
(2010) 04 MP CK 0058

In the Madhya Pradesh High Court

Babla alias Ramvir and Hari Singh both Sons of Karan Singh	APPELLANT
Vs	
The State of Madhya Pradesh	RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 304

Citation : (2010) 7 RCR(Civil) 1639

Hon'ble Judges : Piyush Mathur, J

Bench : Single Bench

Judgement

Piyush Mathur, J.—The Appellants have preferred this Criminal Appeal on being aggrieved by the Judgment of Conviction passed by 3rd Additional Sessions Judge (Fast Track) Gwalior in ST. No. 325/2000, whereby the Appellants have been convicted for an offence punishable u/s 147 I.P.C. for undergoing an imprisonment of One Year with fine of Rs. 200/- and u/s 148 I.P.C. for undergoing an imprisonment of Two Years with fine of Rs. 300/- and under Sec. 326/149 I.P.C. for undergoing an imprisonment of Five Years with Fine of Rs. 500/- for causing injuries to Injured/Complainant Ram Babu and have been further convicted u/s 323/149 I.P.C. for undergoing an imprisonment of One Month with fine of Rs. 200/- for causing injuries to Shree Bai.

2. The prosecution has disclosed through its evidence that on Date 25.07.2000 the Accused-Appellants had gathered together at about 11.00 PM at Village Nanakhedi and had formed an unlawful assembly with common object/intention of causing injuries to the Complainant Ram Babu, upon having deadly weapon in their hands. The Investigating Agency had submitted a Charge-Sheet against the Appellants and the Trial Court had framed Charges under Sections 307/149, 147, 148, 324, 324/149 and Section 294 I.P.C. and after completion of the Trial, the Appellants have been convicted under Sections 147, 148, 326/149 and 323/149 I.P.C. The prosecution case further reveal that P.W.-4 Ram Singh had entered into an agreement with Appellant-Pappu for Sale and Purchase of agricultural land and Ram Singh had paid Rs. 10,000/- as advance money in presence of P.W.-3

Lal Saheb but subsequently it was disclosed to Ram Singh that Pappu is not the Owner of the land, as the land belongs to one Sehariya, therefore, Ram Singh informed P.W.-3 Lal Saheb that when Pappu would show to him the documents of the ownership of land, then he would pay balance of amount to him.

3. When Pappu failed to convince Ram Singh about his ownership of the land, then Ram Singh demanded that the advance money be returned to him, which created an impression in the mind of Appellant Pappu that P.W.-3 Lal Sahab has created hurdle in the smooth execution of the agreement and upon having this feeling in mind, the Appellant Pappu hurled abuses at Lal Sahab on Date 25.07.2000 and subsequently, went to his house at 11:00 PM in the night, where Ram Babu came out of the House and Appellant Mahendra inflicted Farsa blow on his head and the other Appellants caused injuries with Lathis. During this incident, Sukhwanti Bai (P.W.-2) and Shree Bai (P.W.-5) respectively, wife and the mother of P.W.-1 Rambabu, also sustained injuries.

4. The record further reveal that Pappu had also lodged a report with the Police, on the basis of which offence was registered and Sessions Trial No. 44/2001 was conducted before the same Trial Court, where present Sessions Trial No. 325/2000 was decided and different judgments were delivered in relation to the same incident, occurred on Date 25.07.00 amongst the complainant and Accused persons of the present Appeal.

5. I have heard Shri Atul Gupta Learned Counsel for the Appellant and Shri B.D. Mahore Learned Deputy Government Advocate for the State of M.P. and have perused the record.

6. The prosecution has examined as many as 13 Witnesses to establish that the Accused/Appellants have committed the offence. P.W.-1 Ram Babu has narrated the entire story right from the stage of the agreement of the Agricultural Land, till the causing of the injury to him in a very clear manner by describing that Appellant Mahendra caused an injury on his head with a Farsa and other Accused persons caused injuries by inflicting Lathi blows upon him. He further narrated in his statement that the Accused/Appellants have also caused injuries to his mother Shree Bai. Similarly, P.W.-2 Sukhwanti, wife of Ram Babu, and Shree Bai (P.W.-5) Mother of Ram Babu have narrated the entire story of causing injuries by the Appellants, in a categorical and convincing manner.

7. The defence has put forward a common question to these three witnesses that complainant Ram Babu had initially gone to the House of Appellants Babla and Mahendra and had initiated the fighting and caused injuries to Pappu and Babla and this fighting continued, till the Complainant Ram Babu sustained injuries as a result of free-fight. These three witnesses have certainly negated the correctness of this suggestion, but have categorically accepted that on account of of lodgement of report by Pappu, a Criminal Case was instituted against them, which is also pending with the Criminal Court in relation to the same incident, occurred on the same Date 25.07.2000.

8. Shri Atul Gupta, Learned Counsel for the Appellants has submitted that during the pendency of this Criminal Appeal, Accused-Appellant Mahendra has expired and his name has been deleted vide Order Dated 23.09.2009. He further submits that the prosecution witnesses and more particularly P.W.-1 Ram Babu has specifically deposed that Appellant Mahendra had caused injury with Farsa on his head, therefore, he alone could be held responsible for causing grievous hurt to the Complainant Ram Babu and could alone be liable for committing the offence u/s 326, I.P.C.

9. Shri Atul Gupta, Learned Counsel further submits that since the Complainant of the present case and the accused had engaged themselves in free-fighting, therefore, the element of Section 149 I.P.C. would not be attracted as the culpability of the offence would involve the appellants individually, when the prosecution witnesses themselves have admitted the fact of the pendency of another Criminal Case against them, which was instituted at the instance of the present Appellants.

10. Shri Atul Gupta has drawn my attention to a Judgment of the Supreme Court reported as *Puran Vs. State of Rajasthan*, to demonstrate that in a case of sudden mutual fight between the two parties, Section 149 I.P.C. could not be invoked for the purposes of imposing constructive criminal liability and the accused persons would be convicted only for injuries caused by them individually. The Supreme Court has observed in this case that in a case of sudden mutual fight between the parties, there would be no question of invoking aid of Section 149 I.P.C. for the purpose of imposing constructive criminal liability and the accused could be convicted only for the injuries caused by him by his individual act.

11. Shri Gupta has also relied upon another Judgment of the Supreme Court reported as *Mariadasan and Others Vs. State of Tamil Nadu*, to demonstrate that in absence of a satisfactory evidence to prove the formation of any unlawful assembly with the common object of committing crime and when the entire fight started suddenly on the spur of the moment in a heat of passion, then the accused could be liable for their individual acts alone and could not be convicted u/s 149 of I.P.C.

12. Shri Atul Gupta has cited another Judgment of the Supreme Court reported as *Abdul Hamid and others Vs. State of Uttar Pradesh*, to re-iterate the similar analogy that in a free-fight, the accused would be liable for his individual act.

13. Shri B.D. Mahore Learned Deputy Government Advocate has drawn my attention to the text of Section 149 of I.P.C. to demonstrate that every member of the unlawful assembly would be liable for the act/action of the other member of the assembly and would be equally guilty of the offence and since all the Appellants were sharing the common object of causing injury to P.W.-1 Ram Babu, with an intention to cause his death, looking to the nature of the injury, it would be a fit case to convict the Appellants u/s 326/149 I.P.C. even when the

Appellants, (excluding Appellant Mahendra), had caused simple injuries to P.W.-1.

14. The entire prosecution evidence collected and produced before the Trial Court demonstrate that on Date 25.07.2000, the Appellants had formed an unlawful assembly with an intention to cause injury to P.W.-1 Ram Babu, but when the individual act of all the Appellants is evaluated, it emerges that even Appellant Mahendra had caused a single injury on the head of P.W.-1 Ram Babu and had not caused repeated blows of Farsa. Similarly, the evidence regarding causing of repeated injuries of Lathi by other Co-Appellants is very clear, which does not suggest that the other Co-Appellants had repeatedly caused Lathi blows.

15. The evidence regarding sustaining injuries by the present Appellants in the same incident, on the same date demonstrate that the Complainant and the Accused-Appellants have caused injuries to each other, therefore, it has become difficult to ascertain about the culpability of each of the Accused-Appellant and it would be useful for this Court to ascertain about the individual acts of each of the Appellants, for the purposes of fixing the guilt as also the punishment, upon finding it to be a case of free fight.

16. It would be useful to refer to the statements of P.W.-1 Ram Babu who has categorically stated that Appellant-Mahendra had caused an injury on his head by Farsa and P.W.-2 Sukhwanti and P.W.-5 Shree Bai have also corroborated the testimony of P.W.-1 about causing of injuries on the head of Ram Babu by Farsa by Mahendra alone.

17. Dr. N.K. Sharma, P.W.-11, while examining the injuries of Ram Babu had also found one incised wound on the middle of the parietal region of the skull of Ram Babu and had observed that out of seven injuries, found on the body of Ram Babu, it was only Injury No. 1, which was caused by a sharp edged weapon and rest of the injuries, which were lacerated wound and abrasions, were caused by blunt objects. Therefore, it is apparent from the medical opinion that the incised wound found on the parietal region of injured Ram Babu was caused by Appellant-Mahendra, for which he alone could be convicted, but in the event of his death during the pendency of the present appeal, no such order could be passed against him.

18. Dr. N.K. Sharma had also examined Shree Bai and found that there were three contusion on her body, which were simple in nature and were caused by the use of some blunt objects. The other injuries present on the body of Ram Babu were also described to be caused by blunt object and were opined to be of simple in nature. Therefore it clearly emerges out from the record that the injuries caused by the other Appellants, were simple in nature and if the individual acts of the Appellants are evaluated by connecting their overt acts, with the injuries caused upon the person of Ram Babu and Shree Bai, the present Appellants would be liable for committing an offence, punishable u/s 323 of I.P.C.

19. The concept of free-fight had been examined in a series of Judgments by the

Supreme Court, where it has found that each accused should be fastened with the individual liability in relation to the specific role attributable to each of such individual and since in a free-fight it becomes difficult for the Court to ascertain as to who was the aggressor, the safer course of action, suggested by the Supreme Court is to pick up individual acts, for punishing individual accused persons. The observations of the Supreme Court in some of its celebrated Judgments are quoted herein below;

In a case reported as Gajanand and Others Vs. State of Uttar Pradesh, . it has been held that;

5. ...A free fight according to Harrison J. in Ahmad Sher v. Emperor is "when both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders....

In a case reported as Abdul Hamid and others Vs. State of Uttar Pradesh, it has been held by Supreme Court that;

7. It can thus be seen that the substratum of the prosecution case has not been accepted. As to the genesis of the occurrence there is no finding. Having given a finding that it was a free fight we are unable to see as to how the High Court could convict each of the appellants u/s 304 Part II simpliciter though there was only one lacerated injury on the deceased. A person would not be guilty of a crime merely because he was present unless his complicity in the crime can be inferred by some act or the other or by way of constructive liability. If it was a case of free fight then different considerations would arise. In Gajanand v. State of U.P. it is observed: (CriLJ p. 1749, para 5) "A free fight is one where both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends in such event is wholly immaterial and depends upon the tactics adopted by the rival commanders." If that is the nature of the fight, in the instant case, then the witnesses have completely given a different and distorted version. At any rate there is absolutely no scope to convict any of the appellants u/s 304 Part II simpliciter as there is absolutely no material as to which one of them caused the single injury on the head of the deceased. Nor can they be convicted u/s 304 Part II read with Section 149 as it is not possible to hold that they were members of an unlawful assembly. Further the number is less than five. In any event the High Court has doubted the prosecution version as a whole. Thus there are any number of infirmities in the prosecution case. For all these reasons, the convictions and sentences passed against the appellants are set aside. The appeal is therefore allowed.

In another case reported as Dwarka Prasad Vs. State of U.P., it has been held that;

10. A free fight is that when both sides mean to fight a pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival party. In such cases of mutual fights,

both sides can be convicted for their individual acts. This position has been settled by this Court in the cases of Gajanand v. State of U.P.; Kanbi Nanji Virji v. State of Gujarat; Puran v. State of Rajasthan; Vishvas Aba Kurane v. State of Maharashtra⁴. As such once it is established by the prosecution that the occurrence in question is result of a free fight then normally no right of private defence is available to either party and they will be guilty of their respective acts.

In yet another case reported as Kewal Singh and Others Vs. State of Punjab, it has been held that;

16. Having regard to the totality of evidence, we are also convinced that both the parties came armed and indulged in a free fight which resulted in injuries on both sides. The fact that the deceased and PW 7 were carrying firearms is admitted. On the other hand, Kewal Singh also came armed with a gun on hearing the commotion is not in dispute. In the fight that ensued injuries were caused to members of both the parties. Since both the parties had come prepared to fight, it is unnecessary to go into the question as to whether any of them exercised their right of private defence and, therefore, the culpability of the accused must be determined by reference to their individual acts.

20. A close scrutiny of the statements of all the prosecution witnesses reveal that there was a free-fight amongst the Complainant Party and the present Appellants, during which Complainant Ram Babu and his mother Shree Bai sustained injuries and the Appellants also sustained injuries, therefore, in such a situation, it would not be a safer course, for the Court to apply the principles of Sections 147, 148 and 149 of I.P.C., to sustain the conviction of the present Appellants under Sections 147, 148 and 149 of I.P.C. in view of the specific overt acts of the Appellants, however they can safely be convicted u/s 323 of I.P.C. Consequently, the present Appellants are convicted only u/s 323 of I.P.C.

21. Shri Atul Gupta, Learned Counsel for the Appellants submits that the Appellants had remained in custody for almost a period of Three Months during the pendency of the Trial as also after the delivery of the Judgment by the Trial Court and looking to the nature of the injuries caused individually by them as also while considering the mitigating circumstances of pendency of the Criminal Case/Appeal for the last 10 Years and in view of the tender age of the Appellants (and advance age of Appellant-Kashiram, who was aged 65 years at the time of the incident), the sentence may be reduced to the sentence already undergone. The Counsel for the Appellants has cited a Judgment of the Supreme Court, which is reported as Pashora Singh and another Vs. State of Punjab, to demonstrate that the Court can consider the suffering of the agony of Trial for more than 10 Years, to be sufficient for reducing the sentence to the sentence already undergone. In a recent Judgment of the Supreme Court reported as (2009) 2 SCC 273, Chaman Bai, the Supreme Court has permitted reduction of sentence as also imposition of a lesser sentence in the fitness of the facts of a peculiar case, by taking into consideration the mitigating and attending circumstances, for meeting the ends of justice.

22. Therefore in view of the peculiar facts and circumstances of the case as also while considering the nature of the injuries, the Appellants are convicted u/s 323 of I.P.C. and are sentenced to undergo the imprisonment to the extent already undergone by each of the Appellants (Three Months). The Appeal is partly allowed in the aforesaid terms.