

(2007) 07 MP CK 0044
In the Madhya Pradesh High Court

Gokul Prasad and Others etc.

APPELLANT

Vs

State of Madhya Pradesh etc.

RESPONDENT

Date of Decision : 04-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 307, 323, 324, 326, 34
Probation of Offenders Act, 1958 — Section 11

Citation : (2007) CriLJ 4634

Hon'ble Judges : S.S. Dwivedi, J; S.K. Kulshrestha, J

Bench : Division Bench

Judgement

S.K. Kulshrestha, J.—The above appeals have been filed by the accused as also the State against the judgment dated 23-7-1996 passed by the learned Sessions Judge, Shajapur in Session Trial No. 66/ 1993 whereby the learned Sessions Judge has convicted accused Gokul Prasad u/s 324/34 of the Indian Penal Code and sentenced him to rigorous imprisonment for 3 years and fine of Rs. 5,000/-; in default of payment, of fine to further simple imprisonment for 6 months. Gokul Prasad has also been convicted u/s 323 of the IPC and sentenced to rigorous imprisonment for 6 months. Appellants Sanjay and Rajesh have also been convicted u/s 324/34 of the IPC and while Sanjay has been awarded the sentence of rigorous imprisonment for 1 year and Rs. 1,000/- fine; in default of payment of fine simple imprisonment for 3 months, Rajesh has been released on probation. Criminal Appeal No. 912/1996 has been filed by the State u/s 377 of the Criminal Procedure Code read with Section 11 of the Probation of Offenders Act, 1958 against the grant of probation to Rajesh and Criminal Appeal No. 913/1996 against the acquittal of respondents u/s 307 read with Section 34 of the Indian Penal Code and in alternative u/s 326 of the Indian Penal Code. The accused have also challenged their conviction in Criminal Appeal No. 683/1996. Since all these appeals arise out of the same judgment, the appeals are being disposed of by this common judgment.

2. According to the prosecution, there was dispute between the parties with regard to the purchase of land by Anandilal from one Manohar for consideration of Rs. 70,000/-. It was alleged that Gokul was claiming that it was his land and, therefore, sale by Manohar was illegal and nullity. The prosecution further states that on 30-12-1992 while Anandilal (P.W. 5), Omprakash (P.W. 4), Setab Singh (P.W. 6), Siyaram (P.W. 8) and Rajendra Prasad (P.W. 10) were sitting on their "otla", the accused persons approached armed with weapons, such as sword and dagger. All the accused persons then caught hold of the neck of Anandilal and when Omprakash (P.W. 4) tried to intervene, accused Gokul Prasad stabbed him in his abdomen by means of knife with which he was armed. Rajendra Prasad (P.W. 10) also tried to save Omprakash, but he was assaulted by Sanjay and accused Rajesh assaulted Anandilal (P.W. 5) and Setab Singh (P.W. 6) with knife. Omprakash fell down unconscious and Rajendra Prasad also sustained very severe injuries while Setab Singh received a stab wound in his abdomen. Gokul Prasad and his son were shouting that, the complainant side be not let off alive. On hearing commotion, Shivnarayan (P.W. 3) also arrived who saw Rajendra Prasad (P.W. 10), Omprakash (P.W. 4), Setab Singh (P.W. 6) and Anandilal (P.W. 5) in injured condition while accused persons fled away with their weapons knife, sword and dagger. Shivnarayan (P.W.3) then arranged a tractor and took injured to Police Station, Salsalai where Anandilal (P.W. 5) lodged report Ex. P/8. On the basis of the report, crime was registered and the injured were sent to the Hospital, Shajapur where Dr. Maina (P.W. 1) examined their injuries and gave report. Omprakash and Setab Singh in view of their injuries were referred to M. Y. Hospital, Indore where they were under treatment for a long time.

3. During investigation, Investigating Officer M.M. Choudhary (P.W. 11) inspected the spot on 31-10-1992. He also recorded the statement of the witnesses who were acquainted with the facts of the case and arrested the accused persons. Accused Gokul Prasad had also lodged report Ex. P/ 24 which was recorded in the Roznamcha stating that the complainant side had belaboured them. Requisition Ex. P/25, P/ 26 and P/27 for their medical examination were sent and their injuries were examined of which report was sent, but not exhibited by the prosecution. On information having been given by the accused persons as recorded in Ex. P/5 and Ex. P/7 u/s 27 of the Evidence Act vide Ex. P/12, a dagger was seized at the instance of Rajesh, and vide Ex. P. 13, a knife was seized from Gokul Prasad. As per Ex. P/9 sheath of the dagger was seized as also beads of necklace. The remaining part of the necklace containing similar beads were found in the house of Gokul, which was seized vide memo Ex. P/10.

4. As per the prosecution, vide Ex. P/I Rajendra Prasad sustained 2 incised wounds and one abrasion. First incised wound measuring 3 cm x 1 cm x 1 cm on the right side of the chest, the other incised wound measuring 1 1/2 cm x 1/2 cm x 1/2 cm on the left side of the chest. There was also a bruise on the chest. According to the MLC of Setab Singh Ex. P/2, he had sustained incised wound on the left side of lumbar region measuring 3 cm x 1 cm x cavity deep. Out of this injury, omentum had protruded out. Anandilal (P.W. 5), as per MLC Ex. P/3

sustained bruise on the right side of his neck measuring 1 cm x Vi cm. He also complained of pain. Omprakash (P.W. 4), vide MLC Ex. P/4 sustained incised wound on the left side chest 8 cm below the nipple measuring 3 cm x 2 cm x lung deep. On account of this injury, bubbles were coming out of the lung. He also received incised wound on left hypochondrium measuring 2 cm x 1 cm x sub cutaneous. Incised wound on right illiac crest of the size 1 cm x 1/2 cm x 1/4 cm. Incised wound on the lower end of sternum and abrasion over the knee.

5. Though requisition Ex. P/25, P/26 and P/27 were exhibited by the prosecution, reports recorded on the other side of the page of each requisition was not exhibited. However, in view of the fact that these documents have been filed by the prosecution, the documents can be read in evidence, if they favour the accused. According to the report of the doctor, the accused Sanjay received four injuries; there was swelling 2" x V2" over right forearm, abrasion 1 cm x 1/2 cm on the right scalp, tenderness on right scapula and bruise measuring 3" x 1/2 on the thigh. Accused Gokul Prasad received lacerated wound measuring 2" x 0.2" x scalp, abrasion 1" x 0.2" on the scalp right side, diffused swelling on left forearm size 3" x 2" and he also complained of pain.

6. Learned Counsel has also relied upon the FIR Ex. P/24 lodged by accused Gokul Prasad at 20.30 hours on the next day, after about 22 hours.

7. The prosecution examined 13 witnesses, but for the purpose of these appeals, the evidence of Omprakash (P.W. 4), Anandilal (P.W. 5), Setab Singh (P.W. 6) and Rajendra Prasad (P.W. 10) would alone be relevant. Since the parties have not disputed the injuries sustained by the prosecution witnesses and accused, it would be wholly unnecessary to refer to the testimony of Dr. B. Section Maina (P.W. 1) and other witnesses.

8. Since the convicted accused persons have filed appeal (Criminal Appeal No. 683/ 1996) against their conviction, it is necessary first to consider whether their conviction is justified, before adverting to the appeal filed by the State against the release of accused Rajesh on probation upon his conviction u/s 324/34 of the Indian Penal Code and acquittal of the accused persons of the charge u/s 307/ 326 of the Indian Penal Code.

9. Learned Counsel for the appellants has first invited attention to the testimony of Omprakash (P.W. 4). Omprakash has started that when the three accused caught hold of the neck of Anandilal (P.W. 5) and stated abusing him, he intervened to save him, but accused Gokul stabbed him with a knife in his chest. However, he could not say as to why he was stabbed by Gokul. Gokul gave another blow of his knife, which caused injury on his thigh and thereafter he became unconscious. In the above context, learned Counsel submits that even if the version of Omprakash (P.W. 4) is believed, the person who caused injury was accused Gokul alone and not other accused persons. Anandilal (P.W. 5) has stated that while he was sitting on the "otla" of the temple the three accused arrived. Gokul was armed with a knife, Sanjay with a sword and Rajesh with a

dagger. Immediately upon arrival Gokul started abusing them and said that they should leave the land and caught hold of the neck of this witness. He shouted that they should be done to death and when Omprakash tried to intervene, Gokul stabbed in his chest and thigh. Setab also tried to save him, but Gokul stabbed him in his abdomen. However, on arrival of the villagers, these accused person ran away. He went to the Police Station, Salsalai where he lodged report Ex. P/ 8. Setab Singh (P.W. 6) has stated that on arrival of Gokul, he caught hold neck of Anandilal and when they tried to save him, Gokul assaulted him with a knife in his right armpit and he fell down Unconscious. We may pause to point out that Gokul inflicted serious injuries from which omentum protruded.

10. Learned Counsel submits that in the testimony of Omprakash, Anandilal and Setab Singh, no role has been ascribed to the accused other than Gokul and, therefore, it is clear that the other accused persons have been falsely roped in with him constructively with the aid of Section 34 of the Indian Penal Code. Before proceeding to consider this submission of the learned counsel, we may also examine the testimony of Rajendra Prasad (P.W. 10).

11. Sitaram (P.W. 8) was examined as an eye-witness, but he did not support the prosecution and was declared hostile, However, Rajendra Prasad (P.W. 10) in his testimony has stated that when Omprakash and Selab Singh tried to intervene, Gokul assaulted Omprakash in his chest and Rajesh assaulted Setab in his abdomen. Learned counsel, therefore, submits that, when Setab does not say that Rajesh has stabbed, this witness has modulated the story with a view to implicate Rajesh. It is, therefore, clear that apart from Gokul, no role has been attributed to any other accused as regards the causing of injury to the prosecution witnesses Omprakash, Anandilal, Setab Singh and Rajendra Prasad.

12. Learned senior counsel submitted that even if it is assumed on the basis of evidence of the prosecution as herein above referred to, on account of the injuries sustained by the accused and also referred to above by us, the accused Gokul had also acted in the right of private defence of person. We may reiterate that in-so-far as the injuries found on the person of accused Sanjay is concerned, it is only swelling, abrasion tenderness and bruise. Similarly, Gokul Prasad has sustained a lacerated wound measuring 2" x 0.2" on scalp and other injuries are abrasion, diffused swelling. Learned Counsel has submitted that as per the decision of the Supreme Court reported in the case of Subramani and Others Vs. State of Tamil Nadu, "if the accused persons have sustained injuries, their right becomes probable even if the injuries are simple."

13. For seeking the explanation from the prosecution witness as to how the accused persons sustained injuries, the accused are under an obligation to demonstrate that the injuries were received in the same transaction and further, the injuries were such as were capable of being noticed by the witnesses during the incident. In respect of the injuries of Sanjay and Gokul, it cannot be said that they were visible injuries, which must have been noticed by the prosecution witnesses. Learned Counsel has pointed out that the first injury sustained by

Gokul was lacerated wound 2" x 0.2" scalp deep and, therefore, such a wound would not go unnoticed by the prosecution witnesses and consequently the non-explanation would render probable their right of private defence.

14. In the facts and circumstances of the present case, we cannot accept, the said submission of the learned senior counsel. It is not on record that the lacerated wound suffered by Gokul Prasad was a bleeding injury and that the blood was oozing out of the hair and had become visible. No doctor has been examined to show that the injuries were of serious nature for which the prosecution was enjoined with the duty to offer explanation. The accused persons cannot, therefore, claim any advantage on the basis of injuries said to have been received by the accused persons.

15. Coming to the case of the prosecution, it is manifest that only Gokul Prasad participated in the incident to cause injuries to prosecution witnesses Omprakash, Anandilal, Setab Singh and Rajendra Prasad. Though Rejendra Prasad (P.W. 10) has deposed that Sanjay had caused injury to him, in the absence of corroboration from the other injured witnesses, the statement of Rajendra Prasad (P.W. 10) cannot be believed. The question that arises for our consideration is as to whether other accused persons can be held constructively liable with the application of Section 34 of the Indian Penal Code, The intention of the accused persons can be gathered from the circumstances. While it is true that all the witnesses have stated that three accused had come together and they were armed, the fact that except Gokul Prasad none else participated in the incident or caused any injury, rules out that it was in pursuance of the common intention that the accused persons had participated, Under these circumstances, we are of the view that accused Sanjay and accused Rajesh cannot, be convicted for the act of accused Gokul Prasad. Accordingly, conviction of accused Sanjay and accused Rajesh u/s 324/34 of the IPC and the sentence awarded to accused Sanjay cannot be sustained. These accused are, therefore, acquitted of the aforesaid charges.

16. Since the State has filed Criminal Appeal No. 912/1996 against the release of Rajesh on probation, on account of acquittal of Rajesh, the said appeal has become Infructuous. Accordingly, Criminal Appeal No, 912/1996 is dismissed.

17. Accused Gokul has been convicted only u/s 324/34 of the Indian Penal Code and sentenced to rigorous imprisonment for 3 years and fine of Rs. 5,000/-. In default of payment of fine, he has been directed to suffer further Imprisonment for 6 months. He has also been convicted u/s 323 of the Indian Penal Code and sentenced to rigorous imprisonment for 6 months. We may here refer to injuries of the prosecution witnesses. As per Ex. P/2, Setab Singh sustained one incised wound on the left side of lumbar region measuring" 3 cm x 1 cm x cavity deep from which omentum had come out. This injury was a serious injury. Omprakash also sustained incised wound on the left side chest 8 cm below left nipple measuring 3 cm x 2 cm lung deep. The said injury had punctured the lung and air bubbles were coming out. Thus, even if the injuries of the other prosecution

witnesses are taken to be simple, in the case of Setab Singh and Omprakash the injuries were grievous in nature and on vital part of the body. This clearly indicates the intention of accused Gokul in causing the injuries. Therefore, we are of the view that the conviction of Gokul Prasad for lesser offence u/s 324/34 of the Indian Penal Code is not proper and trial Court erred in acquitting him for the charge u/s 307 of the Indian Penal Code. Accordingly, we find him guilty u/s 307 of the Indian Penal Code as well as u/s 323 thereof. His conviction is, therefore, altered from Section 324/34 to Section 307 and he is sentenced to 4 (four) years rigorous imprisonment and fine of Rs. 10,000/-(ten thousand) thereunder, in default of payment of fine the said accused Gokul Prasad shall suffer further simple imprisonment for 6 months. The conviction of appellant Gokul Prasad u/s 323, IPC and sentence of 6 months thereunder is maintained. Both the substantive sentences shall run concurrently.

18. In the result, Criminal Appeal No. 683/1996 is partly allowed and accused Sanjay and Rajesh are acquitted of the charge against them. Criminal Appeal No. 912/1996 is dismissed since accused Rajesh has been acquitted. Criminal Appeal No. 913/1996 against acquittal for offence u/s 307, IPC is partly allowed and accused Gokul Prasad is convicted and sentenced as herein above stated. Accused Gokul Prasad is on bail. He shall now surrender to his bail bonds to serve out the sentence awarded to him by this Court.