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(2024) 07 MP CK 0041

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 12856 of 2023

Bhagatsingh And Others — APPELLANT

Vs

The State Of Madhya Pradesh — RESPONDENT

Date of Decision : 30-07-2024

Acts Referred:
Code of Criminal Procedure 1973 — Section 357(3), 374
Indian Penal Code 1860 — Section 323, 307, 325, 326, 294, 323, 506, 506-II, 34

Citation : (2024) 07 MP CK 0041

Hon'ble Judges : Prem Narayan Singh, J

Bench : Single Bench

Advocate : Akash Rathi, Gaurav Rawat

Judgement

Prem Narayan Singh, J

This criminal appeal under Section 374 of Cr.P.C. has been filed by the appellants being aggrieved by the judgment dated 4.10.2023, passed by the learned Additional Sessions Judge, Badnagar, District Ujjain, in Sessions Trial No.13/2022, whereby the appellants have been convicted for offence under Sections 323 and 307 of IPC for 01 year and 07 years R.I. with fine of Rs.500/- and 2000/- and default stipulations.

2. The prosecution story, on 14-01-2022 complainant Shankarlal reported at P.S, Barnagar that at 9:30 in night, his son Ritesh and his nephew Krishna were sitting outside their house and at that time the appellants came and hurled abuses to them and said that not to sit there it is their land. The said incident was told to him, then his brother Golu has dialed 100 number and reached at appellant Bhagatsingh’s house at that time the appellants' were standing outside of the house armed with lathi and then assaulted Rahul with the help of Lathi. Upon the said report P.S. Barnagar lodged an FIR at Crime No.16/2022 for the offence U/s 294, 323, 506, 34 of the IPC.

3. The police after following the due procedure, prepared the spot map, taken

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the statements of the witnesses, seized the articles, prepared the medical documents, arrested the accused persons and after due investigation filed the charge-sheet under Section 294, 323, 506, 307/34 of IPC. The matter was committed to the Court of sessions and made over to the learned Trial Court where upon the charges are framed under Sections 294, 506-II, 323 and 307/34 of IPC. The appellants abjured their guilt and took a plea that they had been falsely implicated and prayed for trial.

4. The prosecution on its behalf has examined as many as seven 10 witnesses namely Krishna (PW-1), Shankarlal (PW-2), Rahul Solanki (PW-3), Kripanshu (PW-4), Rakesh (PW-5), Jagdish (PW-6), Ratan Singh (PW-7), Dr. Rupesh Khatri (PW-8), Jitendra Patidar (PW-9), Dr. Munshi Khan (PW-10). No. witness has been adduced in defence by the appellants.

5. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 4.10.2023.and finally concluded the case and convicted the appellants for commission of the said offence under the provisions of Sections 323 and 307/34 of IPC while acquitting them from the charges under Section 294,506-II of IPC.

6. Learned counsel for the appellants submits that the appellants are innocent and the learned Trial Court has convicted the appellants wrongly without considering the evidence available on record. He further submits that in this case single blow was caused on the head of the injured. As per the MLC report (Ex.P-3), only one injury was found on his head. On the basis of single blow, all three appellants are convicted for the offence under Section 307 of IPC which is not in consonance of law. The testimonies of the witnesses are full of discrepancies and due to that discrepancies, witnesses are not reliable. Witnesses are related to each other therefore, the testimonies of witnesses are not reliable. In addition to that this is a case of Section 307 of IPC but only single injury has been caused by the appellants with the help of stick, hence, the case comes only under the purview of Section 325 of IPC.

7. In alternate, learned counsel for the appellant Submits that the learned trial Court has convicted the appellant under Section 307 of IPC and sentenced for 07 years R.I. which is on higher side as per the provisions of law. The appellants have already undergone approximately nine months of their incarceration period and prays that appellants deserve some leniency as the appellants already suffered the ordeal of the trial since 2022 i.e. for a period of 2 years. It is further submitted that this appeal be partly allowed and the sentence awarded to the appellants be reduced to the period already undergone.

8. Learned Public Prosecutor has opposed the prayer and has invited attention of the Court towards the conclusive paragraphs of the impugned judgement, learned public prosecutor has submitted that the injured persons have received the injuries caused by the appellants and the learned trial Court has rightly convicted the appellants by sentencing them appropriately. Hence, prays for

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dismissal of the appeal.

9. In the backdrop of rival submissions, the question for determination of deciding this appeal is as to whether the finding of learned trial Court regarding conviction and punishment of the appellants under Section 307 of IPC is incorrect in the eyes of law and facts or not?

10. In order to bring home the charges, prosecution has relied on the evidence of eye-witnessses Krishna (PW-1), Shankarlal (PW-2), Rahul Solanki (PW-3), Kripanshu (PW-4), Rakesh (PW-5), Jagdish (PW-6), Ratan Singh (PW-7). Rupesh Khatri (PW-8)

11. Rahul (PW-3), the injured, narrated that the accused persons have caused injury on his head and due to that he has received grievous injury. The statement of this witness has found support from all the aforesaid witnesses. So far as the offence under Section 323 of IPC is concerned, the witness Shankarlal (PW-2) has stated that the appellants have caused injury by a stick and he has received injury on his back. This statement is also corroborated by aforesaid witnesses. These witnesses also find support from the testimony of two doctors, Dr. Kripanshu (PW-4) found one injury on the head of inured Rahul measuring 9 X 1 cm and Dr. Rupesh Khatri (PW-8) has narrated regarding examination of CT Scan and submitted that he has found a grievous injury in the left hand and also an injury on his head. The testimony of these witnesses has not been controverted in their cross examination.

12. So far as the discrepancies and contradictions came in the statements of witnesses are concerned, actually, counsel for the appellants was not able to point out the discrepancies or contradictions which hit the root of case. With regard to the discrepancies in the statements of witnesses, the Hon'ble Apex court in Babasaheb Apparao Patil v. State of Maharashtra [AIR 2009 SC 1461] the Hon'ble Apex Court held as under:-

"12. It is to be borne in mind that some discrepancies in the ocular account of a witness, unless these are vital, cannot per se affect the credibility of the evidence of the witness. Unless the contradictions are material, the same cannot be used to jettison the evidence in its entirety. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. Merely because there is inconsistency in evidence, it is not sufficient to impair the credibility of the witness. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court would be justified in discarding his evidence."

13. Shri Rathi, learned counsel for the appellant has expostulated that all witnesses are related and interested witnesses, thus on the basis of their testimonies, the appellant can not be convicted. Certainly, the witnesses are related to each other. On this aspect in the case of "Babasaheb Apparao Patil v. State of Maharashtra [AIR 2009 SC 1461] the full Bench of Hon'ble Supreme Court observed in para 26 as under:

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"26. …… Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

14. Further in the case of Masalti vs. State of U?tar Pradesh reported in [AIR 1965 SC 202] wherein it has been held in para 14 as under:

"14. ……. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice."

15. As such, the argument regarding interested witnesses is also appears to be feeble arguments. So far as the relatedness and interestedness is concerned, in a recent decision laid down by Hon'ble Apex Court in the case of Laltu Ghosh vs. State of West Bangal AIR 2019 SC 1058 is relevant to be referred here:

"This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused".

16. As per the human tendency, a close relative would put forth the actual story of incident rather than hide the actual culprit and foist an innocent person. Virtually, in many of the criminal cases, it is often seen that the offence is witnessed by close relatives of the victim, whose presence on the spot of incident would be natural and the evidence of such witness cannot automatically be discarded by leveling them as interested witness.

17. In view of the aforesaid propositions, the discrepancies of the testimony witnesses cannot be wiped out only on the basis of their relations with the injured. In this case, the testimonies of injured witnesses are also having their importance. In this case, Rahul (PW-3) and Shankarlal (PW-2) are injured witnesses. Rahul (PW-3) has received grievous injury on his head and injured Shankarlal (PW-2) has received simple injury on his back.

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18. With regard to the testimony of injured witnesses, the Hon'ble Apex Court in the case of [Chandrashekar Vs. State of Tamilnadu reported in (2017) 13 SCC 585], endorsing another case of the Supreme Court, viewed as under:-

10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:

"28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."

19. The testimonies of injured witnesses are also well supported by medical testimonies of Dr. Rupesh Khatri(PW-8) and Dr. Munshi Khan (PW-9) who admitted the injured Rahul on 14.1.2022 and found a fracture on his hand and an injury on his left side of his head. The prosecution case is also well supported by Investigating Officer Jitendra Patidar (PW-9). In cross examination, nothing has been adverted by defence counsel for controverting the testimony of all these witnesses. Hence, it is well proved by the prosecution that the injured Rahul has received grievous injury which has been caused by a stick while another injured Shankarlal has received simply injury caused by stick.

20. Now, the question for consideration is as to whether the offence of appellant came in purview of the attempt to murder. As per the prosecution, only single blow was cased by the appellant on the head of injured Rahul. No repeated blow is there. Initially, the MLC conducted by Doctor clearly shows that "one lacerated wound of 9X10 cm on the left of the head" .

21. Further, in view of the reports and the nature of the injuries, it cannot be ascertained that the accused persons have intention to murder, or knowledge as to the fact that the injured would be killed by these injuries. The prosecution has also not setup that the said injury was sufficient to cause death in the ordinary course of nature. In this regard, The Hon'ble Apex Court in the case of Jai Narayan Singh vs. State of Bihar [AIR 1972 SC 1764] mandated as under:-...

"11.Taking the case of appellant Suraj Mishra, we find that he has been convicted under Section 307 IPC and sentenced to 5 years rigorous imprisonment. According to the evidence Suraj was responsible for the chest injury which is described by Dr. Mishra P.W. 6 as a penetrating wound 1 1/2" x 1/2 x chest wall deep (wound not probed) on the side of the right side of the chest. Margins were clean out. Suraj, according to the evidence, had thrust a bhala into the chest when Shyamdutt had fallen as a result of the blow given by Mandeo with the Farsa on his head. According to the Doctor the wound in the chest was of a grievous nature as the patient developed surgical emphysema on the right side

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of the chest. There was profuse bleeding and, according to the Medical Officer the condition of the patient at the time of the admission was low and serious and the injury was dangerous to life. Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death In the present case however, three injuries are of simple nature though deadly weapons were used and the fourth injury caused by Suraj, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. The benefit of doubt must, therefore, be given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is not one under Section 307 IPC but Section 326 IPC is set aside and we convict him under Section 326-IPC. His sentence of 5 years rigorous imprisonment will have to be reduced accordingly to 3 years rigorous imprisonment."

22. In Mahendra Singh vs. State of Dehli Administration [AIR 1986 SC 309], it is held that grievous hurt caused by blunt weapon like lathi, can fall within section 325 of IPC and not under Section 326 of IPC. Likewise, in another case, Halke vs. State of M.P. [AIR 1994 SC 951], wherein it is held that the accused caused death of deceased by inflicting blows on him with stick. Head injury proved to be fatal and deceased died after a week. In this case, the accused was held liable and punished under Section 325 of IPC. The following excerpts of the aforesaid judgement is worth to refer here:-

"9.....No doubt the injury on the head proved to be fatal after lapse of one week but from that alone it cannot be said that the offence committed by the two appellants was one punishable under Section 304 Part II IPC. The injuries found on the witnesses are also of the same nature and for the same they are convicted under Section 325 of IPC."

23. From the aforesaid deliberation it is illustrated that the appellants have caused single blow with intention to cause the injured a grievous injury, therefore, they cannot be punished for Section 307 of IPC but rather they are liable for causing voluntarily grievous injury which is punishable under Section 325 of IPC.

24. Hence, in view of the aforesaid analyses, the conviction under Section 307 of IPC is liable to be and is hereby set aside and instead of that the appellants are liable to be convicted under Section 325 of IPC. Accordingly, this appeal is partly allowed with regard to the fact that the appellants are convicted under Section 325 of IPC instaed of the offence under Section 307 of IPC. In so far as the conviction under Section 323 of IPC is concerned, since it is well supported by the injured Shankarlal (PW-2) and other evidence along with Dr. Kripanshu (PW-4), hence, it does not want any interference.

25. So far as the sentence is concerned, looking to the facts and circumstances of the case and also the fact that the appellants are not having any criminal past

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and they are facing the criminal case since 2022, in order to meet the ends of justice, it would be condign to award the sentence of one year RI along with heavy fine of Rs. 25,000/- for the offence under 325 of IPC. So far as the sentence and punishment under Section 323 of IPC is concerned, there is no need to interfere into the sentence of one year RI and fine of Rs.500/.

26. In view of aforesaid discussion, partly allowing this appeal, appellants are convicted for Section 325 r/w Section 34 for one year RI with fine of Rs. 25,000/- to be paid by the appellants before releasing them from the jail. If the appellants fail to deposit the fine amount, they will suffer three months RI in default. Sentence of the imprisonment of both offences will be run concurrently.

27. Out of the total fine amount, Rs.40,000/- shall be paid to the complainant Rahul as compensation under Section 357(3) of Cr.P.C. by the learned trial Court.

28. The fine amount, if already deposited as well as the compensation amount paid to the injured if any shall be adjusted.

29. The appellants are in jail. The bail bond of the appellants shall be discharged after completing the sentence of imprisonment and after depositing the fine amount.

30. The order of learned trial Court regarding disposal of the seized property, if any, stands confirmed.

31. A copy of this order be sent to the concerned trial Court for necessary compliance.

32. Pending application, if any, stands closed. Certified copy, as per rules.

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