

State of Rajasthan

Vs

Madho and another

Criminal Appeal No. 769 of 1979

(A.M. Ahmadi, V. Ramaswami M. Fathima Beevi JJ)

12.03.1991

ORDER

1. Six persons, including the respondents Madho and Krishna, were put up for trial for the commission of offences punishable under Sections 302 and 326/ 323, I.P.C. The trial Court acquitted four women co-accused but convicted Madho under Sections 302 and 326, I.P.C. and Krishna under Sections 302 and 323, I.P.C. and sentenced both of them to life imprisonment for the murder of Mangi Lal. The two convicted accused preferred an appeal which was heard by a Division Bench of the High Court. The High Court came to the conclusion that the prosecution evidence tendered against the convicted accused was full of infirmities and the prosecution version regarding the incident could not be accepted as the prosecution witness had failed to explain injuries sustained by these two accused persons. In that view that the High Court took it reversed the decision of the trial Court and acquitted both the accused persons. It is against the said order of acquittal that the State has preferred this appeal.

2. According to the prosecution, on April 13, 1973, around noon time when PW 1- Gouri Lal was getting a well dug, the dug-up earth was thrown on the adjoining land to which the accused protested. The two respondents abused PW 1 and thereafter Kanwari attacked him and gave lathi blows to PW 1. On hearing an alarm, PW 2 - Lal Chan (anti the deceased) rushed to the site. The respondent Madho struck a farsi blow on the leg of PW 2 which resulted in fracture. The deceased removed PW 2 to the house of Bapu Chamar at a short distance from the field. The prosecution case is that the two respondents and the other four acquitted accused persons followed the deceased and PW 2 the two respondents entered the house of Bapu Chamar and gave farsi blows on the head of the deceased to which he ultimately succumbed. Thus the prosecution case is divided in two parts, namely, the incident which took place in the field where PW 1 was getting a well dug and the incident which took place at the house of Bapu Chamar. So far as the first part of the incident is concerned, both the Courts came to the conclusion that the prosecution version that Kanwari launched the assault on PW 1 and the other three ladies also attacked him is not worthy of acceptance. As regards the second part of the incident the trial Court came to the conclusion that the two respondents were not entitled to any right of private defence because they had actually followed PW 2 and the deceased when the latter was removed by the former to Bapu Chamar's house and had belaboured the deceased there. Therefore, even though the respondents had sustained injuries they were not entitled to right of private defence as they were the aggressors. In this view that the trial Court took it convicted the two respondents as stated earlier. The High Court on a re-appreciation of the evidence came to the conclusion that the prosecution witnesses were guilty of shifting their stand and had failed to explain the serious injuries on the two respondents. So far as PW 1 is concerned, the High Court noticed that he had changed his version from the one stated in the First Information Report as well as his evidence before the committing Court. Before the committing Court he had

stated that after he received injuries he became unconscious and had not noticed the assault on PW 2 as well as the deceased. The High Court further noticed that on his own showing he has gone to his residence from the field for drinking water and by the time he reached Babu Chamar's house the deceased had fallen on the ground with injuries. In other words PW 1 cannot be said to be an eye-witness of the second part of the incident. So far as PW 2 is concerned we find that according to his version he received an injury on the leg when he went to the rescue of PW 1. His version that PW 1 was belaboured by the ladies has not been accepted by both the Courts. Even in regard to that version he is found to have shifted his stand. He deposes that after he was lifted to the house of Babu Chamar the respondent and their companions followed them and belaboured the deceased after he was laid on the 'otle'. According to his statement thereafter the deceased went over to the road where he was belaboured by the respondents. Now this witness was engaged to the daughter of the deceased. As stated earlier his evidence regarding the involvement of the ladies has been rejected by both the Courts and in our opinion rightly. In his cross:-examination he stated that he could not say if the accused persons kept on following and throwing stone, a statement which casts a doubt on his version that the accused had followed the deceased after the latter had lifted him to the 'otle' of Babu Chamar and had thereafter belaboured him. He was unable to explain how the two respondents sustained injuries. If we turn to the injuries sustained by the two respondents which have been set out in paragraph 25 of the trial Court judgment, we find that the respondent Krishna had sustained as many as six injuries, five of them on the skull region. The respondent Madho too had sustained six injuries, two on the skull region, two on the scapular region, one on the forehead and one on the right index finger. Thus some of the injuries were on exposed parts of their bodies and we would expect the prosecution witnesses to explain how the two respondents sustained the said injuries. No explanation worth the name is forthcoming. The trial Court, however, brushed aside this infirmity by pointing out that in the cross case filed at the behest of the respondent Krishna the evidence disclosed that there was no farsi blow and, therefore, the defence theory was not acceptable. Counsel for the respondents, however, questioned the admissibility of the said evidence. Be that as it may, mere acquittal of the accused (prosecution side herein) in that case does not render the defence version false. The defence version has to be evaluated on the basis of the prosecution evidence tendered in the present case. The fact remains that both the respondents had sustained serious injuries, Krishna mainly on the skull whereas Madho on the skull as well as scapular region. If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the respondents herein it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident. The High Court was, therefore, of the opinion that having regard to the fact that they have failed to explain the injuries sustained by the two respondents in the course of the same transaction, the respondents were entitled to the benefit of the doubt as it was hazardous to place implicit reliance on the testimony of the injured PW 2.

3. The High Court also examined the evidence of the other prosecution witnesses including PW 10 - Bai Kali and came to the conclusion that their evidence did not enhance the prosecution case. In fact Bai Kaili gave out a version which was neither the case of the prosecution nor that of the defence. The High Court, therefore, brushed aside her evidence as unworthy of credence.

4. In view of the above, we do not think that the High Court had committed any error in the evaluation of the prosecution evidence. The view taken by the High Court cannot be said to be against the weight of evidence or one which has resulted in gross injustice. In our view the evaluation of the prosecution evidence by the High Court in the context of the injuries sustained by the two respondents is quite proper and does not call for interference by this Court.

5. In the result we see no merit in this appeal and dismiss the same.

Appeal dismissed.

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