
(2009) 05 MP CK 0042
In the Madhya Pradesh High Court

Pardeshi @ Peetambhar and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 308, 34

Citation : (2009) ILR (MP) 2706 : (2009) 3 JLJ 183

Hon'ble Judges : Sushma Shrivastava, J

Bench : Single Bench

Judgement

Sushma Shrivastava, J.—Appellants have preferred this appeal challenging their conviction and order of sentence passed by VIIth Additional Sessions Judge, Jabalpur in S.T. No. 299/91, decided on 27.3.98.

2. Appellants have been convicted u/s 308/34 of IPC and sentenced to rigorous imprisonment for three years by the impugned judgment.

3. Appellant No. 3 Narendra died during the pendency of appeal. His appeal has, therefore, abated, and his name has been deleted from the array of appellants.

4. According to prosecution, on 12.5.89 about 7.30 in the morning at Sadar Bazar, Jabalpur when complainant Rajesh and his brother Subhash were going to answer the call of nature and reached near Lal School, appellants armed with gupti, ballam (spear), sword and lathi emerged there and began assaulting them. Appellant Narendra gave a sword blow on the right hand of complainant Rajesh, while appellant Pardeshi struck him with lathi on his left leg. When his brother Subhash tried to intervene, appellant Jittu assaulted him with spear causing injury in his left wrist and appellant Pardeshi also gave lathi blows on his right ribs. Appellant Munna assaulted their brother Vinod by gupti in his abdomen and appellant Jittu gave a spear blow on his back. Appellant Narendra also gave sword blow to Vinod, while appellant Pardeshi gave a lathi blow on him causing several injuries. Chandan Kureel, Lalla Kureel and Ramesh Kureel somehow came to their rescue. On preceding night, there was some altercation between

appellant Jittu and brother of complainant Rajesh, namely, Brijesh at the place of one Raju in a marriage function, due to which appellants armed with deadly weapons had attacked and assaulted complainant Rajesh and his brothers with intent to kill them and caused severe injury endangering their lives. The FIR of the incident was lodged by complainant Rajesh at Police Station Cantt., on the basis of which an offence was registered against the appellants and was investigated. Injured Vinod was admitted in the hospital and was also operated upon at Medical College Hospital, Jabalpur. During investigation lathi and sword used in the commission of offence were seized at the instance of appellant Pardeshi and Narendra respectively, while ballam (spear) was seized at the instance of appellant Jittu. After due investigation, appellants were prosecuted u/s 307/34 of IPC and were put to trial.

5. Appellants denied the charges framed against them u/s 307/34 of IPC and pleaded false implication due to enmity. Appellants also set forth the defence that the complainant party had come to their house and caused injuries to the ladies of their house. The persons of locality then intervened and assaulted the appellants.

6. Learned Additional Sessions Judge, after trial and upon appreciation of the evidence adduced in the case, found that causing of injuries to complainant Rajesh and Subhash by the appellants was not established, but found the appellants guilty for causing grievous and life threatening injuries to Vinod Kumar by lethal weapons in furtherance of their common intention in front of the house of the appellants in Lane No. 10 under grave and sudden provocation on account of injuries caused to the female members of their family by exceeding right of private defence; therefore, convicted them u/s 308/34 of IPC in place of Section 307 of IPC and sentenced them as aforesaid by impugned judgment, which has been challenged in this appeal.

7. Learned Senior counsel appearing on behalf of the appellants submitted that the trial court recorded certain findings in favour of the appellants, but erroneously convicted them on the basis of unreliable evidence of the prosecution witnesses. Learned Counsel for appellants further submitted that the prosecution witnesses suppressed the real genesis of the occurrence that they had gone to the place of the appellants, invited quarrel and caused hurt to the female members of the family of the appellants and gave false evidence against the appellants. He further submitted that appellant No. 1 Pardeshi was falsely implicated and the conviction of the appellants with the aid of Section 34 could not be sustained when no individual or specific act was attributed to each of the appellants. Learned Counsel for the appellants also submitted that when the female members of the family of the appellants were injured, plea of right of private defence could not be denied to them for want of specific plea by the appellants. Reliance was also placed on the decisions of the Apex Court reported in *Joginder Ahir and Others Vs. The State of Bihar*, (*Kashi Ram and Others Vs. State of M.P.*, .

8. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellants.

9. Perused the evidence on record. It is clearly evident from the testimony of complainant Rajesh (P.W-3) and Vinod (P.W-5) coupled with the medical evidence of Dr. Abdul Hakim Khan (P.W-10) and Dr. Pavan Kumar Agrawal (P.W-13) that appellant Munna assaulted and caused injuries to Vinod by gupti and appellant Jittu assaulted him and caused injuries by ballam (spear). Complainant Rajesh (P.W-3) categorically deposed in his evidence that when his brother Vinod reached the place of occurrence, appellant Munna stabbed him by gupti in his abdomen piercing it through and through and appellant Jittu assaulted him by ballam (spear) and thereby they caused injuries on his back and abdomen. Injured Vinod (P.W-5) also deposed that on 12.5.89 about 7.30 in the morning when he reached the place of occurrence, appellant Munna had stabbed him with gupti and appellant Jittu stabbed him with ballam (spear) causing injuries in his abdomen, back and head. According to Vinod (P.W-5), as a result of injuries caused to him, he remained hospitalized in Medical College Hospital Jabalpur for 24 days.

10. Although P.W-4 Brajesh has also claimed to be an eyewitness and said to have seen appellant Jittu assaulting Vinod by ballam (spear), but he subsequently admitted in his cross-examination that he had reached the place of occurrence subsequently after learning of the incident but the appellants had chased him and he could not see as to who assaulted whom. But, merely because P.W-4 has given an inconsistent version and tried to pose as an eyewitness, the evidence of complainant Rajesh (P.W-3) and injured Vinod (P.W-5) to the effect that appellant Munna stabbed Vinod by gupti and appellant Jittu stabbed him by ballam (spear) cannot be disbelieved or brushed aside.

11. It is also reflected from the medical evidence of Dr. Abdul Hakim Khan (P.W-10) and Dr. Pavan Kumar Agrawal (P.W-13) that stab and incised wounds caused by hard and sharp object were found on the back and epigastric region of injured Vinod (P.W-5). Dr. Abdul Hakim Khan (P.W-10) has proved the medical report (Ex.P-14) of injured Vinod Kumar given by Dr. Meena Batra by identifying her signatures on Ex.P-14. According to Dr. Abdul Hakim Khan (P.W-10), Dr. Meena Batra was transferred from Jabalpur seven years back and he was conversant with her signatures. As per medical report (Ex.P-14) of injured Vinod following injuries caused by sharp cutting object were found on his person:

(i) Stab injury (incised wound) on right scapular region placed obliquely, size 2" x 1 1/2" x "

(ii) Incised wound on right T12-L1,L2 right paraspinal region, size 2 1/2 x 1 1/2 x ?

(iii) Stab wound (incised wound) on right epigastric region, size 3" x 1 1/2" x ?

(iv) Incised wound on nose left side, size 2 x 1/4 x muscle deep .

(v) Contusion of scalp fronto-parietal region, size 2" x 1/2.

12. This medical report was also fortified by summary report of MLC (Ex.P-16) given by Dr. S.B. Nemkar, the then RSO posted at Medical College, Jabalpur proved by Dr. Pavan Kumar Agrawal (P.W-13). As per MLC report (Ex.P-16), injured Vinod remained hospitalized from 12.5.89 to 2.6.89 and following grievous and life threatening injuries were found on his person:

1 Incised wound 2 x 1 cm right subcostal region in mid clavicular line cutting skin, muscle and communicating peritoneal cavity.

2 Tear in inferior border of liver.

3 Incised wound 2 x 1 cm x muscle deep in left scapular region.

4 Incised wound 4 x 2 cm X muscle bone deep at level of T12 & L1 vertebra on back.

5 Incised wound 1 x 1/2 x muscle deep at level of T2 midscapular region.

6 Incised wound 1 x 1/2 cm x muscle deep over tip of nose right side.

7 Incised wound 1 x 1/4 x muscle deep over right parietal region. All wounds repaired in O.T. Injuries grievous and dangerous to life. Dr. Pavan Kumar Agrawal (P.W-13) himself also opined in answer to court question that injury No. 1 and 2 were grievous in nature and dangerous to life.

13. Learned Counsel for the appellants submitted that treating surgeon was not examined and the medical reports (Ex.P-14 and P-16) proved by other doctors could not authentically be corroborative piece of evidence. However, the Apex Court in the case of Prithi Chand Vs. State of Himachal Pradesh, held that such a medical report could be admissible in evidence in view of provision of Section 32 of the Evidence Act, which provides that a statement written or verbal, made by a person in the discharge of professional duty, whose attendance cannot be procured without an amount of delay, the same is relevant and admissible in evidence. It is found mentioned in the impugned judgment that the treating Surgeons not being available at Jabalpur and their addresses not being traceable, the medical reports (Ex.P-14 & P-16) were proved by some other doctors. Even u/s 67 of the Evidence Act the signatures and handwriting of a person on a document can be proved to be in his handwriting. Moreover, there are no reasons to suspect that the medical reports (Ex.P-14 & P-16) of injured Vinod (P.W-5) were fake or manipulated.

14. On the other hand, it is clearly proved from the testimony of Dr. Pavan Kumar Agrawal (P.W-13) that Dr. S.B. Namkar was posted as R.S.O. Medical College Jabalpur and the report (Ex.P-16) was given and signed by him. Similar is the testimony of Dr. Abdul Hakim Khan (P.W-10) that Dr. Meena Batra was an Assistant Surgeon at Victoria Hospital on 12.5.1989 and the medical report (Ex.P-14) was given and signed by her. Therefore, the submission of learned Counsel for the appellants, that medical reports (Ex.P-14 and P-16) could not be

considered as authentic, has no force.

15. Besides, there are no reasons to disbelieve the ocular evidence of complainant Rajesh (P.W-3) and injured Vinod (P.W-5) that appellant Munna had stabbed Vinod by gupti in his abdomen and appellant Jittu had assaulted him by ballam (spear).

16. However, the role attributed to appellant No. 1 Pardeshi @ Peetambhar by the aforesaid witnesses appears to be doubtful. According to complainant Rajesh (P.W-3), appellant Pardeshi had struck him by lathi in his leg, but his medical report is not on record. He has nowhere stated that appellant Pardeshi assaulted or caused any injury to Vinod (P.W- 5). Injured Vinod (P.W-5) himself has said that appellant Pardeshi caused lathi blow on his leg, but no injury on his leg caused by lathi is found in either of his two medical reports (Ex.P-14 & Ex.P-16). Thus possibility of false implication of appellant No. 1 Pardeshi, who is father of other appellants cannot be ruled out. In view of the inconsistent ocular and medical evidence, it could not be said beyond periphery of doubt that appellant No. 1 Pardeshi was also present at the time of occurrence and participated in the incident of assault at Vinod (P.W-5). Appellant No. 1 Pardeshi is, therefore, entitled to benefit of doubt and deserves to be acquitted.

17. However, as said earlier, there are no cogent reasons to disbelieve the version of complainant Rajesh (P.W-3) and injured Vinod (P.W-5) that appellant Munna stabbed Vinod by gupti in his abdomen and appellant Jittu stabbed him with ballam (spear), which also stands corroborated by the medical evidence.

18. The suggestion made during the cross-examination of complainant Rajesh (P.W-3) and Vinod (P.W-5), and also set forth in the defence evidence, that when the complainant party assaulted female members of the family of appellants, neighbouring people gave beating to them causing injuries to Vinod, has rightly been repelled by the trial court. It appears quite unnatural that neighbours would come forward with lethal weapons and cause several injuries to Vinod in the quarrel among third persons. The defence version given by DW-1 Pappu @ Sunil, DW-2 Sumarti Bai that appellants were not present at the time of occurrence, has also been rightly rejected by the trial court for cogent reasons.

19. On the other hand, as said hereinabove, it was clearly established from the ocular evidence of complainant Rajesh (P.W-3) and injured Vinod (P.W-5) coupled with the medical evidence, that appellant Munna stabbed gupti in the abdominal region of Vinod (P.W-5) and appellant Jittu also assaulted him with ballam (spear) and caused life threatening injuries on his vital parts. Medical reports (Ex.P-14 & P-16) of injured Vinod (P.W-5) clearly indicate that stab and incised wounds were caused on the vital parts of injured Vinod (P.W-5), which endangered his life. Dr. Pavan Kumar Agrawal (P.W-13) on a court question also specifically opined that injury No. 1 & 2, as described in medical report (Ex.P-16), were grievous in nature and dangerous to life. Thus, when appellants Munna & Jittu assaulted Vinod (P.W-5) by lethal weapons like gupti and ballam

(spear) and caused life threatening injuries on his vital parts, it is obvious that they intentionally caused such injuries to Vinod (P.W-5), which were life threatening and likely to cause death.

20. Learned Counsel for the appellants, however, submitted that it transpires from the evidence on record, as also held by the trial court, that the incident occurred in front of the house of appellants in Lane No. 10, which indicates that complainant party had gone to the house of appellants and invited quarrel, caused injuries to the female members of their family and thus the right of private defence was available to them. Learned Counsel for the appellants also submitted that the plea of self defence need not be specifically taken by the accused persons in their statement u/s 313 of IPC and such a plea can be introduced in cross-examination of the prosecution witnesses or in the defence evidence or otherwise, as held by the Apex Court in the case of Kashi Ram and others (Supra).

21. There can be no dispute with the legal proposition that the plea of self defence can be raised in the cross-examination of the prosecution witnesses or by way of defence evidence or otherwise and it need not be specifically raised in the statement u/s 313 of Cr.P.C., but according to Section 99 of IPC, the right of private defence in no case extends to the inflicting of more harm than necessary for the purpose of defence. In the instant case, however, the medical reports of injured Vinod (P.W-5) as well as ocular evidence on record indicate that appellants Munna & Jittu resorted to use of lethal weapons like gupti and ballam (spear) and thereby caused life threatening injuries on the person of Vinod (P.W-5), though injuries said to have been caused to the female members of the appellants were not shown to be of grievous nature. Thus, the two appellants, namely, Munna & Jittu exceeded the right of private defence. The trial court also held, after considering the entire prosecution and defence evidence, that the appellants exceeded the right of private defence. The trial court, however, held that appellants caused life threatening injuries to Vinod (P.W-5) under grave and sudden provocation on account of beating given by the complainant party to the female members of the family of appellants and therefore, found the appellants guilty u/s 308/34 of IPC, instead of Section 307 of IPC.

22. In view of the evidence available on record as against the two appellants, namely, Munna & Jittu, also indicating specific act of each of them, and in the wake of discussion made hereinabove, the conviction of appellants Munna & Jittu u/s 308/34 of IPC does not call for any interference in appeal.

23. As regards the sentence, learned Counsel for the appellants submitted that the two appellants above named, were young lads at the time of incident and they have rehabilitated in life and incident of the case is of the year 1989, they should not be sent back to jail after long lapse of time. However, looking to the nature and number of injuries caused to injured Vinod and the use of lethal weapons by the two appellants, they do not deserve much leniency in the sentence; nevertheless, interest of justice would be subserved if the impugned

sentence of imprisonment awarded to appellants Munna @ Dharmendra & Jittu @ Jitendra awarded u/s 308 of IPC is modified and reduced to period of two years" rigorous imprisonment.

24. Appeal is accordingly allowed in part. The conviction of appellant No. 1 Pardeshi @ Peetambhar and sentence awarded to him u/s 308/34 of IPC are set aside and he is acquitted of the charge. The conviction of appellants Munna @ Dharmendra & Jittu @ Jitendra u/s 308/34 of IPC is upheld. However, the impugned sentence of imprisonment of three years awarded to them is modified and reduced to period of rigorous imprisonment for two years. Needless to say that they shall be entitled to set off for the period of imprisonment already suffered by them.

25. Appellants Munna @ Dharmendra & Jittu @ Jitendra are on bail. They shall forthwith surrender to their bail bonds to undergo the remaining part of their sentence of imprisonment.

26. The bail bonds of appellant No. 1 Pardeshi @ Peetambhar shall stand discharged. Appeal is accordingly disposed of.