
(2012) 04 MP CK 0096

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 973 of 1996

Angur, Anjeer and Nathulal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357, 374
Penal Code, 1860 (IPC) — Section 307, 320, 326, 34

Citation : (2012) 04 MP CK 0096

Hon'ble Judges : S.R. Waghmare, J

Bench : Single Bench

Advocate : Prakash Jain, for the Appellant; Amit Singh Sisodiya, learned Counsel, for the Respondent

Judgement

Mrs. S.R. Waghmare, J.—This appeal has been filed u/s 374 of the Cr.P.C. challenging the judgment dated 21/11/1996 passed by the Additional Sessions Judge Shajapur in S.T. No. 391/1993 convicting the accused appellants for offence u/s 307/34 of the IPC and sentencing them to undergo 7 years R.I. with fine of Rs. 3,000/-, in default of payment of fine they were to undergo additional three years R.I. The brief facts of the prosecution are that on the date of incident i.e. on 24.06.1993 one Kailash Chandra Rathore hired a Tractor and went to the farm of Dr. Mahendra Sharma for sowing. The tractor was driven by one Gopal. Kailash, Dr. Mahendra Sharma, Raju Sethi and Prem Mittal were jointly doing some mechanical work on tractor. All of a sudden Nathu Ghosi, Ankur Ghosi and Anjeer Ghosi and two other persons viz, Moolchand and Jagannath @ Jhandu reached there with arms such farsi, logs, dharia etc. Ankur abused and assaulted Mahendra Sharma with dharia, caused injury on his left hand and he fell down. Kailash Rathore tried to intervene but accused Nathu assaulted him by spear edged stick, as a result which, he received injuries on his head and the wound was oozing. Prem Mittal also intervened but he has also been assaulted on his head. The accused persons assaulted Dr. Mahendra Sharma also and caused injuries and thereafter the accused persons fled away from the spot. The matter

was reported at Police station Agar vide Ex.P/1. All the injured persons were sent for medical examination at district hospital Agar. Dr. Khan examined injured Premchand Mittal, Kailashchandra and Dr.Mahendra Sharma and their medical reports are Ex.P/ 23, 24 & 25 respectively. Thereafter all the injured persons were sent to District hospital Ujjain for their treatment. The spot map was prepared. On completion of the investigation the accused persons were duly charged for offence u/s 307 of the IPC and put to their trial.

2. The accused abjured their guilt and stated that they have been falsely implicated in the matter. However, the Trial Court on considering the evidence on record convicted and sentenced the accused/appellants as herein above indicated. Hence, the present appeal.

3. Learned Counsel for the appellants has urged that the conviction is contrary to the provisions of law. The Courts below has failed to appreciate the evidence and there are material omissions and contradictions in the testimony of the prosecution witnesses, which have not been considered by the trial Court. Counsel for the appellant has urged that the dispute had occurred all of sudden and there was no intention to commit the offence as alleged by the prosecution. The medical evidence does not sustain the conviction u/s 307 of the IPC. Counsel further submitted that all the accused appellants were young persons at the time of incident and they were on bail during the trial and have not misused the liberty granted to them. Counsel vehemently urged that the offence u/s 307 of the IPC could not be made out since the medical reports indicate that the injuries were simple in nature. Under the circumstance, Counsel submitted that at the most, the offence would fall u/s 326 of the IPC; hence Counsel prayed for conversion of the offence from offence u/s 307 to Section 326 of the IPC. To bolster his submissions, Counsel relied on Gokul Singh Vs. State of M.P., Sarju Prasad Vs. State of Bihar, Counsel has candidly admitted that the appellants are willing to pay any further amount of fine as may be imposed by this Court. Hence, the appeal deserves to be allowed and the judgment of trial Court be set aside. In the alternate, Counsel submitted that even if this Court was also satisfied regarding the conviction, the custodial sentence may be reduced to the period already undergone since the accused/appellants have already undergone 42 days of the custodial sentence.

4. Learned Counsel for respondent/State per contra submitted that the judgment of the trial Court is in accordance with law and does not require any interference and the appeal filed by the appellant be dismissed.

5. On considering the above submissions, I find that the impugned judgment is based on valid and cogent reasons. However, considering the fact that the dispute had occurred all of a sudden and the injuries sustained were grievous in nature and was dangerous to life, if not treated timely; then, such facts do not attract offence u/s 307 of the IPC and the injury would fall under clause Eighthly of Section 320 of the IPC and the offence would fall u/s 326 of the IPC. Reliance is placed to bolster the submissions; Jai Narain Mishra and Others Vs. State of

Bihar, and 2003 M.P.W.N. 178 (81) Rajesh vs. State of M.P.

6. Thus, in this view of the matter, I allow this appeal in part, set aside the conviction and sentence of the appellant u/s 307 of the IPC and instead convict him for the offence u/s 326 of the IPC. Besides considering the fact that the appellants were on bail through out the trial and have not misused the liberty granted to them. Hence, it would not be just and fair to send them back to prison now after a period of 19 years. Hence it would be appropriate to reduce the custodial sentence to the period already undergone and the fine is enhanced to a sum of Rs. 5,000/-each as fine, which shall be paid to the injured persons equally as compensation 357 of the Cr.P.C. within a period of two months from the date of this judgment. On failure to pay the fine within the stipulated period and the appellants shall undergo the remaining sentence as directed by the lower Court.

7. With these observations and directions, the appeal is partly allowed to the extent herein above indicated. Appellants are on bail, their bail bond and surety bond are hereby discharged. A copy of this judgment be sent to the concerned lower Court for compliance.