded during trial and the judgment of the learned trial court as well as of the learned Appellate Court. During the course of trial, prosecution examined 12 witnesses. Out of which the version of prosecution has been corroborated by only PW 1 Bhagwati and rest of the witnesses P.W. 2 Shantigopal Sinha, P.W. 3 Kumari Paina Peter, P.W. 4 Bhim Singh, P.W. 6 Luna Ram, P.W. 8 Amaan Singh have been declared hostile because they did not corroborate the prosecution story.

8. P.W. 12 Dr. Dharmendra Sharma who examined the decomposed right hand stated in his cross examination that injuries on the above amputated hand could be caused only by blunt weapon. Further the Investigating Officer and Dr. Jagdish Jugtawat observed the injuries, on the body of P.W. 1 Bhagwati, have not been examined by the prosecution during the course of trial. To prove the recovery of the weapon of offence, Investigating Officer who recovered the weapon of offence has not been examined and another witness of recovery of weapon of offence is P.W. 4 Bhim Singh has not corroborated the fact of recovery of "Jharbar".

9. In view of the above fact of appreciation of the evidence made by the learned trial court which was affirmed by the learned Appellate Court does not seem to be proper and the reliance placed by the learned trial court as well as by the learned Appellate Court on the testimony of P.W. 1 Bhagwati cannot be said to be proper because P.W. 1 Bhagwati in her first version Ex.D-2 did not attribute any injury to Petitioner Hari Singh. The evidence of P.W. 1 Bhagwati does not inspire any faith in view of the non-corroboration of the prosecution story by any of the witnesses and moreover the prosecution has not examined the Doctor who examined the injuries on the body of P.W. 1 Bhagwati and the Investigating Officer who recovered the amputated hand and the weapon of offence has also not been examined by the prosecution and there is material contradiction in the first

version recorded as Ex.D-2 by the police and the later version of the same witness and the evidence adduced during the course of trial, therefore, the evidence of P.W. 1 Bhagwati cannot be relied upon and in the absence of P.W. 1 Bhagwati no other evidence is available against the accused so as to prove the offence u/s 326 IPC.

10. In the result, the revision petition filed by the Petitioner Hari Singh is allowed and the judgment and order of conviction passed by the learned trial court as well as of the learned Appellate Court is set aside and the accused Petitioner is acquitted for the offence u/s 326 of the IPC.