
(2017) 08 MP CK 0020
In the Madhya Pradesh High Court
Case No : 2708 of 1997

MUNICIPAL CORPORATION JABALPUR	APPELLANT
Vs	
MANOJ PATEL	RESPONDENT

Date of Decision : 17-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 385](#), [Section 386](#), [Section 374\(2\)](#)
a> - Procedure for hearing appeals not dismissed summarily - Power of the Appellate Court - Appeals

Citation : (2017) 08 MP CK 0020

Hon'ble Judges : Sushil Kumar Palo

Bench : Single Bench

Advocate : Dilip Shrivastava

Final Decision : Allowed

Judgement

1. Law clearly expects the appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial Court in the judgment but by cross-checking the reasoning of the evidence on record. It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place, when the appeal is posted for hearing. This is the requirement of the Code of Criminal Procedure on a plain reading of sections 385-386 of Cr.P.C.
2. The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent. In the case of Bani Singh and Others Vs. State of U.P., AIR 1996 SC 2439, the Apex Court while dealing with Section 386 of Cr.P.C held that when appellant and his lawyer are absent on appointed for hearing, the Court is not bound to adjourn the case, but should dispose of appeal on merits. The dismissal of appeal simpliciter for non-prosecution is not contemplated.
3. In a similar case of K.S. Panduranga Vs. State of Karnataka, 2013 Cr.L.J 1665 the Apex Court has held that it cannot be said that the Court cannot decide a

criminal appeal in the absence of the counsel for the accused, even if the counsel does not appear deliberately or shows negligence in appearing.

4. This criminal appeal is pending since 1997, but none appeared on behalf of the appellant. Therefore, in view of aforesaid enunciation of law, the appeal is being decided.

5. This appeal has been preferred by the appellant- Gorelal under Section 374 (2) of Cr.P.C challenging the judgment dated 19.12.1997, passed by 1st A.S.J, Chhatarpur, in S.T. No. 175/1993, wherein the appellant has been convicted for offence under Section 325 of I.P.C and sentenced to two years rigorous imprisonment with fine of Rs.1,000/- and in default of fine further rigorous imprisonment for six months.

6. It is not disputed that the accused persons are known to Puran (PW 1), Premchand (PW 2), Ramlal (PW 3) and Heera Bai (PW 8).

7. The prosecution case in brief is that complainant Puran (PW 1) along with his wife Heera Bai (PW 8) and his son were planting ???Singhara.??? The accused/appellant Gorelal, his sister Munni and mother Rambo Bai stopped the complainant to plant ???Singhara.??? The complainant Puran (PW 1) when did not pay any heed to the accused Gorelal, he inflicted injury on his head by means of wooden stick (danda). Puran (PW 1) sustained injuries and blood came out. His wife and son also received injuries caused by co-accused Rambo Bai and Munni. They also abused the complainant by obscene words. They even threatened the complainant. Thereby criminal intimidation was caused. Shankar Dheemar and other persons came to save the complainant. The complainant then went to Police Chauki Matguma and lodged report. They were sent to hospital for medical examination. The wife of complainant- Heera Bai (PW 8) and son- Premchand (PW 2) received simple injuries whereas the complainant Puran has received grievous injury.

8. After due investigation, charge sheet has been filed under Sections 294, 323 / 34 506-B, 325 and 307 of I.P.C. The appellant and accused Rambo Bai and Munni abjured guilt. According to them, the complainant Puran, on the instigation of Ramlal and Ramsahay, has given the false evidence. The land in which the complainant- Puran was cultivating ???Singhara,??? was cultivated by the appellant/accused in the previous years. The appellant is innocent. The appellant has been falsely implicated.

9. Learned trial Court after having adduced the prosecution evidence has acquitted all the accused person for offence under Sections 294, 323 / 34, 506-B, 307/34 of I.P.C . But has convicted the appellant Gorelal for offence under Section 325 of I.P.C and sentenced as aforementioned. The co-accused Rambo Bai and Munni Bai were given the benefit of doubt and have been acquitted, for offence under Section 325 of I.P.C.

10. The appellant has assailed the judgment impugned on the ground that the

appellant is innocent. The conviction of appellant is bad in the eyes of law. The prosecution has failed to prove the offence beyond reasonable doubts. There are numbers of contradictions, omissions and improvements. Hence, no implicit reliance can be placed on their testimony. There is no corroboration of any eyewitness. Witness- Shankar Dheemar has not been examined. Heera Bai (PW 8) and Premchand (PW 2) were examined after a lapse of a long time. The trial Court acquitted Munni Bai and Rambo Bai. The appellant is on the same pedestal, therefore, he also be acquitted.

11. Perused the record.

12. For constituting offence under Section 325 of I.P.C, it is necessary that:-

(i) There should be injury to the complainant;

(ii) The injury is of grievous hurt;

(iii) Injury has been caused by the accused voluntarily.

13. The injury, therefore, should be grievous in nature and caused by the accused with the knowledge that the hurt so caused likely to be grievous.

14. Dr. H.M. Ujjaniya (PW/5) has given the M.L.C report Ex. P/6. According to him, he was the Medical Officer in the Primary Health Centre, Matgua on 30.07.1993. Police Chauki Matgua along with a requisition brought complainant Puran for examination. He examined the complainant and found that there is a lacerated wound 2???x2??? muscle deep on the scalp. There was bleeding. The injury was caused by hard and blunt object. He advised for x-ray of skull and referred to the specialist. His x-ray plate was examined by Dr. M.P. Khare (PW 6), the surgical specialist on 31.07.1993. His report is Ex. P/11. According to him, fracture was found on the parietal bone of right side of Puran (PW 1).

15. This evidence reveals that the complainant Puran (PW 1) sustained grievous injury on his head by hard and blunt object. There is nothing on record to suspect the above evidence.

16. Puran (PW 1) has stated that he along with his wife (PW 2) and son Premchand (PW 8) were planting ???Singhara??? when the accused persons came there. The accused persons had the reason to dispute the plantation of ???Singhara??? because this land was given to the accused persons earlier on patta. Subsequently, the complainant Puran was asked to do the plantation of ???Singhara??? on the same land. According to Puran, (PW 1) the "Patta" was given to him and he was planting ???Singhara.??? Because he is a ???Dheemar,??? therefore, this patta was given to him. However, this Court would not enter into the merits of the possession even if the complainant- Puran was planting ???Singhara??? in the land, which was earlier planted by the accused. He should have lodged report and should not have taken law into hand. There was no eminent danger to save his person or property. Therefore, he ought to have restrained himself and he should have taken the recourse to lodge report or

solve the dispute in the Panchayat.

17. The statement of Puran (PW 1) has been found support from Premchand (PW 2), Heera Bai (PW 8). 18 According to him, the accused- Gorelal had given a blow on the head of Puran (PW 1). Besides, Ramlal (PW 3) has also stated that when Puran was injured, his daughter came to him and informed him about the incident and told him that Puran (PW 1) was beaten by the accused- Gorelal. Ghanshyam (PW 4) is the witness in front of whom, the accused Gorelal and others were arrested and from the possession of Gorelal, a danda (wooden stick) has been seized by police. Ramlal has admitted his signature in the seizure memo Ex. P/3 though he denies having such seizure in his presence.

19. Following the law laid down in the case of Ramesh Harijan Vs. State of U.P. reported as 2012(5) SCC 777, the statement of Ramlal (PW 3) can be believed as regarding the seizure of wooden stick. Prakash Babu Sharma (PW 9) the Investigating Officer has clearly stated that by panchnama, Ex. P3, the wooden stick has been seized from the accused Gorelal. No reason to disbelieve the same. Though there are few contradictions and omissions, but these are natural and rules out the possibility of being tutored.

20. Keeping in view the above circumstances, prosecution has proved beyond reasonable doubt that the appellant/accused has inflicted injury voluntarily to Puran and caused grievous hurt. Therefore, the learned trial Court convicted the appellant is not to be dislodged.

21. Following the principle of Ramesh Kumar @ Babla Vs. State of Punjab, 2016 SAR (CRI) 669, as the petitioner appears to be almost 50 years of age and fully settled in life, ends of justice would be met by granting benefit of Probation of Offenders Act to the petitioners.

22. In view of the aforesaid, it is directed that the appellant be released on executing a bond of Rs.30,000/- before the trial Court within thirty days from today to appear and receive sentence of rigorous imprisonment for six months when called upon to do so and in the meantime to keep the peace and be of good behaviour.

23. With the above modification in conviction and sentence, the appeal is allowed in part.