
(2012) 11 MP CK 0081

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1377 of 1996

Mohd. Salim and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 34, 394, 397

Citation : (2012) 11 MP CK 0081

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

Bench : Single Bench

Advocate : K.D. Singh, for the Appellant; G.S. Thakur, Panel Lawyer for the Respondent/State, for the Respondent

Judgement

Hon'ble Shri Justice N.K. Gupta, J.—This criminal appeal is preferred by the appellants being aggrieved by the judgment dated 2/8/1996 passed by the Additional Sessions Judge, Panna in ST No. 106/1991, whereby the appellants were convicted for commission of offence punishable u/s 325/34 of IPC and sentenced for two years" RI with fine of Rs. 1000/- each. In default of payment of fine, three months rigorous imprisonment was also directed. The prosecution's case, in short, is that on 8.11.1990 at about 3:00 PM the complainant Sibgattullah along with his father Safatullah and brother-in-law Mehboobullah went to Parighat of Ken River to take a bath near Village Baroli (Police Station Ajaygarh District Panna). The complainant Sibgattullah was sitting on a rock washing his hands and feet. His father went inside the river to wash his bullocks whereas Mehboobullah was washing his clothes. The appellants along with one Aminuddin came to the spot and they shown guns to the complainant that he should not resist. Thereafter the hands and feet of the complainant Sibgattullah were tied by a rope and thereafter accused Aminuddin assaulted him by a stick. Thereafter the appellants stolen a gun belonging to Safatullah. The complainant had lodged a written FIR at Police Station Ajaygarh which was registered on 9.11.1990. The victim was sent for his medico legal examination and treatment. Dr. P.C. Shrivastava (PW-4) examined the victim Sibgattullah and

gave his report Ex.P-5. He found as many as 13 injuries to the victim. He was referred for his X-ray examination. Dr. G.P. Singh (PW-2) examined the victim Sibgattullah at the District Hospital, Panna and gave his report Ex.P-3. He found a fracture in the 5th right rib of the victim. After due investigation, a charge sheet was filed before the JMFC Panna, who committed the case for the offence under Sections 394, 397, 412 of IPC to the Sessions Court, Panna and ultimately it was transferred to the Additional Sessions Judge, Panna.

2. The appellants-accused abjured their guilt. They did not take any specific plea in the matter. However, they have stated that they were the workers of the accused Aminuddin, and therefore they were falsely implicated in the matter. In defence Shri S.L.Verma, Arms Clerk in the office of the District Magistrate, Panna was examined as (DW-1) to show that the license of the witness Safatullah to hold a gun was already cancelled and he had no gun at the time of the incident.

3. During the trial the accused Aminuddin has expired. Similarly, the victim Sibgattullah has also expired, and therefore he could not be examined. After considering the evidence adduced by the parties, the learned Additional Sessions Judge, Panna, convicted the appellants for commission of offence punishable under Sections 325/34 of IPC and sentenced them as mentioned above.

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

5. The learned counsel for the appellants has submitted that the complainant Sibgattullah could not be examined, and therefore no guilt was proved. All the eyewitnesses have stated that it was the accused Aminuddin who assaulted the victim by a stick, and therefore no common intention of the appellants can be presumed with him. No offence u/s 325 of IPC is made out against the appellants. The trial Court has directed a harsh sentence against the appellants, who remained in the custody for 14 months to two years, which is more than sufficient for the offence, if they have committed. Therefore, it is prayed that the sentence may be reduced to the period which they have already undergone in the custody.

6. In rebuttal, the learned counsel for the State has supported the decision of the trial Court. He has submitted that the conviction as well as the sentence directed by the trial Court appears to be correct and there is no basis by which any interference may be done in the appeal.

7. After considering the submissions made by learned counsel for the parties, it is to be considered as to whether the appeal of the appellants can be accepted? And whether the sentence passed by the trial Court can be reduced?

8. In the present case the complainant Sibgattullah has expired during the trial, and therefore he could not be examined. However, the FIR was proved by the SHO B.B. Gautam (PW-6), who received the written report Ex.P-7 at Police Station Ajaygarh. The eye-witnesses Safatullah (PW-1), Rafatullah (PW-8) and Mehboobullah (PW-11) were examined, who have stated that all the appellants

came with guns and sticks. They covered all the witnesses and the complainant by guns with the direction that they should not resist and thereafter the accused Aminuddin tied the hands of the victim Sibgattullah and assaulted him by a stick. None of the eye-witnesses has stated that any of the appellants have assaulted the victim Sibgattullah. The allegation upon the appellants is that they shown guns to the victim so that he should not resist. The overt-acts of the appellants proved by these witnesses indicate that the victim Sibgattullah was assaulted only by the accused Aminuddin causing him one grievous injury and twelve simple injuries. After considering the evidence given by the eye-witnesses, the FIR proved by the SHO Shri Gautam and the medical reports proved by the Dr. P.C. Shrivastava (PW-4) and Dr. G.P. Singh (PW-2), it is duly established that the accused Aminuddin had committed an offence u/s 325 of IPC.

9. So far as the common intention of the present appellants is concerned, it is categorically stated by the witnesses that each of them came to the spot with guns and held the victim and other witnesses to remain without any resistance. The witnesses have fairly stated that they did not see that the appellants also assaulted the victim. Looking to the number of injuries caused to the victim, they could implicate all the appellants with the act of the assault. Under such circumstances, their evidence is acceptable and the common intention of the present appellants can be observed.

10. However, it is apparent that the deceased accused Aminuddin assaulted the victim Sibgattullah only and he gave blows of the sticks on the non-vital parts of the body except one or two blows which were given on the vital part of the body, and therefore common intention of the appellants can be presumed that they knew that the accused Aminuddin would assault the victim causing him some simple injuries, hence their common intention can be presumed for the offence u/s 323 of IPC and not for the offence u/s 325 of IPC. The appellants did not know that the co-accused Aminuddin would assault in such a manner so that some grave injury would be caused to the victim. Hence the appellants could not be convicted for the offence u/s 325/34 of IPC. The learned Additional Sessions Judge has committed an error in convicting the appellants for that offence. However, the appellants can be convicted for the offence u/s 323/34 of IPC.

11. So far as the sentence is concerned, it is apparent that each of the appellants remained in the custody for more than one year, which could be the maximum sentence for the offence u/s 323 of IPC, and therefore it is a fit case in which the sentence may be reduced to the period which the appellants have already undergone in the custody.

12. On the basis of above discussion, the instant appeal filed by the appellants is partly allowed. The conviction as well as the sentence directed by the trial Court for the offence under Sections 325/34 is hereby set aside. They are acquitted from that offence. However, each of them is convicted for the offence u/s 323/34 of IPC and sentenced with a jail sentence for the period which they have already undergone in the custody.

13. The presence of the appellants is no more required, therefore it is directed that their bail bonds shall stand discharged. A copy of this judgment be sent to the trial Court with its record for information and compliance, if any.