

(2013) 05 MP CK 0065

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 310 of 2008

Bhura alias Ravindra Singh, Monu Singh Kushwah and
Jitendra alias Jitu

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320, 374
Penal Code, 1860 (IPC) — Section 148, 149, 307, 325

Citation : (2013) 05 MP CK 0065

Hon'ble Judges : Brij Kishore Dube, J

Bench : Single Bench

Advocate : R.K. Sharma in Criminal Appeal No. 278/2008, Mr. D.S. Tomar in Criminal Appeal No. 310/2008 and Mr. J.P. Mishra in Criminal Appeal No. 317/08, for the Appellant; Anil Kumar Shrivastava, Panel Lawyer for the State, Shri Dharmendra Garg, Advocate for the complainant and Rajendra Singh Tomar, for the Respondent

Final Decision : Allowed

Judgement

Brij Kishore Dube, J.—The judgment passed in this appeal (Criminal Appeal No. 310/2008) shall also govern the disposal of connected Criminal Appeal No. 278/2008 (Manish Singh @ Lambu v. State of M.P.) and Criminal Appeal No. 317/08 (Lokendra and another v. State of M.P.) because all these appeals have arisen from a common judgment dated 03.04.2008 passed in Sessions Trial No. 120/07 by I Additional Judge to the Court of V Additional Sessions Judge (F.T.C.) Morena at Ambah District Morena. Feeling aggrieved by the judgment of conviction and order of sentence dated 03/04/2008 passed by I Additional Judge to the Court of V Additional Sessions Judge (F.T.C.,) Morena at Ambah District Morena in Sessions Trial No. 120 of 2007 (State of Madhya Pradesh Vs. Bhura alias Ravindra Singh and others), convicting the appellants of this appeal and the appellants of the connected Criminal Appeal Nos. 278/08 and 317/08 under Sections 148 and 307/ 149 of IPC and thereby sentencing each of them to suffer

one year rigorous imprisonment and five years rigorous imprisonment with fine of Rs. 2,000/-, in default of payment of fine additional three months simple imprisonment respectively, the appellants and the appellants in the connected appeals have preferred the appeals u/s 374 of the Code of Criminal Procedure, 1973.

2. The prosecution case, in brief, may be narrated as under:

(i) That, the complainant, Rajendra Singh Tomar (P.W. 4) reached to the Police Station, Dimani and lodged a report on 28/03/07 at 5.40 p.m., to the effect that at about 5.00 p.m., he was cleaning the potatoes after digging out them from the field at his tube-well, at that time, Bhura, Jeetu, Monu, Shakti Singh Tomar, Lokendra and Manish came there in Tata Scorpio bearing registration No. MP-06B 1141. Manish and Lokendra armed with hockeys, Shakti Singh, Monu, Jeetu and Bhura armed with sticks (Dandas). They started abusing him with filthy language, On being restrained them not to give abuses then Manish with an intention to kill him dealt a hockey blow which struck over his head as a result of which blood started oozing out. Lokendra also gave one hockey blow with an intention to kill him which struck over the back side of the head and blood started oozing out. Bhura and Jeetu dealt stick blows over his head as a result of which blood started oozing out. Monu dealt stick blow which hit over the little finger of the right hand. One stick blow was dealt by Shakti Singh which struck on the wrist of the right hand. On this, he shrieked. On hearing his shriek, his brother, Raghavendra (P.W. 5) and one Sarnam Prajapati (P.W. 7) came there and saw the incident and intervened to save him. On this, FIR was registered at Crime No. 28/07 (Exhibit P/11) by the Head Constable, Jitendra Singh (P.W. 10) and the complainant was sent to for examination to the Civil Hospital, Ambah. The criminal law was triggered and set in motion.

(ii) That, the Investigating Officer reached on the spot and prepared the spot map (Exhibit P/12). Dr. Girraj Gangil (P.W. 12) examined and found various injuries over head and right hand of the injured, advised for x-ray of head & the hand, and

(iii) That, the Investigating Officer recorded the statements of the witnesses who were acquainted with the facts of the offence. The accused were arrested and seized the weapons used in the commission of the offence including the Tata Scorpio. On completion of the investigation, a charge sheet was filed against six accused persons (appellants) before the committal Court, which on its turn, committed the case to the Court of Sessions from where it was received by the Trial Court for the trial.

3. The learned Trial Judge on the basis of the material placed on record framed charge punishable under Sections 148 and 307 in alternate 307/ 149 of IPC against all the accused persons. The accused denied the charge and claimed to be tried. The defence of the accused is of false implication and the same defence they set forth in their statements recorded u/s 313 of the Code of Criminal

Procedure, 1973.

4. To bring home the charge, the prosecution has examined as many as 14 witnesses and placed Exhibits P/1 to P/20, the documents on record. The accused/appellants have not examined any witness in their defence.

5. The learned Trial Judge on the basis of evidence placed on record came to hold that charge has been proved against the accused persons as a result of which convicted them and passed the sentence as mentioned hereinabove.

6. In this manner, this appeal and the connected appeals have been preferred by the appellants assailing their judgment of conviction and order of sentence passed by the learned Trial Court.

7. Learned counsel for the appellants without assailing any finding of the Trial Court holding responsibility of the appellants for the alleged incident made limited submission for alteration and modification of the conviction from Section 307/ 149 of IPC to Section 325/ 149 of IPC. In respect of such submission, learned counsel referred to M.L.C. report, X-ray report and the depositions of Dr. Girraj Gangil (P.W. 2) and Dr. Ashok Singh (P.W. 9). Learned counsel further submits that looking to the nature of the injuries as stated by Dr. Girraj Gangil (P.W. 2) and Dr. Ashok Singh (P.W. 9), this case does not appear to be a case of Section 307/ 149 of IPC, as not a single injury was seen which was sufficient to cause death of the victim in the ordinary course of nature. In continuation, it was stated that the alleged injuries were caused by hockeys and sticks (dandas) which could not be termed to be deadly weapons, therefore, in any case, it would not be a case more than u/s 325/ 149 of IPC.

8. Learned counsel for the appellants further submits that during the pendency of the appeals parties have entered into an amicable settlement/compromise and filed applications for permission to compromise the subject matter of the crime for which the appellants have been convicted. Since, the victim/complainant and the appellants belongs to the same locality and had compromised the dispute, therefore, this Court may accord the compromise and grant permission to the parties to compound the offence and the appellants may be acquitted from the offence.

9. On the contrary, Shri Anil Kumar Shrivastava, learned Panel Lawyer has supported the impugned judgment and findings arrived at by the learned Trial Court and submitted that the conviction in question is well merited, however, he fairly conceded that the parties have entered into a compromise and settled amicably the subject-matter of the crime.

10. In order to appreciate the merits of the rival contentions in a proper perspective, it would be necessary to advert to the evidence available on record.

11. Rajendra Singh (P.W. 4) has categorically stated that at the relevant point of time, he was cleaning the potatoes after digging out them from the field, at that time the accused, Manish and Lokendra having hockeys and Bhura, Shakti, Monu

and Jeetu armed with sticks (dandas) came there and started abusing him with filthy language. On being restrained them not to abuse him, then Manish with an intention to kill him dealt hockey blow which struck over his head as a result of which blood started oozing out. Lokendra also dealt hockey blow which struck over the back side of his head as a result of which blood started oozing out. Bhura and Jeetu dealt blows with sticks which also struck over his head as a result of which blood started oozing out. Monu dealt stick blow which hit over his little finger of right hand. Shakti Singh gave a stick blow which hit at the wrist of the right hand. On this, he shrieked. On hearing his shriek, his brother Raghvendra Singh and one Sarnam Prajapati came there and they rescued him. Thereafter, Raghvendra and Sarnam brought him to the Police Station, Dimani where he lodged the report, Exhibit P-11. The police sent him to the Civil Hospital, Ambah where he was examined and from there, he was referred to District Hospital, Morena. Nothing could be elicited in the cross-examinations so as to suggest that he was interested in securing the conviction of the appellants on absolutely false grounds. The testimony of Rajendra Singh gets corroborated by the promptly lodged report, Exhibit P-11.

12. Raghvendra Singh Tomar (P.W. 5) has also corroborated the testimony of Rajendra Singh and vividly described as to how Rajendra Singh has been assaulted by the accused persons.

13. From a perusal of the deposition of the complainant/victim, Rajendra Singh (P.W. 4) and the eye-witness, Raghvendra Singh Tomar, it is revealed that story put forth by the prosecution in the FIR (Exhibit P-11) has been proved beyond reasonable doubt against all the appellants. Hence, the findings of the Trial Court holding guilty of the appellants for the alleged incident appears to be correct. It is apposite to mention here that such findings have not been challenged on behalf of the appellants. During the course of arguments, they argued only for alteration and modification of the conviction and grant of the permission to the parties to compound the subject matter of the crime.

14. The only question which calls for consideration is as to what offence has been committed by the appellants? The Hon'ble Apex Court in the case of Sanjay Kumar and Anr. v. State of M.P., 1994 Supp. (1) SCC 502 observed that in order to bring the case within the ambit of Section 307 of IPC, it must be shown that the accused acted with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. To justify a conviction under this provision an intention or knowledge to constitute murder must exist.

15. Undisputedly, the incident took place at 05.00 p.m. on 28.03.2007 at the field of the complainant, Rajendra Singh (P.W. 4) from where the complainant was taken by Raghvendra Singh (P.W. 5) and Sarnam Prajapati (P.W. 7) to Police Station, Dimani, District Morena. After lodging the report, the complainant was sent to for Civil Hospital, Ambah for medical examination. Dr. Girraj Gangil (P.W. 2) examined the complainant on 28.03.2007 at 06.15 p.m. and M.L.C. report

(Exhibit P-9) was prepared by him. According to him, following injuries were found on the person of the complainant, Rajendra Singh:-

- (i) Lacerated wound on right parietal region of scalp, size 1.5 cm x 0.5 cm
- (ii) Lacerated wound on right temporal region scalp, size 1 cm x 0.2 cm x 0.2 cm
- (iii) Contusion over the right temporal region of scalp above the injury No. 2, size 2 cm x 2 cm.
- (iv) Lacerated wound over the middle of the occipital region of scalp, size 2 cm x 0.5 cm x 0.5 cm.
- (v) Contusion over the right little finger, red in colour, size 1 cm x 1 cm
- (vi) Contusion over the right hand dorsal surface red in colour, size 1 cm x 1 cm.

16. Dr. Girraj Gangil (P.W. 2) opined that all the aforesaid injuries were caused by hard and blunt object and the injured Rajendra Singh was referred to for radiological examination of skull and right hand for ascertaining the nature of the aforesaid six injuries to District Hospital, Morena.

17. Dr. Ashok Singh (P.W. 9), Radiologist conducted the x-ray of the skull and right hand on 29.03.2007 at District Hospital, Morena. By proving x-ray (Exhibit P-17) and X-ray plate (Exhibit P-18), Dr. Ashok Singh opined that no bony injury was found over the skull of Rajendra Singh, however, there was a fracture on distal phalanx of little finger of right hand. Dr. Ashok Singh (P.W. 9) specifically opined that the injuries found over the head of Rajendra Singh were simple in nature. However, Rajendra Singh sustained the fracture of distal phalanx of little finger of right hand.

18. M.L.C., Dr. Girraj Gangil (P.W. 2) in his cross-examination deposed that the nature of injuries of Rajendra Singh can be ascertained after receiving the x-ray report of the skull and right hand. The police Dimani or Investigating Officer had not obtained any opinion from him after conducting the x-ray of Rajendra Singh.

19. After going through the entire depositions of Dr. Girraj Gangil (P.W. 2) and Dr. Ashok Singh (P.W. 9), I could not find that the injuries found on the person of the complainant were sufficient to cause death or dangerous to his life.

20. It is apposite to mention here that the injuries found on the skull of the complainant were found to be simple in nature and this fact clearly goes to establish that the accused persons had no intention for causing death of the complainant.

21. On going through the aforesaid depositions of Dr. Girraj Gangil (P.W. 2) and Dr. Ashok Singh (P.W. 9), M.L.C. report (Exhibit P-9) and x-ray report (Exhibit P-17), I have not found that any of the injuries sustained by the complainant could be termed to be sufficient for causing his death in ordinary course of nature or the injuries caused to Rajendra Singh were dangerous to his life. In such circumstances, the case at hand appears to be a case only grievous injury

with fracture caused by means of sticks on little finger of the right hand for which the appellants ought to have been convicted by the Trial Court u/s 325/ 149 of IPC and not u/s 307 of IPC. In such premises, the approach of the Trial Court holding guilt of the appellants u/s 307/ 149 of IPC is not sustainable, hence, the same is set-aside and all the appellants are acquitted from the charge of Section 307/ 149 of IPC and their sentence in that regard is hereby set-aside.

22. In view of the aforesaid discussion, the appellants are held to be guilty under Sections 148 and 325/ 149 of IPC.

23. The complainant and the injured, Rajendra Singh filed different compromise applications for seeking permission of the Court to compound the offence with all the appellants supported by affidavits stating that the dispute between the parties have been settled as the parties are closely related to each other. Both the parties have amicably settled the subject matter of crime. The offence under Sections 148 and 325/ 149 of IPC are compoundable with the permission of the Court. In view of the submissions made by the counsel for the complainant and the appellants and also the verification report of the Principal Registrar of this Court and having regard to the facts and circumstances of the case, permission to compound the offence deserves to be granted to the complainant/injured/ Rajendra Singh.

24. Consequently, the injured/complainant is permitted to compound the offence punishable under Sections 148 and 325/ 149 of IPC. In view of sub-section (8) of Section 320 of the Code of Criminal Procedure, 1973 the composition of offence under Sections 148 and 325/ 149 shall have the effect of an acquittal of the appellants.

25. Consequently, all the appeals are allowed and the impugned judgment of conviction and order of sentence are set-aside. The appellants are on bail and their bail bonds stand discharged. A copy of the judgment be placed in the record of connected criminal appeals.