

(2015) 02 MP CK 0168
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 158 of 2000

Mohanlal and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 300, 307, 323, 326

Citation : (2015) 02 MP CK 0168

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

Bench : Single Bench

Advocate : Narendra Nikhare, for the Appellant; G.S. Thakur, Panel Lawyer, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Gupta, J—The appellants have preferred the present appeal being aggrieved with the judgment dated 12.1.2000 passed by the Second Additional Sessions Judge, Seoni in ST No. 36/1995 whereby the appellant No. 2 Sanju @ Sanjay has been convicted of offence under Sections 307, 323 of I.P.C. and Sentenced to five years RI with fine of Rs. 1,000/- and six months RI, whereas the appellant No. 1 Mohanlal has been convicted of offence under Sections 323, 307/34 of I.P.C. and sentenced with the same sentence as directed against the appellant No. 2 Sanju @ Sanjay.

2. The victims Neelam Singh and Barati Lal have filed the compromise applications IA No. 2716/15 and IA No. 2717/15, which are also to be considered in the judgment.

3. The prosecution's story, in short, is that on 11.11.1994 at about 6:10 PM victim Barati Lal (PW-3) was going to his house from a Paan shop at township of Seoni. In the way the appellants and their companions detained him. They were armed with sticks, farsa and other weapons. They assaulted the victim Barati Lal by sticks. In the meantime victim Neelam Singh (PW-2) came to save Barati Lal

and appellant Sanju @ Sanjay assaulted him by a farsa causing a fatal injury on his right cheek and right hand. Appellant Mohanlal, his wife Kanti Bai and Triveni Bai also assaulted the victims. Victim Barati Lal had lodged an FIR Ex. P-2 within ten minutes of the incident. The injured persons were sent to the Hospital for their medico legal examination and treatment. After due investigation, a charge sheet was filed before the CJM Seoni, who committed the case to the Sessions Court and ultimately it was transferred to the Second Additional Sessions Judge, Seoni.

4. The appellants-accused abjured their guilt. They took a plea that they were falsely implicated in the matter. On the contrary, it was the complainant and his companions, who assaulted the appellants. A counter FIR Ex. D-9 was also produced. In defence Naib Tahsildar GP Pathak (DW-1) was examined to show that in the dying declaration victim Neelam Singh did not allege against anyone who assaulted him by a farsa. However, after considering the evidence adduced by the parties, the learned Additional Sessions Judge has convicted and sentenced the appellants as mentioned above.

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

6. After considering the evidence of the prosecution witnesses Neelam Singh (PW-2), Barati Lal (PW-3), Naresh Singh (PW-6), Rajkumar Chouhan (PW-7), Dilip Baghel (PW-9), Rakesh Singh (PW-10), Ramsingh (PW-11), Dashrath Lal (PW-12) and Hemraj (PW-14), it appears that appellant Sanju @ Sanjay had given a powerful blow of farsa on the right cheek of the victim Neelam Singh causing a grave injury. Dr. S.L. Multani (PW-8) found an incised wound on the right cheek of the victim Neelam Singh and one incised wound on his right forearm. Dr. Sindhu Vijay Pantane (PW-16) who treated the victim at Nagpur found that there was fracture of xygoma bone caused to the victim Neelam Singh. Dr. Multani in para 8 of his cross examination has stated that Neelam Singh was in position to give dying declaration. There was no symptom of any brain hemorrhage and he could not give any opinion that the injury caused to victim Neelam Singh was fatal in nature. Similarly Dr. Pantane did not say the life of victim Neelam Singh was in danger due to that assault. According to the witnesses, appellant Sanju @ Sanjay did not give a second blow to the victim Neelam Singh on his vital part of the body. There is contradiction amongst the various witnesses as to whether the appellant Sanju @ Sanjay gave two blows or one blow. However, second blow was on his arm, and therefore it cannot be said that he assaulted the victim Neelam Singh by a farsa for two times on his vital part of the body. The injuries of victim Neelam Singh were not found to be fatal in nature, and therefore it cannot be said that the appellant Sanju @ Sanjay was intended to kill the victim Neelam Singh. Actually Barati Lal was the target in the case and when Neelam Singh came to save Barati Lal, then suddenly Sanju @ Sanjay assaulted him by a farsa, and therefore, the ingredients of Section 300 of I.P.C. are not attracted, and therefore no offence under Section 307 of I.P.C. is made out against the appellant Sanju @ Sanjay.

7. However, it is apparent that the appellant Sanju @ Sanjay caused a grievous hurt to the victim Neelam Singh by a sharp cutting weapon, therefore, his overt-act comes within the purview of Section 326 of IPC, which is an inferior crime of the same nature, and therefore, the appellant Sanju @ Sanjay can be convicted of offence under Section 326 of I.P.C. under the same head of the charge. The minor contradictions in the statements of the witnesses can be ignored and by testimony of these witnesses along with the timely lodged FIR Ex. P-2 and medical reports proved by Dr. Multani and Dr. Pantane, it is established that appellant Sanju @ Sanjay caused grievous hurt to the victim Neelam Singh by a sharp cutting weapon.

8. The appellants have tried to say that it was a case of free fight, but it could not be established that the appellant Sanju @ Sanjay assaulted the victim Neelam Singh who was not the main target. He entered into the scene of the crime to save Barati Lal and suddenly Sanju @ Sanjay gave him such a blow. When he had such a heavy weapon, he should know of his overt-act, and therefore, it appears that appellant Sanju @ Sanjay assaulted the victim Neelam Singh without any right of private defence or sudden or grave provocation. After knowing the result of his impact he gave a blow of farsa to the victim Neelam Singh, and therefore it is proved that he assaulted the victim Neelam Singh voluntarily. Consequently, offence under Section 326 of I.P.C. is constituted against the appellant Sanju @ Sanjay.

9. There is no allegation against the appellant Mohanlal that he assaulted the victim Neelam Singh. It is said that he participated in the crime in assaulting the victim Barati Lal. Hence, it cannot be said that by mere his presence, he had any common intention to cause assault to victim Neelam Singh. The common intention of the appellant Mohanlal is not established with his co-accused Sanju @ Sanjay. Therefore, he cannot be convicted of offence under Section 326 of IPC, either directly or with the help of Section 34 of I.P.C. There is no allegation against the appellant Mohanlal that he assaulted the victim Neelam Singh. At this stage if the compromise applications are considered, then compromise done by victim Barati Lal for a compoundable offence and looking to his voluntariness to do compromise, such compromise can be accepted. In the result both the appellants shall be acquitted from the charge of Section 323 of I.P.C. It is apparent that Ram Singh and other victims were also found injured. The trial Court has framed the charge of Section 148 and 307 of IPC, and there was no charge framed of Section 323 of I.P.C. relating to Ram Singh and Dashrath, and therefore if Ram Singh and Dashrath did not come forward to do compromise, then it makes no difference. Due to compromise done by Barati Lal, the appellants shall be acquitted from the charge of Section 323 of I.P.C. Though victim Neelam Singh has also moved compromise application and has shown his voluntariness, the offence under Section 326 of I.P.C. is not compoundable, and therefore his compromise application cannot be accepted. However, he was willing to do compromise, then its effect would be considered at the time of passing of sentence upon the appellant Sanju @ Sanjay.

10. On the basis of the aforesaid discussion, the appellants are acquitted from the charge of Section 323 of I.P.C. due to compromise. Appellant No. 1 Mohanlal cannot be convicted of offence under Section 307 or 326 of I.P.C. either directly or with the help of Section 34 of IPC, therefore he would be acquitted from all the charges, whereas the appellant Sanju @ Sanjay shall be convicted of offence under Section 326 of I.P.C.

11. According to his counsel, appellant Sanju @ Sanjay remained in the custody for 24 days during the trial. He has faced the trial and appeal for last 19 years. He was the first offender, and therefore in the light of compromise, it would be proper that his sentence may be reduced to the period for which he remained in the custody during the trial. However, a heavy fine is to be imposed.

12. On the basis of the aforesaid discussion, the appeal filed by the appellants may be partly accepted. Consequently, it is hereby partly accepted. The conviction and sentence of offence under Section 323 of I.P.C. imposed upon the appellants are hereby set aside due to compromise. The appellants are acquitted from the charge of Section 323 of I.P.C. The conviction and sentence of the appellant Mohanlal of offence under Section 307/34 of I.P.C. are also set aside. He is acquitted from such charge. The conviction and sentence of offence under Section 307 of I.P.C. directed against the appellant Sanju @ Sanjay are also set aside. He is acquitted from the said charge, but he is convicted of offence under Section 326 of I.P.C. and under the same charge he is sentenced with the jail sentence of the period for which he remained in the custody with fine of Rs. 10,000/-. The appellant Sanju @ Sanjay is directed to deposit the remaining fine amount before the trial Court within a period of two months from today, failing which he shall undergo for six month's RI.

13. At present the appellants are on bail, their presence is no more required, therefore it is directed that their bail bonds shall stand discharged.

14. A copy of this judgment be sent to the trial Court with its record with a direction that if fine is not deposited by the appellant Sanju @ Sanjay within the stipulated period, then the trial Court shall recover the fine amount as per the provisions of Section 68 of I.P.C.