

Bhagwan And Anr. vs State Of Madhya Pradesh on 30 July, 1980

Equivalent citations: AIR1980SC1750, 1980CRILJ1269, 1980SUPP(1)SCC316, AIR 1980 SUPREME COURT 1750, 1981 SCC (CRI) 253, 1980 CRILR(SC MAH GUJ) 502, 1980 CRILR(SC MAH GUJ) 473, (1980) CURLJ(CCR) 145, 1980 CRI APP R (SC) 243

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Bench: A.C. Gupta, P.S. Kailasam

JUDGMENT

A.C. Gupta, J.

1. The two appellants before us were convicted by the trial court of offences under Section 307 read with Section 34 I.P.C. and Section 333 read with Section 34 I.P.C. and each of them was sentenced to six years and four years rigorous imprisonment respectively under the afore said 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 16th October, 1972 at about 2-30 a. m. P W. 1 and P.W. 9 (Bhagwan Singh and Maharaja Singh), police constables on duty, saw a truck loaded with fuel wood passing through the town Bagh towards Kukshi. P.W. 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 (P.W. 1) asked the driver to take the truck ahead and bring it back and requested constable Maharaja Singh (P.W. 9) to sit in the truck. After proceeding some distance the truck stopped Appellants, Bhagwan and Yaqoob, who had been following the track came up, Yaqoob opened the left side window of the truck and Bhagwan dragged out Maharaja Singh. Yaqoob then hit him with an iron 'rami' 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 F.I.R. (Ex.P. 1). Maharaja Singh was then re moved to the Public Health center, Bagh, where he was examined by P.W. 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 P. Ws. 1, 5 and 9. P.W. 1 constable Bhagwan Singh lodged the F.I.R. The story that appellants Bhag wan and Yaqoob followed the truck when it was being taken to the Police Station does not find a place in the F. I. R., and P.W. 1 is not able to explain why. The F.I.R. also does not mention the name of appellant Yaqoob at all. It appears that P.W. 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 P.W. 5 had been kept under detention. The fact however remains that Latif was examined on 25-11-1972 and there is no explanation why he could not be examined earlier.

3. Apart from Latif, P.W. 9 Maharaja Singh was the only witness of the assault on himself. He was also examined on 25-11-1972 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 P.W. 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. P.W. 10 Sub-Inspector Suraj Prakash Sharma who ne corded Maharaja Singh's statement states in his evidence:

The statement which Maharaja Singh gave was given by him with full under standing. 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 P.W. 4 Dr. Sadashiv Sharma who says referring to the injuries sustained by P.W. 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 the 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.