
(2013) 12 MP CK 0095

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 75 of 1999

Mahendra Singh, Rajesh, Ram Kumar and Kashi Bai

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0095

Hon'ble Judges : Brij Kishore Dubey, J;B.D. Rathi, J

Bench : Division Bench

Advocate : Madhukar Kulshreshtha, for the Appellant; Mukund Bhardwaj, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

B.D. Rathi, J.—This appeal u/s 374 of the Code of Criminal Procedure, 1973 (in short "the Code") has been preferred by the appellants being aggrieved from the judgment of conviction dated 07-01-1999 passed by learned Second Additional Sessions Judge Ashoknagar District Guna in S.T. No. 365/1996 whereby appellants have been convicted under Sections 302/149, 323, 324, 449, 452, 147 and 148 of Indian Penal Code (in short "IPC") and sentenced to undergo life imprisonment with fine of Rs. 1,000/-, 6 months" rigorous imprisonment, 1 year"s rigorous imprisonment, 5 years" rigorous imprisonment with fine of Rs. 200/-, 3 years" rigorous imprisonment with fine of Rs. 300/-, 1 year"s rigorous imprisonment and 1 year"s rigorous imprisonment, respectively with default stipulation. The prosecution story, in brief, is that on 14-07-1996 at about 5:30 pm, Man Singh S/o. Jugraj Singh reached at the Police Station and informed that when his brother Shankar was in his house at about 4 pm, Mahendra, Rajesh and Vijay Singh came and assaulted Shankar by taking him out of his house. The report of the said incident could not be lodged because of flood. Thereafter, when the complainant Man Singh, his wife-Kosiya Bai and daughter-in-law Tursa were going to their field, accused persons had abused them and when they entered into the house of Bhairrolal in order to save themselves, the accused persons had

assaulted them by committing house trespass. Further, it was alleged that Mahendra had assaulted Kosiya Bai by Farsa. After some time, mother of Mahendra Kashi Bai, Rampal and Ramkumar also reach there and provoked the appellants to assault the victims. Kosiya Bai had died on the spot. On this information, Dehati Nalishi was registered at crime No. 0/1996 and thereafter crime No. 68/1996 was registered at Police Station Nai Sarai as Ex-P/6. After completion of investigation, charge-sheet was filed against the appellants.

2. During the trial, the accused/appellants pleaded not guilty to the charges under Sections 148, 452, 323, 324/149, 449, 302 or 302/149 of IPC and contended that they had been falsely implicated.

3. It is submitted by learned counsel for the appellants that the evidence produced by the prosecution before the trial Court has not been properly appreciated and therefore, the judgment of conviction cannot be sustained and it was also submitted that as per the evidence of Dr. Ramvir Singh Raghuvanshi (PW-7) death of Kosiya Bai was not homicidal but it was natural. She had died due to failure of cardiorespiratory system because she was suffering from tuberculosis and so far as the injuries of other persons are concerned only simple injuries were caused. It was also submitted that the injured, namely, Man Singh (PW-1), Tursa Bai (PW-2), Shivraj (PW-6), Ashok (PW-8) and Bhairolal (PW-5) are close relatives and belong to same family and all are interested witnesses, therefore their testimonies cannot be given much weightage and ultimately it was prayed that the appellants be acquitted.

4. Learned Public Prosecutor on the other hand submitted that the impugned judgment of conviction and sentence is well merited and no interference is called for.

5. To bring home the charges prosecution has examined as many as 18 witnesses, namely, Man Singh (PW-1), Tursa Bai (PW-2), Ashok (PW-3), Shankarlal (PW-4), Bhairolal Bhargav (PW-5), Shivraj (PW-6), Dr. Rambir Singh Raghuvanshi (PW-7), Ashok Kumar Sharma (PW-8), Udham (PW-9), Gopal (PW-10), Yusuf Mohammad (PW-11), Munna (PW-12), Ramcharan (PW-13), R. Virendra Singh (PW-14), Dharam Singh (PW-15), Gopal (PW-16), Dr. Lal Singh Uchariya (PW-17) and Naresh Dubey (PW-18) and in defence Ramnaresh Tiwari was examined as DW-1.

6. Having regard to the arguments advanced by the parties, we have perused the entire evidence and material available on record as well as the impugned judgment of trial Court.

7. On perusal of evidence of Dr. Rambir Singh (PW-7) who had conducted the post mortem of Kosiya Bai (since deceased) on 15th July, 1996 and found only one abrasion on her left shoulder having size of 8 x 6 cm. Except that, no other injury was found on the dead body of Kosiya Bai. It was opined that above mentioned injury was simple in nature. She had died due to failure of cardiorespiratory system as she was suffering from the disease of tuberculosis

and her death was natural.

8. After taking into consideration the evidence of doctor and other witnesses, in our considered view the death of Kosiya Bai was not homicidal but it was natural, therefore, appellants cannot be held guilty for committing murder of Kosiya Bai and also cannot be convicted for the charge u/s 302 or 302/149 of IPC.

9. After taking into consideration, the evidence of above mentioned witnesses, it was held by the trial Court that the accused persons, being members of unlawful assembly and in furtherance of common object of unlawful assembly had inflicted simple injuries by Lathi blows to Bhairrolal, Shankar, Man Singh, Shivraj and Ashok. It was also held that simple incised wound was also caused to Tursa Bai by sharp edged weapon. Kosiya Bai was also assaulted resultantly she had died. It was further held that the offence was committed by the members of unlawful assembly after committing house trespass. The appellants were held guilty for the charges under Sections 147, 148, 452, 323/149, 324/149, 449, 302 in alternate 302/149 of IPC.

10. As discussed above in para 9, in our considered view, prosecution has failed to prove the offence under Sections 449 and 302 or 302/149 of IPC against the appellants beyond reasonable doubt.

11. We have also gone through the evidence of all the witnesses, namely, Man Singh (PW-1), Tursa Bai (PW-2), Ashok (PW-3), Shankarlal (PW-4), Udham (PW-9) and Gopal (PW-16), who have categorically deposed that Mahendra Singh, Rajesh, Ramkumar, Kashi Bai, Vijay and one Rampal entered into the house of Bhairrolal and assaulted Man Singh, Tursa Bai, Shankar, Kosiya Bai and Bhairrolal by using Lathi and Farsa. There is no reason to disbelieve the evidence of the witnesses. The injuries of the injured persons are also found proved from the evidence of Dr. Lal Singh (PW-17).

12. It is pertinent to mention here that the accused Vijay was juvenile and his case was decided by the Juvenile Court. Similarly, the accused Rampal had died during the trial.

13. In the aforesaid premises, appeal is partly allowed. Appellants are acquitted of the charges punishable under Sections 449, 302 or 302/149 of IPC and at the same time conviction of each appellant for the offence under Sections 148, 452, 323/149 and 324/149 of IPC is hereby affirmed. So far as sentence part is concerned, looking to the fact that since 14-07-1996 appellants are facing the ordeal of trial and appeal, their jail sentences are modified in the following manner in confirmation of fine, sentence and default stipulation as awarded by the trial Court:

U/s. 148 of IPC: 6 months" RI for each appellants

U/s. 452: 6 months" RI for each appellants

U/s. 323/149: 6 months" RI for each appellants

U/s. 324/149: 6 months" RI for each appellants

It is made clear that all the sentences shall run concurrently.

14. On perusal of record, it reflected that the appellants have already undergone more than 6 months imprisonment, therefore, no need to send them further in jail. Appellants are on bail, their bail bonds stand discharged. With the above modifications, the appeal is partly allowed. In case of deposition of fine amount imposed by the trial Court under Sections 302/149 and 449 of IPC, same be refunded to the appellants respectively.

Copy of the judgment along with record be sent to the trial Court for information and compliance.