Harijan Magha Jesha vs State Of Gujarat on 7 March, 1979

Equivalent citations: AIR1979SC1566, 1979CRILJ1137, (1979)3SCC474, AIR 1979 SUPREME COURT 1566, 1979 (3) SCC 474, 1979 CRILR(SC&MP) 603, 1979 SCC (CRI) 652

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Bench: Syed M. Fazal Ali, A.D. Koshal

JUDGMENT

S. Murtaza Fazal Ali, J.

1. In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act the appellant has been convicted under Section 302 and sentenced to imprisonment for life. The appellant was tried by the learned Sessions Judge who acquitted the accused of the charges framed against him. The State then filed an appea before the High Court against the order of acquittal which was successful and the High Court reversed the order of acquittal and convicted the appellant as indicated above. A resume of the prosecution case has been given in the judgment of the High Court and it is not necessary for us to repeat the same over again.

2. The entire conviction of the appellant is founded on the testimony of witness P.W. 1 Megha. The trial Court after considering the evidence of this witness completely disbelieved him and expressed doubts regarding his presence at the spot mainly on the following grounds:

> 1. that while the witness definitely stated that Rule 1 had struck a stick injury on the head of the deceased, yet from the medical evidence, it appears that there was no such injury at all;
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> 2. that according to the evidence of P.W. 1, Megha he caught hold of accused No. 1 while he was holding utensils yet we do not know what happened to utensils which were neither seized nor a seizure list of the same was prepared at the spot.
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> 3. that while the witness P.W. 1 was catching hold of accused No. 1, the appellant if he wanted to assault the deceased, should have first got him released from the grip of P.W. 1 which he had not done.

In view of these serious infirmities the Trial Court refused to act on the solitary evidence of this witness. When the matter camp up before the High Court, the High Court thought that none of the reasons given by the Sessions Judge were relevant but were easily explainable. The High Court

observed that as the stick blow was given to the deceased from' behind, the witness might not have been able to see the exact spot which was hit by the stick and that explained why he mentioned that stick hit the deceased on the head. While this view is plausible, it is equally possible that as the witness was not present at the time of occurrence, therefore he committed a grave mistake in describing the nature of the injury caused to the deceased. It cannot be said, in the circumstances, that the view taken by the Sessions Judge was perverse and not at all borne out by the evidence on the record. Similarly, the other two reasons given by the Sessions Judge could not be brushed aside as being totally irrelevant. We have carefully perused the evidence of P.W. 1 and we feel that it will be wholly unsafe to act on the solitary testimony as it does not appear to be free from blemish or infirmity. Mr. Shah appearing for the State vehemently relied on certain circumstances to corroborate the evidence of P.W. 1. In the first place, he stated that on the personal search of the appellant, a chadi was found which was blood stained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement under Section 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant particularly after he had been acquitted by the Trial Court. It was then contended that P.W. 1 had immediately narrated the occurrence to the Mamlatdar who had arrived at the scene of the occurrence. He relied on the diary Ex. 22. So far as diary Ext. 22 is concerned, that does not appear to have been proved according to law. Although Mamlatdar was examined as a. witness he was never asked to identify P.W. 1 as the very person who had narrated the occurrence to him when he visited the spot but in his statement named Mava Lakhe as the person who narrated the incident to him. On the other hand in the F.I.R. lodged by P.W. 1 himself, it is clearly mentioned that when the Mamlatdar came to the village, it was one Maganbhai which according to the counsel for the State should be Khetan Bhai who narrated the story to the Mamlatdar. Thus it appears that three inconsistent pleas have been taken by the prosecution on such a vital matter. This, therefore, knocks the bottom out of the case of the prosecution on this point and shows that if anybody narrated the story to the Mamlatdar, it was not P.W. 1 at all. Having regard to these circumstances the testimony of P.W. 1 is not free from doubt. We feel that this was not a case in which the High Court ought to have reversed the order of acquittal passed by the Sessions Judge. Even assuming that the view taken by the High Court is correct, the circumstances clearly disclose that the view taken by the learned Sessions Judge was also reasonably possible. Once this is so, there can be no question of reversing the order of acquittal. For these reasons, this appeal is allowed the judgment of the High Court is set aside and the appellant is acquitted of the charges framed against him.