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JUDGMENT

This criminal appeal is preferred under Section 374 of the Code of Criminal Procedure, 1973 by the appellant being crestfallen by the judgment dated 13.10.2018 passed by the learned Additional Sessions Judge, Sendhwa, District-Barwani (M.P.) in Sessions Trial No. 139/2016 whereby the appellant has been convicted for the offence punishable under Sections 148, 332/149 & 332 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to undergo 2 years R.I., 3 years R.I. and 3 years R.I. with fine of Rs.1,000/-, Rs.1,000/- & Rs.1,000/- and usual default stipulation.

2. As per the prosecution story, on 11.09.2016, present appellants assembled all together before the police station and shown their agitation and anger by sloganeering and shouting against the order of banning the use of DJ in Ganesh Utsav procession. When force tried to intervene and attempted to keep them back, it was alleged that crowd did not allow them to do so and present appellants threw stones over them. Thereafter, Crime No. 180/2016 was registered under Sections 147, 148, 353, 332 & 506 of IPC against all accused and final report was submitted.

3. The police party, following due procedure, arrested the appellants, registered the case against them. After necessary investigation, charge-sheet was filed against the appellants under Sections 147, 148, 353, 332 & 506 of IPC. In turn, learned Magistrate has committed the case to the Sessions Judge. The learned Additional Sessions Judge framed the charges under Sections 352/149, 332, 333/149, 506 (Part-II), 147 and 148 of IPC and Section 3 of Prevention of Damage to Public Property Act, 1984 and recorded the plea of appellants, wherein they had denied the charges and prayed for trial.

4. In order to bring home the charges, the prosecution has examined as

many as 11 witnesses namely Vinod Meena, Head Constable (PW-1), Shivkumar, Constable (PW-2), Rameshsingh Chouhan, Head Constable (PW-3), Duasingh (PW-4), Surya Panwar (PW-5), Biharilal Sen (P.W.-6), Sanjay Mori, Constable (PW-7), Dr. P.D. Chouha, Medical Officer (PW-8), R.S. Singod (PW-9), Bhupendra Singh, Head Constable (PW-10) & R.C. Chouhan, A.S.I. (PW-11). No witness has been examined in support of the defence. The appellants abjured their guilt and they took a plea that they are innocent.

5. After appreciating the evidence adduced by the parties, trial Court by the impugned judgment found guilt to the appellants and convicted and sentenced them as mentioned in para-1 of this judgment.

6. The appellants have preferred this criminal appeal on several grounds and submitted that they had not done anything wrong but prosecution witnesses have narrated false story against them. All of the witnesses are police personnel and their statements are full of contradictions and omissions. No independent witness has been furnished by the prosecution agency. There is unexplained inordinate delay in sending the copy of the FIR to the Magistrate as required under Section 157 of Cr.P.C. which makes every possible chance of manipulation in the FIR by roping innocent persons as an accused, which exactly happened in this case and therefore, this lacuna is sufficient for throwing out the entire prosecution case being fabricated. The learned trial Court has erred by not considering the facts that few appellants (appellant Nos. 11 to 17) have not been named in the FIR and later on they have been named without attributing any specific role to them in the evidence that was adduced during the trial, which cast a cloud over the truthfulness of the prosecution story. The prosecution has produced two articles of CD 'A' & 'B' but without compliance with Section 65B of the Evidence Act, 1872, they are not admissible. As such

prosecution miserably failed to prove its case beyond all reasonable doubts, hence, the appellants are liable to be acquitted.

7. On the other hand learned Government Advocate for the respondent/State has supported the conviction and sentence passed by the trial court and submitted that after due appreciation of the evidence, the trial Court has found guilty the appellants for the offence punishable under Sections 148, 332/149 & 332 of I.P.C, which is not warranting any interference.

8. I have heard the learned counsel for the parties and perused the record.

9. Vinod Meena, Head Constable (PW-1) and Shivkumar, Constable (PW-2) testified that on 11.09.2016 at about 10:45 pm, crowd was assembled in front of police station. The accused persons Gopal Bagul, Raj Bagul, Banti Choudhary, Son of Guddu Shukla Patwari, Mantu Koli, Anil Choudhary, Inu, former counsellor, Jojo Darbar, Pichku alongwith 10-12 persons were there. They have stated that inasmuch as on the occasion of Ganesh Festival they have not been permitted to play DJ, they will not allow to cut the goats on Eid festival. Meanwhile, crowd started to throw the stone.

10. Further, Vinod Meena (PW-1) has stated that the accused Gopal Bagul has caused injury on the knee of his left leg and Shivkumar (PW-2) also stated that all of accused persons were saying to set ablaze the police station. Certainly, Vinod Meena (PW-1) has supported the prosecution story, but in his examination-in-chief, there are some omissions and contradictions emerged in the FIR (Exhibit-P/1) as well as police statements (Exhibit-P/1). In para 31 of his statement, he has admitted that he has not got ascribed in the FIR that due to broken glass of window and headlight of room of the In-charge of police station, loss Rs.1,500/- was caused. Likewise, he has also not stated in the

police statement and FIR that there are nine stones lying in the premises of police station. These contradictions and omissions are material especially when the FIR was lodged by Head Constable. These contradictions are having their importance.

11. Another injured Shivkumar (PW-2) has also supported the prosecution story in his examination-in-chief. However, in para 6 of his cross-examination, he has conceded that he was standing outside of chanel gate of police station premises and there are crowd of 20-25 persons who were abusing and throwing the stone, but he said that if the same information has not been placed in police statement, he cannot assign any reason. Rameshsingh Chouhan, Head Constable (PW-3) has also supported the prosecution case but in some points he was declared hostile by prosecution. In para 8 of his cross-examination, he has admitted that in his statement recorded under Section 161 of Cr.P.C. that if the name of Raja, Bunti, Son of Guddu Shukla Patwari, Montu, Anil, Kinu Counselor, Joju Dhabe Wala, Pichku has not been mentioned, he cannot assign any reason.

12. In furtherance, Dudhasingh (PW-4) has not supported the prosecution case even after being declared hostile, he has not said anything in favour of prosecution story. Certainly, CDs have been filed in this case but since certificate under Section 65B of the Evidence Act has not been filed, these CDs are having no relevance. Surya Panwar (PW-5) has supported the prosecution case to some extent, however, he has clearly stated that he has not identified any person from the crowd which was of 25-30 persons. He has also been declared hostile and on being declared hostile, nothing came in support of prosecution case. Biharilal Sen (PW-6) has also not supported the prosecution case. Although, he said about preparation of panchnama of damage of

Rs.1500-1600/-. On the basis of this witness, only it can be said that there were some glasses were broken. Sanjay Mori (PW-7) has also supported the prosecution case and stated that nearly 50 persons were in crowd and he has also one videography of the said incident but since the certificate under Section 65B of Evidence Act, has not been furnished, such type of evidence cannot be used.

13. Dr. P.D. Chouhan (PW-8) stated that on 12.09.2016, he has examined the injured Vinod Meena, Head Constable and found a contusion 4X4 on the left leg (Exhibit-15) on his person and examined the injured Shivkumar, Constable and found a contusion 6X6 on thigh of right leg.

14. Now, considering the statements of aforesaid witnesses, In this case the police professionals are the complainant and injured party. The police witnesses and other witnesses have not supported the prosecution case properly and some of them have been declared hostile. Ramesh Singh Chouhan (PW-3) and Bhupendra Singh (PW-10) are police Constables and in spite of that they have been declared hostile. That apart, Dudha Singh (PW-4) who is said to be photographer and videographer has also not supported the prosecution case and even also being declared hostile, he has not stated anything in support of prosecution. Likewise Biharilal Sen (PW-6), Surya Panwar (PW-5), the witnesses of seizure memo, loss memo, arrest memo have not supported the prosecution case in their examination-in-chief and have been declared hostile.

15. Under these conditions, it can be articulated that a society gets justice, which it deserves. If the persons are not willing to state or depose about the facts which they have witnessed or regarding the events which took place in

their presence, the Courts of law cannot help the situation, as the Courts of law are duty bound to give findings strictly in accordance with law and strictly within the four corners of law.

16. It is evident that this case is only supported by police witnesses Vinod Meena, Head Constable and Shivkumar, Constable but on this aspect, the law is well settled that when the case only rests upon police witnesses, there should not be material discrepancies in the statements of police witnesses.

17. On this aspect, the law laid down by Co-ordinate Bench of this Court in the case of *Samrath Vs. State of M.P.* reported in *2005 (2) MPLJ 11*.

Relevant paragraph of the judgment is condign to quote here :-

" 5So, the standard for judging the deposition of police officers and any other public man shall also differ and such minor discrepancies might be of greater importance while judging the deposition of police officers which should be ignored in case of other witnesses. Judging from this angle the testimonies of the prosecution witnesses could not be safely relied. Learned Trial Magistrate did not consider the testimonies of the police officials from the above angle and has relied upon them without close scrutiny, hence, did not exercise the discretion properly."

18. In view of the aforesaid law held by the High Court of Madhya Pradesh, it can be envisaged that when the prosecution case is resting only upon police witnesses, the testimonies of police witnesses are subject to strict scrutiny. Omissions and contradictions in the statements of police witnesses will create cloud and they will make prosecution case suspicious. That apart, this case is also suffering from non proper compliance of Section 157 of Cr.P.C.. In this case, FIR was lodged at 2:30 on 11.09.2016 but the counter of

FIR was transmitted to respective Magistrate on 15.09.2016. Whereas, as per Section 157 (1) of Cr.P.C., it should be sent forthwith to respective Magistrate. Certainly, it is not always fatal for the prosecution case, but when the police itself is complainant, such type of delay also creates doubt on prosecution case.

19. Here, where the prosecution case is fully dependent upon police witnesses and other independent witnesses have not supported the prosecution case and even the police witnesses are not able to mention the name of all accused persons and they are containing contradictions and discrepancies on material points, it cannot be safe to rely upon the prosecution case in order to convict the accused persons.

20. Under these circumstances, it can be reckoned that the prosecution is not able to prove its case beyond reasonable doubt, hence, the findings of learned trial Court in convicting the appellant under Sections 148, 332/149 & 332 is not in consonance of law. Therefore, the appeal preferred by the appellants is liable to be allowed and the impugned order of learned trial Court being perverse, deserves to be set aside.

21. In upshot of the aforesaid terms, the present appeal preferred by the appellants is hereby allowed and in the result thereof, having set aside the impugned judgment, the appellants are acquitted from the charges under Sections 148, 332/149 & 332 of IPC. The appellants are on bail, hence, their bail bond and surety bond stand discharged. The appellants are entitled to receive back the fine amount deposited by them before the learned trial Court.

22. A copy of judgment alongwith record be sent to the concerned learned trial Court for information and necessary compliance.

23. The order of the learned trial Court regarding disposal of the seized property stands confirmed.

24. Pending application, if any, stands closed.

25. With the aforesaid, the appeal is allowed and disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

Vindesh

