

(2018) 02 MP CK 0248
In the Madhya Pradesh High Court
Case No : 630 of 1996

State of Madhya Pradesh

APPELLANT

Vs

Raju @ Bhagwandas

RESPONDENT

Date of Decision : 23-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 324](#),
[Section 450](#) - Voluntarily causing hurt by dangerous
weapons or means - House-trespass in order to commit offence punishable with
imprisonment for life

Citation : (2018) 02 MP CK 0248

Hon'ble Judges : S.K. Gangele, Anjuli Palo

Bench : Division Bench

Advocate : Vijay Soni, Smt. Pratibha Mishra

Judgement

1. This appeal has been preferred by the State challenging the judgment dated 3.8.1995, passed by 4th Additional Sessions Judge, Bhopal in S.T.

No.279/1992, whereby the respondent has been acquitted from the charges under Sections 307, 324 and 450 of the IPC.

2. Brief facts of the case are that, on 30.4.1992 at about 7:20 p.m. at Sector-A Govindpura, Bhopal, the respondent quarreled with the

complainant Sampat Bai and inflicted blows on her by knife. At the same time, some of the eye-witnesses were also injured. On the report of

complainant Sampat Bai, FIR has been registered by Police Inspector B.S. Sengar (PW-12) at the hospital. After investigation, charge sheet has

been filed before the concerned Court for offence punishable under Section 307 of the IPC against the respondent.

3. Learned trial Court framed charges under Sections 307, 324 and 450 of the IPC against the respondent. He abjured guilt and pleaded that he

has been falsely implicated by the complainant party due to enmity.

4. To prove the charges, the prosecution examined as much as 13 witnesses. The trial Court held that the prosecution has failed to prove that the

respondent voluntarily caused grievous injuries to Sampat Bai, Kamla Bai, Savitri and Rajkumari Bai by sharp weapon. Hence, the respondent

was acquitted from the charges under Sections 307, 324 and 450 of the IPC.

5. The impugned judgment has been challenged by the State on the grounds that learned trial Court has wrongly disbelieved the statements of

injured persons, only for some contradictions or omissions in their testimony. On the contrary, all the injured persons Kamla Bai, Savitri Bai and

Sampat duly supported the prosecution story. Their statements were corroborated by the medical evidence. The nature of injuries have been

established that the respondent had intention to cause grievous injuries to the injured persons. Looking to the medical reports, at the most, the

offence under Section 324 of the IPC would be made out against the respondent. Therefore, it is prayed that the impugned judgment be set aside

and the respondent be convicted accordingly.

6. Learned counsel for the respondent has submitted that the trial Court after duly appropriated the evidence on record, acquitted the respondent.

There is no evidence against the respondent to convict him for the charges levelled against him.

7. Heard learned counsel for both the parties and perused the record.

8. As an appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, it is

presumed that accused is innocent, unless he is proved guilty by an evidence on record. Secondly, if two reasonable conclusions are possible on

the basis of evidence on record, appellate Court should not disturb the findings of acquittal recorded by the trial Court.

9. In case of Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415 the Hon^{ble} Supreme Court has held as under:- "An appellate court has full

power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. The Supreme Court has further held that

Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence

before it may reach its own conclusion, both on questions of fact and of law.

Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. (See also. Pawan Kumar Vs. State of Himachal Pradesh, (2017) 7 SCC 780.)

10. In the present case, Sampat Bai (PW-1) is the complainant has deposed that at 5:00 p.m., she was sitting in front of her hut. The respondent came to her hut armed with a hot knife and told that he would kill her and all family members. He also abused her. Suddenly, the respondent caught hold her hair and inflicted three blows of knife in her stomach. Bhaijan witnessed the incident. He reached to rescue her. Earlier on the same day, the respondent assaulted Kamla Bai (niece of Sampat Bai) and Savitri Bai. Dehatinalishi Ex.P/1 lodged by Sampat Bai was registered by B.S. Sengar (PW-12) at Police Station Govindpura, Bhopal. In Dehatinalishi Ex.P/1, the complainant Sampat Bai mentioned all the facts similar to her testimony. It was also mentioned that earlier to this incident, the respondent assaulted her niece Kamla Bai and Savitri Bai .

11. Kamla Bai (PW-4) also corroborated the testimony of Sampat Bai (PW-1). She stated that on the date of incident, the respondent was present in her home. He wanted to drink water. When witness Kamla Bai brought a glass of water for him, suddenly the respondent inflicted seven blows to her by knife. She also explained that she had no dispute and old enmity with the respondent.

12. We find the testimony of Sampat Bai and Kamla Bai (PW-4) are trustworthy. Dr. S.K. Meena (PW-9) duly corroborated the testimony of both witnesses Sampat Bai and Kamla Bai. We do not find any inconsistency in between the ocular evidence and medical evidence. Dr. S.K. Meena (PW-9) examined the complainant Sampat Bai on the date of incident. The incident took place at 5:00 p.m., and medical examination of Sampat Bai was conducted at 5:50 p.m. at J.P. Hospital, Bhopal. He found the following injuries on victim Sampat Bai:- (i) A stab wound size

about 2 cm. x 1 cm. x 2 cm. over right side of abdomen, (ii) Incised wound about 1 cm x ? cm x 2 cm. in middle part of her stomach. In his

opinion, all the injuries are simple in nature and caused by sharp object within six hours from the examination.

13. Similarly, Dr. S.K. Meena (PW-9) found following injuries on Kamla Bai (PW-4): (i) One stab wound size 5 cm x 3 cm over chest, (ii)

Incised wound about 10 cm. x 2 cm. x 2 cm. on left side of chest, (iii) Stab wound 5 cm. on her back below secondary scapula. Dr. Meena

referred the case of Kamla Bai to the Government Hamidiya Hospital for further treatment.

14. We find that Dr. S.K. Meena (PW-9) has clearly supported the prosecution case with regard to injury sustained by the injured persons in his

medical report Exs.P/8 and P/9. In his cross-examination, Dr. Meena has denied the possibility that above injuries were sustained by the victims

Sampat Bai and Kamla Bai due to fall on earth. Dr. I.K. Chug (PW-10) has established that Sampat Bai was admitted in J.P. Hospital for her

treatment from 30.4.1992 to 6.5.1992 and report Ex.P/10 has been proved by him.

15. J.P. Singh (PW-11) deposed that he received an information from unknown person at about 5:20 p.m. then he registered it in Rojnamchasanah

Ex.P.11. The testimony of J.P. Singh was unchallenged in his cross-examination. Dr. B.S. Sengar (PW-12) has established that on the date of

incident i.e. on 30.4.1992, Dehatinalishi Ex.P/1 was registered and crime was registered as Ex.P/2. We do not find any ground to disbelieve the

statements of Dr. S.K. Meena (PW-9) and I.K. Chug (PW-10).

16. As per Investigating Officer B.S. Sengar (PW-12), he recovered a knife as per memorandum Ex.P/3 of respondent and prepared seizure

memo vide Ex.P/4. We do not find that Investigating Officer had any personal interest in the case or any enmity with the respondent. Hence, with

regard to memorandum of the respondent and seizure of knife from the respondent, the testimony of investigation officer is sufficient to rely.

17. The trial Court thoroughly discussed the entire evidence on record against the respondent. We also find on the record that other witnesses also

sustained some simple injuries. Savitri (PW-2) and Rajkumari (PW-3) were also assaulted by the respondent. Savitri (PW-2) deposed that the

respondent suddenly reached at her house with a knife and thereafter, the respondent assaulted her by knife. She sustained injuries. She did not know as to why the respondent assaulted her. Further that, she supported the testimony of Rajkumari and Sampat Bai. She witnessed that the respondent inflicted blows by knife on Sampat Bai (PW-1), Rajkumari (PW-3) and Kamla Bai (PW-4). Savitri (PW-2) also explained that the respondent is her relative.

18. Learned counsel for the respondent has submitted that the testimony of Savitri Bai and Rajkumari has not been supported by the medical evidence. We find that the above facts and evidence grossly ignored by learned trial Court with incorrect findings. We do not find any material contradiction or omission in their evidence or prosecution story. Merely, in absence of medical evidence of Savitri and Rajkumari, learned trial Court acquitted the respondent from all the charges levelled against him. Learned trial Court has wrongly held that the prosecution has failed to prove that the respondent caused simple injuries to Kamla, Sampat Bai, Rajkumari and Savitri by sharp object.

19. Learned counsel for the respondent has further submitted that defence witnesses Jagdish (DW-1) and Munni Bai (DW-2) clearly established that on the date of incident, Kamla Bai and Sampat Bai quarreled with each other. They had bad character in which the respondent had interfered and rescued them. Due to enmity with Kamla and Sampat Bai, they have deliberately implicated the respondent. In cross-examination, Jagdish (DW-1) has explained that Sampat Bai, Raju @ Bhagwandas (the respondent), Kamla, Savitri and Chandan all were neighbours. In para 4, he denied that any unknown person had assaulted Sampat Bai, Savitri and Kamla. Munni Bai (DW-2) also corroborated the testimony of Jagdish (DW-1).

20. After considering the evidence of defence witnesses, in our considered opinion, both the defence witnesses have falsely deposed in favour of the respondent to save him. The evidence of defence witnesses is not sufficient to create any reasonable doubt in favour of the respondent. It seems that as they are the neighbours and to maintain good relation with the respondent, the defence witnesses suppressed the real facts.

21. In case of Shivaji Sahabrao Bobde Vs. State of Maharashtra, (1973) 2 SCC

793, wherein it was held that:-

The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all

acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of

escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond

reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.

The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only

reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community .

The evil of acquitting a guilty person lightheartedly as a learned author has sapiently observed, goes much beyond the simple fact that just one guilty

person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a

public demand for harsher legal presumptions against indicated ""persons"" and more severe punishment of those who are found guilty. Thus, too

frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons, it

is true to say, with Viscount Simon, that ?a miscarriage of justice may arise from the acquittal of the, guilty no less than from the conviction of the

innocent. ""In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice

potent and realistic .

22. We find that there is sufficient evidence to prove that the respondent assaulted simple injuries to Sampat Bai, Kamla, Rajkumari and Savitri Bai

by sharp object i.e. knife. Kamla, Savitri and Rajkumari were all injured witnessed, hence, their evidence has strong evidentiary value to establish

their presence on the spot.

23. In case of Chandrasekar & Anr. Vs. State, 2017 SCC Online SC 620, Hon''ble Supreme Court has held that :

Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking

the truth unless shown otherwise. Though, the law is well settled and precedents abound, reference may usefully be made to *Brahm Swaroop Vs.*

state of UP (2011) 6 SCC 288 observing as follows: Where a witness to the occurrence has himself been injured in the incident, the testimony of

such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the

crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

24. In the light of above discussion and the principles laid down by the Supreme Court in cases of *Pawan Kumar (supra)*, *State of Karnataka Vs.*

Gopal Krishnan (2005) 9 SCC 291, *Girja Prasad Vs. State of M.P.*, (2007) 7 SCC 625 and *State of U.P. Vs. Ajai Kumar*, (2008) 3 SCC 351,

it is held that if the findings of Court below are not reasonable and not based on the evidence on record, it suffer from serious illegality and include

ignorance and misreading of record. Hence, the judgment of acquittal is liable to be set aside. Hence, appeal filed by the State is partly allowed

and the impugned judgment is hereby set aside. There is sufficient evidence to prove the charge under Section 324 of the IPC in four counts

against the respondent, accordingly respondent is convicted for the same. The respondent committed the offence in the year 1992 and he has

faced the trial since 1996. Looking to the age of respondent, which is more than 49 years, a fine of Rs.2500/- (Rupees twenty five thousand) is

imposed on the respondent for each count (i.e. Rs.2500 x 4=10,000). He is directed to deposit the fine amount (for four counts) within two

months before the trial Court, failing which he shall undergo for six months R.I. for each count (8 months for 4 counts).

25. Copy of this judgment be sent to the Court below for information and compliance along with the record.