

Bhagwan and Another

Vs

State of Madhya Pradesh

Criminal Appeal No. 103 of 1975

(A. C. Gupta, P. S. Kailasam JJ)

30.07.1980

JUDGMENT

GUPTA, J. –

1. The two appellants before us were convicted by the trial Court of offences under Section 307 read with Section 34, IPC and Section 333 read with Section 34, IPC and each of them was sentenced to six years' and four years' rigorous imprisonment respectively under the aforesaid two charges. On appeal the High Court affirmed the order of conviction and the sentences passed on the accused-appellants. The prosecution case is that on October 18, 1972 at about 2.30 a.m. PW 1 and PW 9 (Bhagwan Singh and Maharaja Singh), police constables on duty, saw a truck loaded with fuel wood passing through the town Bagh towards Kukshi. PW 5 Latif, cleaner of the truck, and appellant Yaqoob were in the same truck. The truck belonged to the other appellant Bhagwan. Suspecting that the fuel was being illicitly taken away, the two constables stopped the truck and asked for the permit. Latif was then sent to summon appellant Bhagwan who is said to be the owner of the truck. The constables asked the driver of the truck to turn the truck and take it to the police station. As there was no sufficient space for turning the truck, constable Bhagwan Singh (PW 1) asked the driver to take the truck ahead and bring it back and requested constable Maharaja Singh (PW 9) to sit in the truck. After proceeding some distance the truck stopped. Appellants, Bhagwan and Yaqoob, who had been following the truck came up, Yaqoob opened the left side window of the truck and Bhagwan dragged out Maharaja Singh. Yaqoob then hit him with an iron 'tami' and Bhagwan belaboured him with a stick. Maharaja Singh fell down unconscious and the truck was driven away. Bhagwan Singh waited for some time for the truck and when it did not return, he proceeded towards the bus stand where on the road he found Maharaja Singh with bleeding injuries on his person. Bhagwan Singh found appellant Yaqoob standing there and took him to the police station and lodged the FIR (Ex. P-1). Maharaja Singh was then removed to the Public Health Centre, Bagh, where he was examined by PW 4 Dr. Sharma. The defence version is that when constable Bhagwan Singh asked the driver to take the truck to the police station, constable Maharaja Singh was standing on the footboard of the truck and after it proceeded some distance, he was hit by another truck coming from the opposite side, as a result of which he fell down and sustained injuries.

2. The prosecution case rests on the evidence of PWs 1, 5 and 9. PW 1 constable Bhagwan Singh lodged the FIR. The story that appellants Bhagwan and Yaqoob followed the truck when it was being taken to the police station does not find a place in the FIR, and PW 1 is not able to explain why. The FIR also does not mention the name of appellant Yaqoob at all. It appears that PW 5, the cleaner of the truck was examined nearly 1 1/2 months after the date of the incident. According to this witness he was kept confined by the police for about two days before they took his statement

and it was argued before the trial Court as also before the High Court that he gave his evidence under duress. The High Court has declined to accept the story that PW 5 had been kept under detention. The fact however remains that Latif was examined on November 25, 1972 and there is no explanation why he could not be examined earlier.

3. Apart from Latif, PW 9 Maharaja Singh was the only witness of the assault on himself. He was also examined on November 25, 1972 but in his case the explanation is that he could not be examined earlier because of his state of health. In his statement to the police PW 9 did not mention what he stated before the court that appellant Yaqoob assaulted him with a knife and appellant Bhagwan assaulted with a 'tami'. The reason for the omission according to him was that at that time his mind was not working properly. However, he does not say when his mind started functioning properly and when exactly the memory of the incident came flooding back to him to enable him to narrate the story in such detail before the court. The explanation that the mind was not working properly does not also seem to be correct. PW 10 sub-Inspector Suraj Prakash Sharma who recorded Maharaja Singh's statement in states in his evidence :

The statement which Maharaja Singh gave was given by him with full understanding. He did not give it in unbalanced condition of mind. His statement Ex. D-3 is written in the same way in which he gave it.

4. The defence version finds support from the evidence of PW 4 Dr. Sadashiv Sharma who says referring to the injuries sustained by PW 9 :

If two vehicles are passing each other and the injured happens to come in between the two, the person would be pressed and will fall down and roll, in that case all the injuries are possible simultaneously.

5. It thus appears that both trial Court and the High Court either ignored the aspects of the case discussed above or sought to explain away some of them, though there was no material to sustain the explanation. We think it unsafe and unreasonable to rest the conviction of the accused on such evidence. We accordingly allow the appeal and set aside the conviction of the appellants and the sentences passed on them. The bail bonds furnished by them are discharged.

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