
(2012) 11 MP CK 0101

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1816 of 2010

Khubchand @ Kubbi and four Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 302, 323, 34, 427

Citation : (2012) 11 MP CK 0101

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

Bench : Single Bench

Advocate : Ashish Sinha, in Criminal Appeal No. 1816/2010 and Mr. Paritosh Trivedi, in Criminal Appeal No. 1938/2010, for the Appellant; Ajay Tamrakar, Panel Lawyer for the Respondent-State in Criminal Appeal Nos. 1816 and 1938/2010, for the Respondent

Judgement

Hon"ble Shri Justice N.K. Gupta, J.—Both the criminal appeals arose from a common judgment dated 31.8.2010 passed by IInd Additional Sessions Judge, Mandla in ST No. 140/2007 and therefore, both the appeals are decided by a common judgment. The appellants have preferred these appeals against the judgment dated 31.8.2010 passed by the learned IInd Additional Sessions Judge, Mandla in ST No. 140/2007 whereby the appellants were convicted for offence punishable u/s 323 read with Section 34 of I.P.C. and sentenced for one years rigorous imprisonment with fine of Rs. 1000/- and in default of payment of fine three months rigorous imprisonment was directed.

2. The prosecution"s case in short is that on 29.8.2007 at about 11.00 p.m. in the night the complainant deceased Dev Kumar was going to his house situated at Village Maneri Tola, (Out Post Maneri, Police Station Bijadandi, District Mandla). He had some enmity with Devendra @ Kabli and therefore, at about 11.00 p.m. in the night when he reached near his house the appellants Ratnu @ Ratan and Lokesh @ Bubu detained him and abused him. They also assaulted him by sticks. In the meantime the other accused persons came with others and

they also assaulted the victim by the sticks. His father Govind Prasad came to save him then the accused persons also assaulted his father Govind Prasad. Devkumar went to the Out Post Maneri and lodged an FIR Ex.P/2. He was sent for his medico legal examination. Dr. Vijay Paigwar (PW20) had examined the victim Govind Prasad at Community Health Centre, Niwas and found four simple injuries to him and gave his report Ex.P/29-A. Those injuries were caused on his right head, right thigh, right upper arm and palm. He also examined the victim Devkumar and gave his report Ex.P/25. There was only one lacerated wound to the victim Devkumar caused on his right knee. He referred the victim Devkumar for his X-Ray examination but in the radiological examination no bony injury or dislocation was found. On 7.9.2007 the victim Devkumar expired. Intimation was given to the Police Station Bijadandi, District Mandla. Panchayatnama lash Ex.P/21 was prepared by the Police Officers and the dead body was referred for post mortem. Dr. Yogesh Neekhara (PW10) examined the body of the deceased Devkumar on 7.9.2007 and gave his report Ex.P/20. The deceased sustained only one injury on his right knee and he died due to complications of that injury. After due investigation a charge sheet was submitted before the JMFC, Niwas, District Mandla who committed the case to the Sessions Court, Mandla and thereafter it was transferred to the Second Additional Sessions Judge, Mandla.

3. The appellants abjured their guilt. They did not take any specific plea in the case but they have stated that they were falsely implicated in the matter. It was the victim Devkumar who tried to assault Raju and in reaction Raju assaulted the victim Dev Kumar. A Rojnamcha Ex.D/5 is produced in defence.

4. The learned Additional Sessions Judge after considering the evidence adduced by the parties acquitted the appellants from the charges of offence punishable u/s 302, 451, 427, 294, 506 Part II of I.P.C. but convicted them for offence punishable u/s 323 read with Section 34 of I.P.C. and sentenced them as mentioned above.

5. I have heard the learned counsel for the parties.,

6. The learned counsel for the appellants have submitted that the appellant Devendra @ Kabli remained in the custody for five months and 22 days whereas the appellants Khubchand @ Kubbi, Lokesh @ Bubu and Ranu @ Ratan remained in the custody for 84 days and remaining appellants remained in the custody for one month. Actually it is no where clear that a single injury caused to the victim Devkumar was caused by a particular appellant and therefore, there is no evidence that they assaulted the victim Dev Kumar and it is no where established that a particular appellant assaulted the victim Devkumar. The appellants cannot be convicted for offence punishable u/s 323 of I.P.C. for the single injury caused to the victim Devkumar. So far as the injury caused to victim Govind Prasad those were simple in nature and therefore, looking to the custody period of the appellants they may not be sent to the jail again.

7. On the other hand the learned Panel Lawyer has submitted that the conviction

as well as the sentence directed by the trial Court appears to be correct.

8. 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 appeals filed by the appellants can be accepted ? And whether the sentence directed against them can be reduced ?

9. First of all it is to be made clear that the appellants are convicted for offence punishable u/s 323 of I.P.C. for the victim Devkumar. The trial Court has prepared a memo of the charges against the appellants Khuchand @ Kubbi, Lokesh @ Bubu, Ratnu @ Ratan and Devendra @ Kabli for offence punishable under Sections 302 or 302 read with section 34, 451 and 427 of I.P.C. No charge was framed against these four appellants for offence punishable u/s 323 of I.P.C. for the victim Govind Prasad whereas a charge of Section 323 of I.P.C. was framed against the appellant Brajesh for the victim Govind Prasad and therefore, Brajesh is convicted for offence punishable u/s 323 of I.P.C. for the injuries caused to the victim Govind Prasad whereas remaining accused persons are convicted for offence u/s 323 of I.P.C. for the injuries caused to the victim Devkumar. Actually the incident took place on 29.8.2007 and victim Devkumar sustained a simple injury on his knee. He died after nine days. It appears that he did not take care of that injury and therefore, he died due to complications which arose by that injury and therefore, the learned Additional Sessions Judge acquitted the appellants from the charges of offence punishable u/s 302 of I.P.C.

10. It appears that the appellants did not challenge the conviction directed against them but, they simply challenged the sentence directed against them and therefore, there is no need to discuss the matter on merits.

11. So far as the sentence is concerned the appellants remained in the custody for 30 days to 167 days. Injuries caused to the victim Devkumar is considered then it was a simple injury and he sustained only one injury. Under such circumstances, while considering the sentence for that offence the factum of his death should not be considered and therefore, looking to his single injury the appellants cannot be punished in such a manner where the appellants except the appellant Brajesh is convicted for offence punishable u/s 323 read with Section 34 of I.P.C. for the injury caused to the victim Devkumar. It is apparent that the appellants have faced the trial and appeal for last five years and they remained in the custody for more than 30 days. They have deposited the fine amount which was the maximum as prescribed for the offence punishable u/s 323 of I.P.C. Looking to the overt act of the appellants whereas they were the first offenders, the custody period appears to be appropriate sentence and therefore, their sentence can be reduced to the period which they have already undergone in the custody. So far as the sentence of the appellant Brajesh is concerned, he had caused 3-4 simple injuries to the victim Govind Prasad. He is also the first offender who faced the trial and appeal for last five years. He also remained in the custody for one month and therefore, for the same reasons his custody period appears to be an appropriate sentence where a maximum fine is imposed

upon him for that offence. Hence it is a fit case in which the sentence directed against the appellant Brajesh can be reduced to the period which they have already undergone in the custody.

12. On the basis of the aforesaid discussion both the appeals filed by the appellants are hereby partly allowed. Conviction for offence punishable u/s 323 read with section 34 of I.P.C. is hereby maintained but the sentence is reduced to the period which they have already undergone in the custody. No change in the fine amount.

13. Almost all the appellants are on bail. Their presence is no more required and therefore, their bail bonds shall stand discharged. The appellant Devendra @ Kabli is in custody and therefore, Registry is directed to arrange for issuance of a supersession warrant so that the appellant Devendra @ Kabli be released without any delay. Copy of the judgment be sent to the trial Court along with its record for information and compliance.