
(2009) 06 MP CK 0001
In the Madhya Pradesh High Court

Idris Beg and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 147, 149, 302, 325

Citation : (2010) 1 MPHT 304

Hon'ble Judges : Syed Ali Naqvi, J;A.K.Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—Feeling aggrieved by the judgment of conviction and order of sentence dated 18-12-1998 passed by the learned Additional Sessions Judge, Sironj, District Vidisha, in Sessions Trial No. 15/93 convicting the appellants under Sections 147, 302/149 and 323/149, IPC and thereby sentencing them to suffer imprisonment as mentioned in the impugned judgment, this appeal has been filed by the appellants u/s 374 (2) of the Code of Criminal Procedure, 1973.

2. In brief the case of the prosecution is that on 25-9-1992 at 11.30 a.m. in the field of Babu Khan, all the accused persons including the appellants carrying lathis in their hands dealt lathis blows on the persons of Rafique (hereinafter referred to as "the deceased"), complainant Rajamiyan. Raja Khan and Sharif Khan. It is said that Shabbir Khan gave his field on batiya to Raja Khan. However, appellants Idris and his family members were not permitting said Raja Khan to cultivate the land and were saying to them that in case they will go to the field, they may face dire consequences. It is said that there is enmity between the parties. On the date of incident, all the accused persons including the appellants arrived at the field and dealt the blows of lathis to the deceased as well as to complainant Rajamiyan, Raja Khan and Sharif Khan. A report was lodged by complainant Rajamiyan in the Police Station, on the basis of which a case under Sections 147, 148, 149, 323 and 506-B, IPC was registered against

the accused persons including the appellants.

3. Later on the deceased, who was alive at that time, was sent to District Hospital, Guna for further treatment. It is borne out from the evidence that the deceased was discharged from the District Hospital, Guna. However, later on, on account of his serious condition again he was admitted in the hospital where he could not survive and breathed his last on 16-10-1992.

4. After the death of the deceased, the case, which was initially registered u/s 323, IPC with other offences, was altered to Section 302 of IPC.

5. After the investigation was over, a charge-sheet was submitted in the Competent Court which on its turn committed the case to the Court of Session and from where it was received by the Trial Court for its trial.

6. The learned Trial Judge on the basis of the allegations made against the appellants as well as other co-accused persons framed charges punishable under Sections 147, 148, 302/149, 325/149 and 323/149 of IPC.

7. Needless to emphasize the appellants abjured their guilt and pleaded complete innocence.

8. In order to bring home the charges, the prosecution examined its witnesses and placed the certain documents on record.

9. The defence of the appellants is of false implication. Apart from the false implication, some of the appellants have taken the plea of alibi and have also examined the witnesses in defence.

10. The learned Trial Judge on the basis of the evidence placed on record came to hold that the appellants have committed the offence under Sections 147 and 302/149 of IPC and they have also committed the offence u/s 325/149 of IPC and hence passed the sentence against them as mentioned in the impugned judgment.

11. In this manner, the present appeal has been filed by the appellants assailing the judgment of conviction and order of sentence.

12. Learned Counsel for the appellants are not challenging about authenticity of the incident. However, according to him, since the death of the deceased was not homicidal in nature, therefore, the learned Trial Court erred in convicting them u/s 302/149 of IPC.

13. The contention of the learned Counsel for the appellants is that looking to the role assigned to the appellants at the most their act would come under the ambit and sweep of Section 325 of IPC.

14. On the other hand, Shri C.S. Dixit, learned Public Prosecutor for the State argued in support of the impugned judgment.

15. Having heard the learned Counsel for the parties, we are of the considered

view that this appeal deserves to be allowed in part.

16. In the present case, the prosecution examined complainant Rajamiyan (P.W. 9), Raje Khan (P.W. 10), Sharif Khan (P.W. 11) and Sazid Khan (P.W. 8) as eye-witnesses. However, Raje Khan and Sharif Khan were declared hostile as they did not support the case of the prosecution.

17. On going through the testimony of Rajamiyan, who is also an injured witness, we find that all the appellants armed with lathis arrived at the field and dealt blows to the deceased which landed on several parts of his body. They also dealt lathi blows to complainant Rajamiyan (P.W. 9). On examining the testimony of Rajamiyan, there is nothing in his evidence in order to disbelieve that the appellants did not inflict the injuries by lathis to the deceased or to complainant Rajamiyan (P.W. 9). Thus, according to us, the learned Trial Court rightly came to hold that the appellants dealt lathi blows on the person of the deceased as well as to complainant Rajamiyan.

18. The question that still hinges, as to what offences the appellants have committed. The learned Counsel for the appellants have rightly invited our attention to the testimony of autopsy surgeon Dr. S.K. Shrivastava (P.W. 12) and has contended that the deceased had died on account of haemorrhage due to bleeding from gastric ulcer. The autopsy surgeon has also proved his post-mortem report (Exh. P-29). Nowhere in his evidence the doctor opined that the death of the deceased was homicidal in nature. Thus, according to us, since the death of the deceased was not homicidal, Section 299 of IPC would not be attractive and, therefore, according to us, the appellants cannot be convicted u/s 302 read with Section 149 of IPC.

19. At this juncture, we would like to scan the testimony of Masit (P.W. 5), who is the son of the deceased and who has categorically admitted in Para 9 of his cross examination that after the deceased came back to Lateri, he was able to speak, but he was not eating food because he was complaining burning sensation in his stomach and was also complaining pain in the chest. Thereafter, his father was examined by Dr. Khilwani of Lateri, who after examining the deceased gave medical prescription. Thereafter, the deceased was shifted to Guna Hospital. This witness has further stated that the doctor of Lateri specifically directed the deceased to eat "Khichadi" and directed not to eat the spicy food. Thus, according to us, since the death of the deceased was not homicidal in nature, and he died on account of gastric ulcer, the learned Trial Court erred in convicting and sentencing the appellants u/s 302/149 of IPC. However, there is overwhelming evidence on record that all the accused persons formed an unlawful assembly whose common object as to cause injury to the deceased. There is a fracture on the head of the deceased and his injury was found to be grievous in nature. MLC Dr. A.P. Khilwani (P.W. 1) on examining the injury No. 1, which is lacerated wound on the scalp, opined that the said injury could be dangerous to life. In this contest, if we examine Section 320 of IPC, where the definition of grievous hurt has been defined and particularly 8th clause, we find

that the term "grievous hurt" in 8th clause has been explained thus:

320. Grievous hurt.- The following kinds of hurt only are designated as "grievous":

Firstly,:

Secondly:

Thirdly,:

Fourthly,:

Fifthly,:

Sixthly,:

Seventhly,:

Eighthly, -Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

(Emphasis supplied)

20. The autopsy surgeon as well as MLC doctor have not at all stated that the injury No. 1 sustained to the deceased, which is a fracture on his head, was sufficient in ordinary course to cause death, therefore, according to us, the appellants have committed the offence u/s 325/149 of IPC. Thus, all the appellants are hereby convicted under Sections 147 and 325/149 of IPC.

21. We have been apprised that all the appellants have undergone a period of nearabout 7-1/2 months imprisonment and this would be the proper punishment for the offence they have committed. The appellants are further directed to deposit the fine of Rs. 13,000/- u/s 325/149 of IPC and each appellant shall deposit fine of Rs. 500/- each for the offence u/s 147 of IPC. The appellants are hereby directed to deposit the amount of fine before 31-10-2009, if already not deposited. In case the appellants fail to deposit the fine amount, they shall further undergo imprisonment as directed by the learned Trial Court. The amount of fine shall be disbursed to the person as directed by the learned Trial Court in Para 54 of the judgment. All the appellants shall appear before the learned Trial Court on 24th August, 2009. In case, they fail to appear on 24th August, 2009, the learned Trial Court shall issue bailable warrants of arrest against them.

22. The conviction and sentence of all the appellants u/s 323/149 of IPC for causing injuries to Rajamiyan is hereby affirmed.

23. For the reasons stated hereinabove, this appeal is allowed in part. The appellants are on bail. Their bail bonds are discharged.