
(2008) 09 MP CK 0053
In the Madhya Pradesh High Court

State of M.P.

APPELLANT

Vs

Tidda alias Sonu

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 378
Penal Code, 1860 (IPC) — Section 333, 457, 511

Citation : (2008) ILR (MP) 90 : (2008) 5 MPHT 225

Hon'ble Judges : Brij Mohan Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Brij Mohan Gupta, J.—Feeling aggrieved with the judgment of acquittal of the respondent from the offence punishable under Sections 457/511 and 333 of IPC, dated 11th April, 2008 passed by the First Additional Sessions Judge, Ashok Nagar in Sessions Case No. 280/07, this petition has been filed on behalf of the State u/s 378(3) of the Cr.PC for seeking permission to file an appeal against the aforesaid judgment of acquittal.

2. The facts of the prosecution case in brief are that Prabhashankar and Gopal Singh both the Police Constables were on Kasha Gashta in the intervening night of 8-9 June, 2007. When they reached near the shop of Vipin Mobiles, they heard some noise. When they reached there, they witnessed that two persons were trying to break open the shutter. One of them pelted stone, by which Prabhashankar sustained grievous injury below his left knee. He fell down. Both unknown persons ran away. Upon hearing the noise, Ravindra Raghuvanshi and Ishwarlal also came on the spot. Thereafter a report was lodged by Prabhashankar. Crime No. 73/07 was registered at Police Station, Nai Saray, District Ashok Nagar. During investigation, respondent-Tidda alias Sonu and another persons Shyam alias Shyamkishore were arrested. Shyam being juvenile complaint against him was filed before Juvenile Court and charge-sheet against the respondent was filed in the Regular Court. After committal of the case, the

respondent was tried for the aforesaid offences and acquitted as aforesaid.

3. Shri Mohd. Irshad for the State has assailed the impugned judgment on the ground that vide identification memo (Exh. P-1), the respondent was identified, which has been proved by N.P. Mourya (P.W. 9), who is the Investigating Officer. On that basis, the respondent ought to have been convicted.

4. Admittedly, at the time of incident, the assailants were not identified. As per Shri Irshad during investigation, test identification parade was conducted by N.P. Mourya, Investigating Officer in presence of two witnesses. At the same time, he admits that both the witnesses of identification memo (Exh. P-1), Sanjay (P.W. 7) and Jairam (P.W. 3) have become hostile to the prosecution and are not supporting the prosecution case with regard to the proper identification of the respondent/accused. Upon perusal of the statement of these two witnesses, it appears that Sanjay (P.W. 7) has totally refused about conducting the identification parade. Jairam (P.W. 3) although does not state anything in his examination, but when he was declared hostile, during his cross-examination he has admitted that before him identification of the accused was conducted by the police, where the police officers identified. With regard to this fact, Investigating Officer, N.P. Mourya (P.W. 1) has stated that on 25th June, 2007 in presence of witness Sanjay and Jairam, identification of the respondent/accused was conducted by him, where Constable Prabhashankar and Gopal Singh identified the respondent. He prepared Panchnama (Exh. P-3) [Exh. P-3 is wrongly typed, it may be Exh. P-1]. In Para 4, he has stated that he included two other persons during identification proceeding, but at the same time admits that this fact is not mentioned in Exh. P-1.

5. Identification memo (Exh. P-1) and conducting the parade by N.P. Mourya (P.W. 9), who is a Police Officer, is not admissible in evidence u/s 161, Cr.PC. Identification parade of the accused is to be conducted by some Magistrate. However, this common sense principle was not observed in the present case. As per the case of the prosecution itself, the identification parade was conducted by N.P. Mourya, Investigating Officer. Such identification parade has no value in the eyes of law. It may be useful to mention that nay statement made by identifying witness to the police officers during investigation would be hit by Section 162 of the Cr.PC and will not be admissible in the evidence.

6. That apart, both the witnesses are not supporting this identification. Statement of N.P. Mourya (P.W. 9) cannot be relied on the ground that in the Court he states that two persons were included at the time of identification, but no such fact has been mentioned by him in Exh. P-1. As such the statement of N.P. Mourya and Exh. P-1 identification memo appears valueless so far as the steps taken for identification of the respondent/accused is concerned. On the other hand this step taken by the police spoils the identification of the respondent in the Court during trial on the ground that the accused was shown by the police to these witnesses earlier to the identification in the Court. Except this evidence there is no other evidence with regard to the fact of identification of

the respondent, nor the same has been highlighted on behalf of the State.

7. It is surprise to note that the offence has been committed with Police Constable by unknown persons and during investigation, no identification parade was conducted in legal way. It ought to have been conducted by any person other than the Police Officer.

8. Upon perusal of the statement of Prabhashankar (P.W. 8), it appears that it was a dark night and there was no light on the spot. However, it is stated by him in Para 1 that at a distant place, where the electric bulb was on, he identified the respondent/accused. Thereafter in Para 4 he has stated that when the respondent/accused ran away, at the turn he saw him in the light. On perusal of spot map (Exh. P-2), no such turn or such bulb or such electric pole has been mentioned therein. It is rightly observed by the learned Judge that when a person is running only his back can be seen and in that situation it was not possible for this witness to see the face of the respondent.

9. In view of all, as discussed herein above, if the learned Judge did not believe the identification of the respondent/accused, there appears no error in this approach. It is immaterial that sustaining the injuries at the spot has been proved, but unless it is proved that the same has been inflicted by the respondent he cannot be conducted.

10. Consequently, this petition being devoid of merit is dismissed.