

(2015) 03 MP CK 0043

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2325/2000

State of Madhya Pradesh

APPELLANT

Vs

Premnarayan and Others

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 354

Citation : (2015) 4 CCR 128

Hon'ble Judges : N.K. Gupta, J.

Bench : Single Bench

Advocate : G.S. Thakur, Panel Lawyer, for the Appellant; Siddharth Datt, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N.K. Gupta, J.—The State has preferred the present appeal being aggrieved with the judgment dated 10.8.1998 passed by the JMFC, Begumganj, District Raisen in Criminal Case No. 37 of 1997 whereby, the respondents have been acquitted from the charges of offence under Section 354 read with Section 34 of I.P.C.

2. The prosecution's case in short is that on 31.12.1996 at about 11.00 p.m in the night the prosecutrix (PW1) was sleeping in her house at Village Sonpur (Police Station Sultanganj, District Raisen). Her younger brothers Maniram (PW4) and Halke were also sleeping there whereas, her elder brother Pratap went to the fields and her mother Ladlibai (PW2) went to her maternal house. In the night the respondent Premnarayan held the hand of the prosecutrix with bad intention. On shouting of the prosecutrix, Maniram and Halke immediately ran towards the prosecutrix hence, the respondents ran away. On the next day morning when Pratap came back from the fields, she narrated him the entire story. In the evening when mother Ladlibai came back, she was also informed and thereafter on the third day the prosecutrix went to the Police Station Sultanganj along with her brother and lodged an FIR. After due investigation a charge sheet was filed.

3. The respondents abjured their guilt They took the plea before the trial Court that they did not commit any offence. On the contrary a plea was taken that they were falsely implicated due to enmity. In defence Mangal Singh (DW1) was examined to prove the enmity

4. The trial Court after considering the evidence adduced by the parties acquitted the respondents.

5. I have heard the learned counsel for the parties at length.

6. The learned counsel for the respondents has submitted that the testimony of the prosecutrix was not relevant and the trial Court did not find the prosecution's case believable. Hence in appeal against acquittal re-appreciation of evidence cannot be done on the basis of another view. In support of his contention he has placed his reliance upon the judgments of the Apex Court in the case of Shingara Singh Vs. State of Haryana and Another, and Harijana Thirupala and Others Vs. Public Prosecutor, High Court of A.P., Hyderabad, . In both the cases, it is held that interference should not be done in the appeal against acquittal only because that other view was possible. The Appellate Court while reversing the acquittal is duty bound to dispel reasons given by the trial Court in support of its order. The High Court would not interfere with acquittal if the trial Court took a possible reasonable view.

7. In the light of the aforesaid judgments if the prosecution's case is examined then it would be apparent that Maniram (PW4), brother of the prosecutrix has accepted that the respondent Premnarayan was neighbor of the prosecutrix and 2- 3 days prior to the incident a quarrel took place between the prosecutrix and the respondent Premnarayan. The testimony of Maniram, brother of the prosecutrix in this context appears to be acceptable. The prosecutrix (PW1) and Maniram (PW4) have accepted that the respondent Nathu was standing away. He did not commit any overt act in the incident. Hence, there is no allegation against the respondent Nathu. The trial Court has rightly acquitted the respondent Nathu from the aforesaid charges.

8. In the present case, according to the prosecutrix and her brother Pratap (PW3) that mother of the prosecutrix was not present in the house and when she came back from her maternal house, the incident was informed to her and on the next day the FIR was lodged. The incident took place on 31.12.1996 at about 11.00 p.m and the FIR was lodged on 2.1.1997 at about 5.30 p.m. If mother of the prosecutrix came in the evening of 1st January, 1997 then the prosecutrix could go with her mother to lodge an FIR in the same evening or in the early morning of 2nd January, 1997 whereas, an FIR was lodged at 5.30 p.m. The Police Station was 18 kms away from the village and therefore, within 2-3 hours the prosecutrix and her mother could reach to the Police Station. Hence if the pretext given by the prosecutrix is accepted then the FIR is delayed by at least six hours.

9. Also Pratap (PW3) has accepted that a Panchayat took place after the incident

but nothing could be resolved. However, the prosecutrix (PW1) has denied about any Panchayat. Ladlibai, mother of the prosecutrix did not state in her case diary statement Ex.D/1 that at the time of incident she was not present at home. Hence the story of absence of mother of the prosecutrix appears to be concocted where the FIR appears to be lodged with delay of two days. Also Maniram (PW4) has accepted in para 2 of his cross examination that the person who, held the hand of the prosecutrix had covered his face by a towel. He saw the culprit from the back while he was running. Under these circumstances, the possibility cannot be ruled out that since a quarrel took place between the prosecutrix and the respondent Premnarayan when hand of the prosecutrix was held by some masked person then prosecutrix and her family members have thought that it was the respondent Premnarayan.

10. On the basis of the aforesaid discussion, it would be apparent that the entire story of the prosecution appears to be doubtful and therefore, if the trial Court has acquitted the respondents from the aforesaid charges then it is not a case in which interference can be done by the Court. The appeal filed by the State cannot be accepted. Consequently, it is hereby dismissed.

11. The respondents are on bail. Their presence is no more required before this court any more and therefore, it is directed that their bail bonds shall stand discharged.

12. Copy of the judgment be sent to the Courts below along with its record for information.