
(2018) 04 MP CK 0137
In the Madhya Pradesh High Court
Case No : CRA No. 1175 OF 2003

State Of Madhya Pradesh	Vs	APPELLANT
Khakan & Ors		RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 326
Arms Act, 1959 — Section 27

Citation : (2018) 04 MP CK 0137

Hon'ble Judges : S.K. GANGELE, J; ANJULI PALO, J

Bench : Division Bench

Advocate : Vijay Soni, H.S.Dubey, S.K.Gangrade

Final Decision : Partly Allowed

Judgement

1. The appellant-State has filed this appeal challenging the judgment dated 07.02.2003 passed by the 12th Addl. Sessions Judge, Bhopal in Session

Trial No. 144/2002 whereby the respondents have been acquitted from the charges punishable under Sections 147, 148 & 307/149 of the Indian Penal

Code and Section 27 of the Arms Act.

2. In brief, the prosecution case is that, on 19.06.2001 at about 2:00 pm movie 'Gadar' was running in Lily Talkies at Bhopal. Some persons

from Muslim community wanted to stop the show. They protested and started damaging the cinema hall and its properties. At that time Motilal (PW-

21) Head Constable was going to police control room for his duty. The respondents surrounded and assaulted him. Respondent Sarvar inflicted blow

of sword on his head which he was able to stop by his right hand.

He was brought to Vardan Hospital, thereafter, referred to Hamidia Hospital. On his report, offence under Section 147, 148 and 307/149 of the Indian

Penal Code and Section 27 of the Arms Act was registered against the respondents. After due investigation, charge-sheet was filed against the respondents.

3. Learned Trial Court acquitted the respondents from the charge under Section 147, 148, 307/149 of IPC and Section 27 of the Arms Act.

4. Challenging the aforesaid finding, the State has filed this appeal on the grounds that, the Court below failed to see that injured Motilal (PW-21)

Head Constable and eye-witness Shabbir (PW-23) had duly identified the assailants. Further, they identified the respondents in dock. The Trial Court

has not appreciated the evidence on record in its right perspective.

Therefore, it is liable to be set aside and prayed that respondents be convicted for offence punishable under Sections 147, 148 and 307/149 of the

Indian Penal Code and Section 27 of the Arms Act.

5. Heard learned counsel for both the parties at length. Perused the record.

6. Learned Counsel for the parties has not challenged the fact that on the date of incident, 19.06.2001 at about 2:00 pm some persons of Muslim

community was protesting the show of movie â??Gadarâ??.

7. Motilal (PW-21) Head Constable deposed that at the time of incident he was on duty going to police control room, respondents Sarvar Ali, Khakan,

Javed, Saiyed, Raja Miya and Vasim assaulted him. He also stated that respondent Sarvar tried to inflicted blow of sword on his head which was

stopped by him by his right hand. Hence, he sustained grievous injuries on his right hand.

8. Learned counsel for the respondent has not challenged the testimony of Dr. Joseph (PW-11). Dr. Joseph examined injured Motilal on the date of

incident. Dr. Joseph (PW-11) found an incised wound of size 10x10 cms., on his right forearm. From the said injuries, his bone of right hand was

fractured. The general condition of Motilal was critical.

He advised for X-ray. Dr. Sourabh Bavecha (PW-5) Radiologist examined the X-ray and found that the radius and ulna bones of right hand were

fractured. The number and nature of injuries have not been challenged by the counsel for the respondents. The only suggestion for the defence

counsel was that the injury was caused by lathi or danda. Â Dr. Joseph (PW-11) clearly established that originally this injury was caused by hard and

sharp edged weapon. He found the incise wound on right forearm of Motilal about 10x10 cms.

9. In our opinion, it was established that the injury may be caused by sharp edged cutting weapon (sword). Therefore, the testimony of Motilal (PW-

21) is corroborated by medical evidence also. Mohd. Shabbir (PW-23) eyewitness corroborated the entire evidence of Motilal (PW-21). From the

cross-examination, his presence on the spot of incident is found reliable. Therefore, on the grounds that he is in police, his testimony cannot be brushed aside.

10. Rakesh Kumar Gurgela (PW-24) also supported the testimony of Motilal (PW-21) and Mohd. Shabbir Khan (PW-23).

All the above witnesses had no enmity with the respondents. Their testimony is consistent. There is no material contradictions and omissions in their testimonies. Hence, we are also inclined to rely on their testimony.

11. Jamuna Prasad (PW-6) Head Constable received a telephonic message from Mahipal Singh that Motilal was admitted for treatment in the surgical

ward. It was recorded in rojnamacha no. 1654 (Ex. P/13) by Jamna Prasad and sent it to police station through Banshi Singh Sengar (PW-3). Â

12. Banshi Singh Sengar (PW-3) deposed that he reached at Hamidia Hospital on the date of incident. He recorded Dehati Nalishi (Ex. P/3) as

narrated by Motital who was under treatment.

Thereafter, he went to the spot and prepared spot map (Ex. P/5). Further, he recovered shirt of Motilal vide seizure memo Ex. P/7.

13. As per the testimony of B.S.Sengar (PW-3), on 26.06.2001, he interrogated the respondent Sarvar who informed that the sword was at his house

in his cot. B.S.Sengar recovered the aforesaid sword from the house of respondent Sarvar. The respondents were arrested by him.

14. B.S.Sengar (PW-3) sent all the articles to FSL, Sagar. As per the FSL report human blood stains were found on the sword used by the respondent

Sarwar, it was proved from FSL report Ex. P/25.

15. Aforesaid evidence is sufficient to establish the guilt of the respondent Sarwar. Learned counsel for the respondent placed reliance on the case of

Jimmy Bharucha Vs. Sate of Maharashtra (1977) SCC (Cri.) 557 and contended that when the victim Motilal was brought to Dr. Joseph (PW-11)

with regard to injuries sustained by him. He has not stated nameâ??s of any

assailants who inflicted injury to him. This statement clearly contradicts his evidence that he received the injuries as a result of sword blow given by respondent Sarwar. But in case of Jimmy (supra) at the time of starting treatment culprit stated that he had received injuries accidentally. The facts of present case is totally different. Hence, we are not inclined to accept the aforesaid contention of the defence counsel.

16. Learned counsel for the respondents has drawn our attention to the cross-examination of Motilal (PW-21) wherein he failed to identify some of the respondents. But in our considered view, incident took place at the day time. It is possible for the injured to identify the culprit who gave fatal blow to him. If he failed to save himself, certainly Motilal would have sustained head injury which could have caused his death.

17. Although, benefit of every reasonable doubt should be given to the accused, the Court should not at the same time reject evidence which is *ex facie* trustworthy, on grounds which are fanciful or in the nature of conjectures. In case of *Kali Ram Vs. State of H.P.* (AIR 1973 SC 2773)

Honorable Supreme Court has held that :

It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more (1) Cr. App. 7 of 1972 decided on August 6, 1973 7 3 6 serious and its reverberations cannot but be felt in a civilized society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiation. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether.

18. Hence, there is sufficient ground to convict the respondent No. 2 Sarwar Ali only for offence punishable under Section 326 of IPC.

19. In case of Pawan Kumar Vs. State of Himachal Pradesh, (2017) 7 SCC 780 the Honâ??ble Supreme Court has held as under:

â??First we shall deal with the nature of jurisdiction the High Court exercises when it reverses a judgment of acquittal to that of conviction in exercise

of appellate jurisdiction. It is put forth by the learned Additional Advocate General that the prosecution has been able to establish the active role played

by the accused by adducing cogent evidence and hence, the reversal of the judgment of acquittal by the High Court is absolutely flawless. In Jadunath

Singh and others v. State of Uttar Pradesh [(1971) 3 SCC 577], a three-Judge Bench of this Court has opined:- â??22. This Court has consistently

taken the view that in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that

upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the

Judicial Committee of the Privy Council in Sheo Swarup v. King Emperor [AIR 1934 PC 227] and Nur Mohammad v. Emperor [AIR 1945 PC 151].

These two decisions have been consistently referred to in the judgments of this Court as laying down the true scope of the power of an appellate court

in hearing criminal appeals (see Surajpal Singh v. State [AIR 1952 SC 52] and Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715]).â??

20. For the above reasons, we hold that the reasons given by the trial Court for recording the order of acquittal in favour of the respondents are cogent

and convincing. In appeal against acquittal, this Court can reappraise the prosecution evidence and reverse the findings of acquittal.

21. Therefore, this appeal is partly allowed so far as respondent No. 2 Sarwar Ali is concerned. He is convicted under Section 326 of Indian Penal

Code and awarded sentence of rigorous imprisonment for 10 years with fine of Rs. 5,000/-, in case of default of payment of fine, further 6 months

simple imprisonment. His bail bonds are canceled and he is directed to surrender immediately before the concerned trial Court to undergo remaining

part of the jail sentence, failing which the trial Court shall take appropriate action under intimation to the registry.

22. So far as other respondents namely Khakan, Javed, Raja Miya, Arif Masood, Saiyed Kalai and Vasim are concerned, the appeal is liable to be and

is hereby dismissed.

23. Copy of this judgment be sent to the Court below for information and compliance alongwith its record.