

(2004) 08 MP CK 0088

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 512 of 2004

Hari Singh and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320(6), 401
Penal Code, 1860 (IPC) — Section 323, 326, 34

Citation : (2005) 1 ALT(Cri) 12 : (2005) 1 MPHT 13 : (2004) 4 MPLJ 277

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : Mayank Upadhyaya and Manoj Saxena, for Ramsingh, for the Appellant; Amitab Upadhyaya, Panel Lawyer, for the Respondent

Judgement

S.L. Kochar, J.

This revision has been preferred by the applicants against the judgment dated 18-6-2004 passed by II Addl. Sessions Judge, Fast Track Court, Narsinghgarh in Criminal Appeal No. 17/2003 arising out of Criminal Case No. 370/2000, judgment dated 28-11-2002 passed by learned JMFC, Narsinghgarh, whereby affirmed the conviction of the applicants for the offence punishable u/s 326 326/34 of IPC but modified the sentence. Instead of three years R.I. with fine of Rs. 750/- the applicant No. 1 Harisingh has been sentenced to R.I. for one year with fine of Rs. 750/- and applicants No. 2 Hanumantsingh, No. 3 Indarsingh and No. 4 Jagdishsingh have been sentenced to undergo R.I. for one year with fine of Rs. 750/- each u/s 326/34 of IPC.

The learned Counsel for applicants Shri Mayank Upadhyaya, has submitted that prior to filing application for grant of permission to compound the offence, the complainant Ramsingh who is present today before this Court had also filed an application dated 10-5-2003 for grant of permission to compound the offences before the learned Lower Appellate Court. This application is available in the record and this Court has perused the same. Looking to these facts, there is no

doubt that the complainant Ramsingh s/o Dayaram has amicably settled the dispute between the applicants and also filed application for grant of permission to compound the offences before this Court also.

In brief the prosecution case before the Trial Court was that on 9-10-2000 at 5.00 p.m., complainant Ramsingh was going to his house from his field. At that time applicants were taking their bullock cart through his field which was objected by the complainant Ramsingh at which all of a sudden applicant No. 1 Harisingh taken out a Spear (Ballam) from the bullock cart and dealt a blow, causing injury at the wrist of right hand. Thereafter applicants No. 2 Hanumantsingh, No. 3 Indarsingh and No. 4 Jagdishsingh also reached over there and exhorted applicant No. 1. The complainant tried to run away towards his house but he was assaulted by the applicants by lathi. The matter was reported in the Police Station by the complainant. His report is Ex. P-2. In medical examination by Dr. R. Kumar (P.W. 5), injuries were found on the person of the complainant Ramsingh out of which injury No. 1, incised wound on the left forearm and injury No. 3 on right thumb and index finger were caused by sharp edged weapon and rest injuries were caused by hard and blunt object.

After investigation, charge-sheet was filed and the learned Trial Court framed the charges against applicant No. 1 Harisingh u/s 326 and against No. 2 Hanumantsingh, No. 3 Indarsingh and No. 4 Jagdishsingh u/s 326/34 of IPC because the complainant had fracture of left ulna, metacarpal bone and right febula bone underneath the incised injury. The applicants denied the charges before the Trial Court. Therefore, put on trial. The learned Trial Court, after examining the prosecution and defence witnesses and hearing them, convicted the applicants as mentioned above against which they went up in appeal and the Lower Appellate Court upheld the conviction but modified the sentence as indicated above. The application filed by the complainant for compounding the offence was dismissed because the offence was not compoundable.

The contention of the learned Counsel for applicants is that the conviction of applicants No. 2 Hanumantsingh, No. 3 Indarsingh and No. 4 Jagdishsingh with the help of Section 34 of IPC is not tenable because at the time of causing of injury by sharp side of Spear (Ballam), they were not present. They reached later on and joined the applicant No. 1 Harisingh and thereafter all had caused injuries by lathi and all those injuries are simple in nature. The learned Counsel has also submitted that offence u/s 326 of the IPC would be made out only against applicant No. 1 Harisingh which is not compoundable and against applicants No. 2 Hanumantsingh, No. 3 Indarsingh and No. 4 Jagdishsingh the offence punishable u/s 323 of IPC would be made out and this offence is compoundable for which the complainant has already filed application.

Having heard the learned Counsel for parties and after perusing the entire record, there is substance in the submission of the learned Counsel for applicants regarding conviction of applicant Nos. 2, 3 and 4 u/s 326 read with Section 34 of IPC. There is no evidence on record that there was pre-meeting of mind,

premeditation and pre-plan between the applicants for causing grievous injuries to the complainant by sharp edged weapons. According to the prosecution case itself the incident had occurred all of a sudden when the applicant No. 1 Harisingh was taking his bullock cart through the field of the complainant. At that time, applicant Nos. 2, 3 and 4 were not present. At the time of causing of the injury by Spear (Ballam), the applicant Nos. 2, 3 and 4 were not present. Therefore, for the act of applicant No. 1 Harisingh, causing grievous injuries by Spear (Ballam), applicants No. 2 Hanumantsingh, No. 3 Indarsingh and No. 4 Jagdishsingh could not be held liable. Therefore, the conviction of the applicant Nos. 2, 3 and 4 is hereby set aside instead thereof they are convicted u/s 323, IPC.

The learned Counsel filed application for compounding the offence and the complainant Ramsingh is also present before this Court. The complainant has submitted that he has compounded the offence without any threat, inducement or promise. He has also submitted that in the Lower Appellate Court he had filed an application for compounding the offence. According to him, he and the applicants are residents of same village and now they want to maintain peace and harmony. The application for compounding the offence filed by the complainant so far as the applicants No. 2 Hanumantsingh, No. 3 Indarsingh and No. 4 Jagdishsingh are concerned, is allowed. They are acquitted from the offence u/s 323 of the IPC. The Trial Court is directed to release them forthwith if not required in any other case. The fine amount, if deposited by them before the Trial Court, be refunded to them.

The application for compounding the offence filed by the complainant so far as applicant No. 1 Harisingh is concerned, the same is refused because the offence u/s 326, IPC is not compoundable. The conviction of the applicant No. 1 Harisingh is maintained u/s 326 of the IPC, but in view of the compromise arrived at by the parties, his sentence is reduced to the period already undergone with fine of Rs. 5,000/- (five thousand). In default of payment of fine, he shall undergo R.I. for six months. Out of line amount, Rs. 4,500/- (four thousand five hundred) be paid as compensation to the complainant Ramsingh. The learned Counsel for applicants has submitted that applicant No. 1 Harisingh has already deposited fine amount of Rs. 750/-. If this is so, the learned Trial Court, upon depositing the remaining amount of fine by the applicant No. 1 Harisingh, shall release him forthwith if not wanted in any other criminal case.

The revision is allowed in part in the terms as indicated above. A copy of this judgment along with the record be transmitted to the Court below immediately.