

Madhya Pradesh High Court

Shivnarayan vs Mahesh Patel S on 5 May, 2022

Author: Dinesh Kumar Paliwal

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IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 5th OF MAY, 2022

CRIMINAL APPEAL No. 3368 of 2015

Between: -

SHIVNARAYAN S/O VAN SINGH RAJPOOT ,AGED
ABOUT 55 YEARS, R/O VILLAGE KARTANA POLICE
STATION TIMARNI, DISTRICT HARDA (MADHYA
PRADESH)

.....APPELLANT

(BY SHRI AMIT VERMA, ADVOCATE)

AND

1. MAHESH PATEL S/O SHRI DHANNALAL JAT, AGED
ABOUT 59 YEARS, R/O VILLAGE KATANA POLICE
STATION TIMARNI DISTRICT HARDA (MADHYA
PRADESH) .
2. SANTOSH S/O MAHESH PATEL, CASTE JAT, AGED
ABOUT 35 YEARS, R /O VILLAGE KATANA POLICE
STATION TIMARNI DISTRICT HARDA (MADHYA
PRADESH) .
3. STATE OF M.P. THROUGH ARAKSHI KENDRA
TIMARNI DISTRICT HARDA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SHIVAM CHILLOTRE, ADVOCATE FOR RESPONDENTS
NO. 1 & 2 AND SHRI ANIL UPADHYAY, PANEL LAWYER FOR THE
RESPONDENT NO.3/STATE)

T h is appeal coming on for admission this day, the court passed the
following:

ORDER

This appeal under Section 372 of Cr.P.C. has been filed by the victim Shivnarayan Singh against the judgment and order of acquittal dated 08.07.2015 passed in S.T. No. 5/2015 (State of MP Vs. Mahesh Patel and another) by Sessions Judge, Harda (MP), whereby respondents No. 1 and 2 Mahesh Patel and his son Santosh have been acquitted for commission of offence under Sections

294, 323/34, 325/34 and 506 part II of IPC.

2. The prosecution story, in brief, is that on 03.08.2014 at around 11:30 am Shivnarayan Singh resident of Village Kartana, Police Station Timarni lodged an FIR stating that he is a farmer. On 03.08.2014 at around 10:00 AM he from his home was going towards bus stand. At around 10:00 AM, when he reached near the Mahesh's shop. Mahesh told that he always coughs up so today let us teach him a befitting lesson. Mahesh Patel and his son Santosh uttered him filthy words related to mother and sister. Thereafter, Mahesh Patel and Santosh threw stones towards him causing injuries over his head and left eyebrow. He fell down on the spot. In the meantime two other persons reached there and beat him by means of fists. Mukesh Rajput (PW-2) pacified the matter. They all intimidated him telling that they will kill him in future. He along with his son Premnarayan (PW-3) lodged an FIR in police station. On the basis of narration given by Shivnarayan Singh (PW-1) an FIR was registered at Crime No. 328/2014 of Police Station Timarni for commission of offence under Section 294, 323, 506, 34 of IPC. After investigation, police filed charge sheet against the respondents No. 1 and 2 before JMFC who in his turn committed case to the Court of Session.

3 . Learned Sessions Judge framed charges against the respondents No. 1 and 2 for commission of offence under Sections 294, 323/34, 325/34 and 506 part II of IPC. They abjured their guilt and claimed to be tried.

4. Learned Sessions Judge recorded the evidence of prosecution and defence witnesses and after hearing the parties, acquitted the respondents/accused by the impugned judgment dated 08.07.2015. Being aggrieved by judgment of acquittal complainant/victim Shivnarayan Singh (PW-1) has preferred this appeal.

5. Learned counsel for the appellant has submitted that learned Session Judge has not considered the evidence of prosecution witnesses in the proper perspective. Learned trial Court was not justified in disbelieving the reliable, cogent and trustworthy evidence of witnesses available on record. Prosecution had proved its case against accused persons beyond all reasonable doubts. Hence, learned trial court ought to have convicted the accused persons for commission of offence under Sections 294, 323/34, 325/34 and 506 part II of IPC. Learned trial Court was not justified in giving much weight to minor contradictions and variance caused in the evidence of prosecution witnesses. The findings recorded by learned Sessions judge are perverse as same are based on conjectures and surmises. Learned trial Court has mis-appreciated and misread the evidence of prosecution witnesses. Impugned judgment is erroneous. Therefore, it has been prayed that impugned judgment and order of acquittal dated 08.07.2015 be set aside and respondents No. 1 and 2 be convicted for commission of offence proved by the prosecution beyond all reasonable doubts.

6. On the other hand, learned counsel for the respondents No. 1 and 2 has supported the impugned judgment and order of acquittal dated 08.07.2015 by learned Sessions Judge and has submitted that on the date of incident, appellant Shivnarayan Singh (PW-1) along with his son had caused life threatening injuries in the abdomen of respondent No. 1 Mahesh. An FIR was lodged by respondent No.1 Mahesh against appellant Shivnarayan Singh for commission of offence under Section 307, 294 of IPC and in that case Shivnarayan Singh (PW-1) has been convicted and sentenced for commission

of offence under Section 307 of IPC by learned Sessions Judge. Shivnarayan Singh (PW-1) with an intention to escape from criminal liability of attempt to murder Mahesh with the help of his brother-in-law a police inspector posted in some other district in collusion with local police got registered a false case against Mahesh Patel and his son Santosh with a view to pressurize them for compromise. Therefore, learned trial Court after properly appreciating the evidence of prosecution and defence witnesses has not committed any error in acquitting the respondents No. 1 and 2 by impugned judgment. Learned counsel further submitted that appeal under Section 372 of Cr.P.C. filed by the Shivnarayan Singh (PW-1) is without merit. There is nothing on record warranting the interference of this Court in the order of acquittal. Thus, he has prayed for dismissal of the same.

7. I have heard the learned counsel for the parties at length and have gone through the trial Court record and material available on it.

8. Shivnarayan Singh (PW-1) has deposed that on 03.04.2014, thereafter he stated that in the month of Sawan (Shravan) at around 10:00 AM when he from his house was going towards bus stand, Mahesh was standing on road in front of his shop and told him why he always coughs up and asked his son Santosh to teach him a befitting lesson. Mahesh Patel and Santosh hit him by stones causing injuries on his left eyebrow and nose. He had fallen down on the spot. In the meantime, Mukesh Singh Rajput (PW-2) reached there and pacified the matter. The evidence of Shivnarayan Singh (PW-1) does not find corroboration from the evidence of Mukesh Singh Rajput (PW-2). Mukesh Singh Rajput (PW-2) has deposed that after hearing the noise when he came out from his house, he had seen Shivnarayan Singh (PW-1)'s nose bleeding. He has not supported the prosecution story. Premnarayan (PW-3) is son of Shivnarayan (PW-1) and at the time of incident he was not present on the spot. He is a hearsay witness. Thus, it is explicit that evidence of Shivnarayan Sing (PW-1) is not corroborated by the evidence of independent witness.

9 . Dr. Rajesh Meena (PW-4) has deposed that on 03.08.2014 in P.H.C. Timarni, he had examined Shivnarayan Singh S/o Bansri Rajput and had found following injuries on his person.

(1) Incised wound 3cm x .2 cm in palmar aspect of left hand. injury may be caused by hard and sharp object.

(2) Abrasion below the left eyebrow 1cm x 0.1 cm x 0.1 cm.

(3) Abrasion on face (near to left side of nose) Injury No. 2 and 3 may be caused by hard and blunt object. All injuries were simple in nature.

10. Dr. Rajesh Meena (PW-4) in his cross examination has admitted that possibility of injury No. 1 being self inflicted cannot be ruled out. He further admitted that injuries No. 2 and 3 may be sustained by a person if he falls on ground.

11. Dr. Rajiv Mahrotra (PW-6) of Bhopal without any referral by Dr. Rajesh Meena (PW-4) conducted the C.T. Scan of Shivenarayan Singh (PW-1) and gave report of fracture in his nasal bone.

12. Dr. S.K. Rai (PW-8) has deposed that he had admitted Shivnarayan in hospital on 03.08.2014 and had discharged him through Ex. P-13.

13. If the evidence of Shivnarayan Singh (PW-1) and prosecution story is accepted as correct, it is apparent that only one-one stone were hit by Mahesh Patel and his son Santosh on the person of Shivnarayan Singh (PW-1). It is not the case of prosecution that any of them had caused any injury to Shivnarayan Singh by any sharp and hard object. How Shivnarayan Singh sustained incised wound on his left palm is not clear. Dr. Rajesh Meena (PW-4) has not denied the suggestion offered by defence that incised wound found in the left palm of Shivnarayan Singh may be self inflicted.

14. In this regard, it cannot be over looked that same day accused Mahesh Patel had lodged an FIR against Shivnarayan Singh (PW-1) alleging that Shivnarayan Singh with an intention to kill him caused injuries on his abdomen a vital part of body by means of knife. Mahesh Patel was medically examined by Dr. Ajay Shivhare (DW-2) who has deposed that on 03.08.2014 at about 11:50 AM, he had examined Mahesh Patel S/o Dhanlal Patel, aged about 52 years and had found 4 cm x 2 cm incised stab wound on left side of his abdomen which was deep into abdominal cavity and another incised wound was 2 cm x 1 cm on right thumb of right hand. Injury No. 1 was grievous in nature.

15. Dr. Smith (DW-1) is from Choithram Hospital, Indore. He has deposed that on 03.08.2014 Mahesh S/o Dhannalal R/o Village Kartana was brought to Choithram Hospital, Indore from Harda. He had treated him in Choithram Hospital for a period from 03.08.2014 to 20.08.2014. Mahesh's intestines were found cut which were operated. He has clearly deposed that injury caused to Mahesh on abdomen was dangerous to life.

16. As far as the truthfulness and reliability of the evidence of Shivnarayan Singh (PW-1) is concerned that does not find corroboration from the evidence of any other witness and medical evidence. The possibility of injury No.1 found on his left hand of being self inflicted is not ruled out. In such circumstances, learned trial Court was justified in disbelieving the evidence of Shivnarayan Singh (PW-1). A lot of omissions and contradictions have been noted in his deposition.

17. Shivnarayan Singh (PW-1) has admitted that he had fallen down on the road therefore, even if for the sake of argument it is assumed that he had abrasion on his left eyebrow and near nose sustaining of two abrasions due to fall on road cannot be ruled out. He has deposed that Mahesh Patel, his son Santosh and two other persons had also beaten him by the means of fists but no injury was found on his person except two abrasions one on left eyebrow and another near nose. Thus, the evidence of Shivnarayan Singh (PW-1) being at variance with medical evidence does not inspire confidence. He on his own got done his C.T. Scan at Bhopal without any referral from Dr. Rajesh Meena at Harda and got created the evidence of nasal fracture whereas as per the evidence of Dr. Rajesh Meena injuries on the persons of Shivnarayan Singh were simple in nature.

18. Premnarayan (PW-3) is son of Shivnarayan Singh (PW-1). He in his cross examination has admitted that his maternal uncle Omkar Singh is a Police Inspector. In such circumstance, registration of a false case against accused person with a view to escape Shivnarayan Singh (PW-1) from commission of offence of causing life threatening injury to respondent No.1 Mahesh Patel by

knife cannot be ruled out. Learned trial Court has meticulously examined the evidence of Shivnarayan Singh (PW-1) and Premnarayan (PW-3) in detail and has concluded that their evidence is unreliable. Shivnarayan Singh (PW-1) in his cross examination has stated that Mahesh Patel had hit around 1 1/2 kg (one and half) stone in the back of his head whereas in the FIR he has stated that Mahesh Patel and Santosh had hit one-one stone only. No injury has been found in the back of his head. Therefore, the evidence of Shivnarayan Singh (PW-1) appears suspicious and untrustworthy. The evidence of Shivnarayan Singh (PW-1) is self contradictory on the points of lodging FIR first or medical examination first.

19. I have examined learned trial Court's judgment meticulously. Learned trial Court has minutely appreciated the evidence of Shivnarayan Singh (PW-1), Premnarayan (PW-3) and other witnesses and had termed them as unreliable witnesses.

20. For the reasons stated herein above the possibility of false implication of respondents No.1 and 2 Mahesh Patel and his son Santosh with an intention to pressurize Mahesh Patel to whom he had caused life threatening injury by means of knife on vital part of body i.e. abdomen cannot be ruled out. There is nothing on record, on the basis of which it can be inferred that learned trial Court has not properly appreciated or misread the evidence of prosecution witnesses.

21. Learned trial Court has properly and minutely appreciated the evidence of prosecution witnesses in the light of medical evidence. It has taken into consideration all circumstances appeared in the evidence. Thus, no fault is found with the findings recorded by the learned trial Judge.

22. Consequently, this appeal filed by the victim does not appear worth admission. Hence, dismissed accordingly.

23. A copy of this order along with trial Court record be immediately sent down to the Court of Session Judge, Harda.

(DINESH KUMAR PALIWAL) JUDGE L.R.

Digitally signed by LALIT SINGH RANA Date: 2022.05.07 17:12:25 +05'30'