
(2019) 09 MP CK 0078

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 3807 Of 2016

Kalu @ Bhagwandas Patel

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 323

Citation : (2019) 09 MP CK 0078

Hon'ble Judges : Mohd. Fahim Anwar, J

Bench : Single Bench

Advocate : Sanjay Patel, Veer Bahadur

Final Decision : Allowed

Judgement

1. This appeal has been filed by the appellant being aggrieved by the judgment dated 1.12.2016 passed by Additional Sessions Judge, Special Court, Sagar in Sessions Trial No.3900287/2016, by which the trial Court has held the appellant guilty for offence punishable under section 307 of IPC and sentenced him to undergo R.I for 5 years and to pay fine of Rs.5,000/-, in default to undergo R.I. for 6 months.

2. The case of prosecution in brief is that on 1.12.2015 at about 7:00 pm in vilalge Bidhwas under the jurisdiction of Police Station Surkhi, District Sagar when injured Pintu alias Mukesh Pandey had gone to the vegetable shop of appellant for buying vegetables, some dispute arose between them and the appellant had dealt an axe blow on the neck of injured Mukesh, as a result of which he sustained grievous injuries. The report of the incident was lodged and the offence was registered against the appellant and other co-accused person.

3. The trial Court framed the charges for offences punishable under sections 307, 323 read with section 34 of IPC. The appellant abjured his guilt and pleaded innocence. After trial, the appellant had been held guilty under section 307 of IPC and sentenced as mentioned above, while he has been acquitted of the

charges for offence punishable under section 323 read with section 34 of IPC.

4. Learned counsel for appellant has submitted that the appellant has been falsely implicated and the trial Court has not properly evaluated the evidence adduced on record and has erred in convicting the appellant for the aforesaid offence. It is also submitted that the appellant's wife Sitarani has lodged a complaint case against the complainant on 28.1.2016. It is further submitted that the sentence awarded by the learned trial Court is excessive and the appellant has already undergone sentence of 3 and ½ years, therefore it may be reduced to the sentence already undergone by the appellant. It is therefore prayed that this appeal may be allowed.

5. On the other hand, learned Panel Lawyer appearing on behalf of the State has supported the impugned judgment of conviction and order of sentence delivered by the learned trial Court and submitted that the appeal is devoid of substance and it be dismissed.

6. After hearing counsel for the parties, examining the record and considering the peculiar facts and circumstances of the case, it appears that the appellant has rightly been convicted under section 307 of IPC by the trial Court. However the sentence awarded to the appellant appears to be excessive and on the higher side. The appellant is in custody since 10.3.2016 and till today he has already undergone 3 ½ years of jail sentence. Therefore, it will be appropriate to reduce the sentence of imprisonment imposed upon the appellant under section 307 of IPC from 5 years to the sentence already undergone by him, and to enhance the fine amount from Rs.5,000/- to Rs.10,000/- for the said offence.

7. Accordingly, this appeal is allowed in part. The conviction of appellant under section 307 of IPC is maintained. However the sentence of R.I. for 5 years awarded by the trial Court is reduced to the period already undergone by him, but enhance the fine amount from Rs.5,000/- to Rs.10,000/-, which shall be payable to the injured Pintu alias Mukesh Pandey and in default to undergo sentence of R.I., for one year. On payment of fine amount, the appellant shall be released forthwith, if not required in any other crime.