
(2012) 09 MP CK 0263

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1957 of 2000

Halke and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 325

Citation : (2012) 09 MP CK 0263

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : S.K. Dixit, for the Appellant; G.S. Thakur, Panel Lawyer, for the Respondent

Judgement

Hon''ble Shri Justice N.K. Gupta

1. The appellants have preferred this appeal against the judgment dated 18.7.2000 passed by the 1st Additional Sessions Judge, Chhatarpur in S.T. No. 201/96, whereby the appellants were convicted for the offences punishable under Sections 325/ 34 of IPC and sentenced for three years" R.I. with fine of Rs. 1,000/-. In default of payment of fine, each of them to undergo for six months" S.I. in addition. The prosecution's case, in short is that, on 29.4.1996 at about 8-9:00 p.m. in the night, the complainant Pajan Singh (PW-1) was coming back from the house of his uncle at village Budhaura (Police Station Laundi, District Chhatarpur) along with his brother Kallu (PW-4) and wife Mst. Raju (PW-7) then, the accused persons surrounded him. They were armed with weapons like sticks, Farsa and Barchhi etc. After looking at the culprits, the complainant Pajan Singh ran towards the forest and however, the accused persons chased him. The accused persons including the appellants assaulted the complainant Pajan Singh by Farsa, Ballum, Barchhi and sticks causing him so many injuries on his body. Thereafter, they left him in the field. Bhullo Singh and Bhurelal were the persons, who saw the incident. After sometime, Kallu Singh and his father went to the spot and took the victim Pajan Singh to the Police

Station, Laundi by a tractor, where he had lodged an FIR Ex. P/1. He was directed for his medico legal examination and treatment to Primary Health Centre, Laundi. Dr. S.S. Chourasiya (PW-6) examined the victim Pajan Singh and gave his report Ex. P/5. He found nine injuries to the victim. Out of them, four injuries were the lacerated wounds caused on the head, below the left knee, below the right knee and near the right middle finger of the victim, whereas he sustained some contusions on his head, hands and back also. He was referred for his x-ray examination. Dr. Rajesh Khare (PW-2) performed his radio logically examination and gave a report Ex. P/2. He found that 4th & 5th metacarpal bones of left hand were broken of the victim. His 7th rib of left side was also broken, whereas left tibia was also found fractured. After due investigation, a charge sheet was filed before the J.M.F.C. Laundi, who committed the case to the Sessions Court and ultimately, it was transferred to the 1st Additional Sessions Judge, Chhatarpur.

2. The appellants abjured their guilt. They took a specific plea that they were falsely implicated in the matter due to enmity. The incident took place in the night and the victim could not see the actual culprits and therefore, on the basis of suspicion only, the victim implicated so many persons in the FIR. In defence, Bhurelal (DW-1) and Bhagwat (DW-2) were examined.

3. The learned 1st Additional Sessions Judge after considering the evidence adduced by both the parties, acquitted the appellants from the charges of offences punishable under Sections 147, 148 & 307/ 149 of IPC, but convicted them for the offence punishable under Sections 325 / 34 of IPC and sentenced as mentioned above, whereas other accused persons were acquitted from all the charges.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the appellants has submitted that there was only one eyewitness i.e. the complainant himself, who was examined by the prosecution, whereas his brother and wife were not the eyewitnesses in the case. They were cooked witnesses. The incident took place in the night and the complainant could not see the actual culprits, therefore, he could not say about the specific assault committed by a particular accused. He implicated seven persons in the matter. However, four accused persons were acquitted by the trial Court. Under such circumstances, no offence is made out against the appellants. They may be acquitted by accepting their appeal. In alternate, it is submitted that the appellants Raja Singh and Devi Singh remained in the custody for 39 days, whereas the appellant Halke Singh remained in the custody for 19 days. They have faced the trial and appeal for last 16 years and therefore, it is prayed that they may not be sent to the jail again.

6. On the other hand, learned Panel Lawyer has submitted that the conviction as well as the sentence directed by the trial Court appears to be correct. There is no basis by which any interference can be done in the conclusion drawn by the trial

Court.

7. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether the appeal filed by the appellants can be accepted? and whether the sentence directed against them can be reduced?

8. Pajan Singh (PW-1) has stated about the incident that the appellant Halke Singh had a Farsa in his hand, whereas the appellant Devi Singh had a Barchhi and the appellant Raja Singh had a stick in his hand. Initially, they surrounded him in front of his uncle" house but he ran away from the spot and the appellants captured him in the field and assaulted him by various weapons. Kallu Singh (PW-4) and Mst. Raju (PW-7) have stated that the victim Pajan Singh was taken by the appellants towards the field. They tried to tell about the story of assault caused in front of the house of their uncle but according to the complainant Pajan Singh, no assault took place in front of his uncle"s house and therefore, the story told by Kallu Singh as well as Mst. Raju appears to be incorrect. In the present case, the injuries of the complainant were duly proved by Dr. S.S. Chourasiya (PW-6). He found nine injuries to the complainant caused by hard and blunt object. Out of them, four injuries were such, which could be caused by sharp objects having no sharpness as such. Out of such injuries, Dr. Rajesh Khare (PW-2) found that three injuries were grievous in nature. His one rib, one finger and one leg sustained fractures.

9. The most important document in the case was FIR Ex. P/1. The incident took place on 29.4.1996 at about 8-9:00 p.m. in the night, whereas FIR was lodged on 30.4.1996 at about 4:00 a.m. in the morning i.e. the FIR was lodged after seven hours of the incident. In the FIR, it was mentioned that the place of incident was quite away from the Police Station and therefore, such delay was caused. However, the complainant Pajan Singh (PW-1) has accepted in his cross-examination that he was taken to the Police Station by a tractor and from going to his village to the Police Station, 15-20 minutes were required in traveling with the tractor and therefore, his traveling from his village to the Police Station must be completed within 1/2 an hour. Kallu Singh (PW-4) has stated that when the appellants were chasing the victim Pajan Singh, he ran towards his house to call his father and thereafter, he went to the spot along with his father, therefore, he must have reached to the spot within 1/2 an hour and hence, the victim must have brought to the village within one hour of the incident. Under such circumstances, the FIR could be lodged within two hours of the incident, but it appears that the FIR was lodged with the delay of at least five hours and no reasonable explanation could be shown by the complainant Pajan Singh for the delay in this regard.

10. The incident took place in the night hours and therefore, it was not possible for the complainant and the witnesses to identify the actual culprits unless there was any source of light at the spot. The delay in lodging the FIR indicates two possibilities; firstly, that the victim was assaulted by the unknown persons at the

field and a false FIR was lodged against the appellants and a story was prepared that the complainant was returning from his uncle's house along with his brother Kallu Singh and wife Mst. Raju and; secondly, it was not known to father of the victim that Pajan Singh was lying in the field and when the witnesses informed him that the victim was lying in the field, he was taken to the village and thereafter, he was taken to the Police Station and a report could be lodged. Under both the situations, it appears that the victim, his family members and relatives prepared a false report against the appellants after due deliberations.

11. Pajan Singh (PW-1) has admitted in his cross-examination that the a prosecution was initiated against him that he abducted one Sushila and committed rape upon her, whereas Sushila was daughter-in-law of the appellant Halke Singh and therefore, the complainant could presume that he was assaulted by the person related to the prosecutor Sushila and therefore, he could lodge an FIR against such persons on the basis of suspicion only.

12. In the FIR Ex. P/1, the complainant Pajan Singh has mentioned that the incident took place at the field was viewed by Bhullo Singh and Bhurelal (DW-1). The police could not search Bhullo Singh, who saw the incident and therefore, no case diary statement was available of Bhullo Singh, whereas Bhurelal was given up by the prosecution and he appeared as a defence witness (DW-1). Bhurelal has stated that he saw the complainant Pajan Singh lying on the field and Pajan Singh told the witness Bhurelal that he could not see the culprits, who assaulted him. There is no reason by which the testimony of the witness Bhurelal can be brushed aside. In the Court, the complainant Pajan Singh has stated that the alleged incident was seen by Lakhan Singh and Bhurelal, but he did not tell that if the incident was seen by Lakhan Singh then as to why, the police could not examine Lakhan Singh and as to why he did not give the name of Lakhan Singh so that he could be examined in the Court. Under such circumstances, the eyewitness who were present at the spot are not supporting the evidence of the complainant.

13. According to the statement of the complainant Pajan Singh and narration given in the FIR Ex. P/1, when the complainant was surrounded by the appellants, he ran away towards the field, whereas Kallu Singh (PW-4) has stated that the appellant Halke Singh tried to assault him by an axe but he could be saved and thereafter, his brother Pajan Singh ran towards the field. It is apparent that the appellants Halke Singh etc. had a grievance with the complainant, but they did not try to assault anyone else. It is not proved either by the complainant Pajan Singh or Mst. Raju that the appellant Halke Singh tried to assault the witness Kallu Singh by an axe and therefore, it appears that the witness Kallu Singh told a falsehood about assault caused to him. Similarly, Kallu Singh has stated that when he reached to the field, he found that the hands and feet of the complainant were tied by a rope but it is nowhere corroborated either by the complainant or by any other witness. Similarly, such type of facts were not mentioned in his case diary statement Ex. D/2. He has given the description of

arms kept by the appellants, but his description given in the Court was quite different from his description given in the case diary statement Ex. D/2. Under such circumstances, it appears that the testimony of the witness Kallu Singh is not believable. He did not see the appellants at that time, when they chased the complainant.

14. Similarly, Mst. Raju has stated that the appellants having axe, Farsa etc. and they took the complainant towards the field but according to the statement of the complainant, the appellants did not take him to the field, whereas he himself ran towards the field. Similarly, the description of arms kept by the appellants is different as given by this witness in her case diary statement. Mst. Raju has accepted that her uncle's house is surrounded by so many houses, but she also accepted that on her shouting, nobody came from those houses. On the contrary, she tried to show that those houses were locked and therefore, there was no possibility for appearance of any persons residing in that locality. Looking to the statements given by Kallu Singh & Mst. Raju, it appears that since the incident took place at the field in the night and the complainant did not have any opportunity to see the actual culprits, therefore, a story was cooked that the appellants surrounded the complainant in front of his uncle's house and according to the story, role of the witness Kallu Singh and Mst. Raju was also fixed but, if it was true a story then no material contradictions could come in the statements of Kallu Singh & Mst. Raju. Under such circumstances, it appears that the appellants never surrounded the complainant in front of his uncle's house but the entire incident took place in the field. Also it is unnatural for the complainant that when he was surrounded by the appellants he ran toward the field, whereas he could not get any help in the field and he could be captured by the appellants. On the contrary, it was for him to run towards his house so that he could shout in the street and he could get the help of villagers in the village itself. Looking to the unnatural conduct of the complainant, it appears that no such alleged incident took place in front of the house of his uncle and such portion of story was unnecessarily added in the FIR to establish the fact that the appellants were identified by the complainant and his brother and wife.

15. Under such circumstances, if a doubt is created that no incident took place in front of uncle's house of the complainant, then there was no opportunity to the witness Kallu Singh and Mst. Raju to see the culprits.

16. The incident took place at the field in the night and the complainant Pajan Singh could not tell about any arrangement of light, by which he could see the culprits. Under such circumstances, the testimony of the witness Bhurelal (DW-1) can be accepted that the unknown persons assaulted the victim near the field and the victim was lying at the spot and thereafter, Bhurelal went to his father's house and informed him that the victim was lying in the field and then, the victim was taken to the Police Station and subsequently to the hospital.

17. On the basis of aforesaid discussion, a doubt is created that the complainant was assaulted by the unknown persons and since there was an enmity between

the appellant Halke Singh and the complainant, therefore, the complainant implicated so many persons on the basis of suspicion only. The complainant could not specifically say that which sort of assault was caused by a particular appellants. In FIR also, the complainant mentioned about the weapons kept by the appellants but he could not inform that by such weapons, whether a particular assault was committed by the appellant on which part of his body. If the appellant Devi Singh had a Barchhi and appellant Halke Singh had a Farsa then, there was no problem to these culprits to assault the victim by such weapons and in such a situation, the complainant would have sustained some incised wounds caused by Farsa and Barchhi but according to the Dr. S.S. Chourasiya (PW-6), no incised wound was found to the victim. Therefore, the weapons shown in the hands of the appellants Devi Singh and Halke Singh did not match with the injuries caused to the victim Pajan Singh.

18. On the basis of aforesaid discussions, it is nowhere clear that, who assaulted the victim Pajan Singh causing him various grievous injuries and, therefore the overt acts of the appellants are nowhere proved beyond doubt, by which they can be convicted for the offence punishable u/s 325 of IPC or any inferior offence of same nature either directly or with the help of Section 34 of IPC. If a doubt is created then, the benefit of doubt is to be given to the accused person. The learned 1st Additional Sessions Judge has erred in convicting the appellants for the offences punishable under Sections 325 / 34 of IPC.

19. It is established that it was not proved beyond doubt that the appellants assaulted the victim causing him the grievous injuries and therefore, the appellants cannot be convicted for the offence punishable under Sections 325 / 34 of IPC in such a doubtful conditions. They will get the benefit of doubt. Under such circumstances, the appeal filed by the appellants can be accepted and hence, it is hereby allowed. The conviction as well as the sentence directed against the appellants for the offences punishable u/s 325 / 34 of IPC is hereby set aside. They are acquitted from all the charges levelled against them by giving a benefit of doubt. They would be entitled to get the fine amount back, if they have deposited the same before the trial Court.

20. The appellants are on bail. Their presence is no more required before this Court and therefore, it is directed that their bail bonds etc. shall stand discharged. Copy of the judgment be sent to the trial Court along with its record for information and compliance.