

(2012) 08 MP CK 0010

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 601 of 2009

Lalu and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2012) 08 MP CK 0010

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

Bench : Single Bench

Advocate : Rajendra Raghuvanshi, for the Appellant; Ajay Tamrakar, Panel Lawyer State, for the Respondent

Judgement

Hon'ble Shri Justice N.K. Gupta

1. The appellants have preferred this appeal against the judgment dated 13.3.2009 passed by the 5th Additional Sessions Judge, Bhopal in S.T. No.40/08, whereby the appellants were convicted for the offence punishable under Sections 324/34 of IPC and sentenced for two years" R.I. with fine of Rs. 1000/-. In default of payment of fine, each of them to undergo for three months" R.I. in addition. The prosecution's case in short is that on 31.7.2007 at about 7:00 p.m. in the evening, the victim Monu @ Rahul was called from his house to the STD booth near Kumhar Mohalla Panchsheel Nagar, Bhopal by the appellant Lalu and thereafter, he had assaulted the victim Monu by a dagger causing him serious injuries. On shouting of Monu, Shankar Rao elder brother of his father came to the spot, who took the victim Monu @ Rahul to the J.P. Hospital Bhopal, from where he was referred to the Hamidiya Hospital. A Dehatinalishi (FIR) Ex. P/1 was lodged at Hamidiya Hospital and therefore, a case was registered against the appellants. After due investigation, a charge sheet was filed before the J.M.F.C. Bhopal, who committed the case to the Sessions Court and ultimately, it was transferred to the 5ththAdditional Sessions Judge, Bhopal.

2. The appellants abjured their guilt. They did not take any specific plea in

defence. No defence evidence was adduced.

3. After considering the prosecution's evidence, the learned 5th Additional Sessions Judge, Bhopal acquitted the appellants from the charges of offence punishable u/s 307 of IPC, but convicted them for the offence punishable under Sections 324/34 of IPC and sentenced them as mentioned above.

4. During pendency of this appeal, the appellant No.2 had expired and therefore, the appeal filed by the appellant No.2 was dismissed being abated.

5. I have heard the Learned Counsel for the parties.

6. The Learned Counsel for the appellant No.1 has submitted that the appellant No.1 was convicted for the offence punishable u/s 324 of IPC, which is not so grave. The appellant was only 20-21 years of age at the time of incident and he remained in the custody for 26 days during the trial. At present, he is in the custody since 18.5.2012 till today. Under such circumstances, he remained in the custody approximately for four months and therefore, looking to his custody period, the sentence may be reduced to the period, which he has already undergone in the custody. However, some fine amount may be enhanced.

7. 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.

8. It appears that the appellant No.1 does not challenge the conviction directed against him and therefore, there is no need to discuss the matter on that point. So far as the sentence is concerned, the appellant No.1 assaulted the victim Monu @ Rahul by a dagger and he was the main culprit. However, he was 21 years of age at the time of incident and on the basis of his age, he could not get any advantage of probation but looking to his age, where he remained in the custody for four months, it would be proper that his sentence may be reduced to the period, which he has already undergone in the custody by enhancing of fine amount.

9. On the basis of aforesaid discussion, the appeal filed by the appellant No.1 is hereby partly allowed. The conviction directed for the offence punishable under Sections 324/34 of IPC is hereby maintained but the sentence is reduced to the period, which he has already undergone in the custody, whereas the fine amount is enhanced from the sum of Rs. 1,000/- to Rs. 10,000/-. In default of payment of fine, the appellant No.1 shall undergo for six months" R.I. If, he deposits the remaining fine amount then, a sum of Rs. 7,000/- be given to the victim Monu @ Rahul S/o Panjabrao Ghote, R/o Plot No.125, Panchsheel Nagar, Bhopal by way of a compensation.

10. Registry is directed to issue a supper session warrant so that the appellant No.1 may be released, if he deposits the fine amount. Copy of the judgment be sent to the trial Court alongwith its record for information and compliance.