
(2013) 08 MP CK 0283

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 719 of 1998

Bhawani Singh Yadav and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 325

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2013) 08 MP CK 0283

Hon'ble Judges : B.D. Rathi, J

Bench : Single Bench

Advocate : Ranjan Banerjee, for the Appellant; Vivek Lakhera, Panel Lawyer, for the Respondent

Judgement

B.D. Rathi, J.—This appeal has been preferred u/s 374(2) of the Code of Criminal Procedure (for short "the Code") being aggrieved with the judgment dated 6/3/1998 passed by Special Judge, Panna in Special Case No. 140/97, whereby the appellants stand convicted under Sections 325 read with 149, 148 and 323 read with 149 of the Indian Penal Code (for short "the IPC") and sentenced to undergo R.I. for 1 year & to pay a fine of Rs. 500/-; R.I. for six months; and fine of Rs. 500/- respectively with default stipulation, while they have been acquitted of the offence u/s 3(1)(x) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act (for brevity "the Act"), 1989. According to the prosecution case, on 1/12/1993 at 9 p.m., when Santosh Kumhar, Kaman, Ramcharan etc. were warming themselves by fire at the door of their house situated at Village Badi Roondh (Dande Ka Bara), appellants, armed with Lathis, came there and filthily abused them in the name of their caste. Appellants told them that they would no longer be allowed land on sharecropping basis and assaulted Santosh Kumhar, Kaman, Ramcharan, Bharatlal, Guthalu and Sunder with Lathis, who all received injuries during the incident. On 2/12/93, Santosh

(PW 3) lodged the First Information Report (for short "FIR") leading to registration of Crime No. 165/93 at Police Station Ajaygarh in respect of the offences punishable under Sections 147, 148, 149, 323, 325 and 506B of the IPC and Section 3(1)(x) of the Act. After completion of investigation, charge sheet was filed.

2. Charges under Sections 148, 323 and 325 of the IPC and Section 3(1)(x) of the Act were framed. Appellants denied the charges and pleaded false implication.

3. Learned counsel for the appellants submitted that when the trial Court has held in paragraph 31 of the impugned judgment that only appellant nos. 1, 2 and 3 had assaulted the victims, all the appellants could not have been convicted. He further submitted that non explanation of injuries received by appellant no. 5 Tulsidas by the prosecution, was fatal to its case. Alternatively, he submitted that the incident had taken place on 1/12/1993 and, thereafter, in pursuing the legal battle, a considerable period of 20 years has already elapsed and, therefore, in the interests of justice, only fine sentence may be imposed upon the appellants.

4. In response, learned Panel Lawyer, while making reference to the incriminating pieces of evidence on record, submitted that the conviction was well merited and the impugned judgment does not deserve to be interfered with.

5. Having regard to the arguments advanced by the parties, record of the trial Court was perused.

6. To bring home the charges, prosecution examined, as many as 11 witnesses viz. Bharatlal (PW 1), Shivram (PW 2), Santosh (PW 3), Sunderlal (PW4), Guthalu (PW 5), Pachola (PW 6), Ramcharan (PW 7), Ramdas (PW 8), Dr. V.S. Upadhyay (PW 9), Budhai (PW 10) and Ramkishore (PW 11).

7. On a perusal of the evidence and material on record, it is apparent that Bharatlal, Santosh, Sunderlal, Guthalu and Ramcharan all have categorically stated that when they were taking warmth of fire in front of their house, all the appellants came there with Lathis, and in furtherance of their common object, opened assault on them, as a result of which, all of them including Kaman received injuries. Their evidence is fully corroborated by medical evidence as the corresponding injuries were proved by Dr. Upadhyay who had prepared respective MLC reports after examining the victims. Minor contradictions and omissions have rightly been ignored by the trial Court to sift out the grain from chaff.

8. So far as the injury received by appellant no. 5 Tulsidas is concerned, it has been held by the trial Court that either he had received the injury in his private defence, or it was received in any other incident. The trial Court has elaborately discussed the evidence on this point in paragraphs 37 to 40 of the impugned judgment and, while taking note of the judgment passed in Counter Case No. 219/93 on 28/10/94, came to the conclusion that there was no need for the prosecution to explain the simple injury received by Tulsidas.

9. In the aforesaid premises, it is held that the appellants, after constituting an unlawful assembly, in furtherance of the common object thereof, had inflicted grievous injury to Ramcharan and simple injuries to Santosh, Bharat, Sunderlal, Kaman and Guthalu and, therefore, they all are liable to be convicted under Sections 148, 325/ 149 and 323/ 149 of the IPC.

10. Convictions of the appellants are, accordingly, maintained. However, taking into consideration the nature of injuries, time elapsed and the circumstances in which the offences were committed including the fact that the appellants are poor agriculturists, interests of justice would be met if the term of custodial sentence u/s 325/ 149 of the IPC is reduced to the period already undergone with a fine of Rs. 3000/-, custodial sentence awarded u/s 148 of the IPC is altered to fine sentence and the sentence imposed u/s 323/ 149 is affirmed. In the result, the appeal stands allowed in part. Convictions of the appellants under Sections 148, 325/ 149 and 323/ 149 are affirmed. However, impugned sentence awarded u/s 148 of IPC is set aside and instead, in that regard, each one of the appellants is sentenced to pay a fine of Rs. 1000/- (Rupees one thousand), in default to suffer S.I. for 1 month. For their conviction u/s 325/ 149, the sentence of imprisonment is reduced to the period already undergone, while the amount of fine is enhanced from Rupees Five hundred to Rupees Three Thousand each. Further, the sentence imposed by the trial Court for the offence u/s 323/ 149 is affirmed.

Copy of the judgment be sent to the trial Court for compliance.