
(2024) 12 MP CK 1245

In the Madhya Pradesh High Court, Indore Bench

Case No : Criminal Appeal No. 12259 of 2023

Munshikha And Others

APPELLANT

Vs

The State Of Madhya Pradesh

RESPONDENT

Date of Decision : 23-12-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 164, 311, 482
Indian Penal Code 1860 — Section 363, 366, 376(2) (n), 376, 376(3)
Protection of Children from Sexual Offences Act, 2012 — Section 3, 4, 5, 6

Citation : (2024) 12 MP CK 1245

Hon'ble Judges : Pramod Kumar Agrawal, J

Bench : Single Bench

Advocate : Anil Khare, Madhur Shukla, C.M. Tiwari, Rakesh Kumar Shukla

Final Decision : Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Prem Narayan Singh, J

1. Appellants have preferred this criminal appeal under section 374 of Cr.P.C. being aggrieved by the judgment dated 29.08.2023, passed by learned Fifth Additional Sessions Judge, Mandsaur, in S.T. No.67/2016 whereby the appellants have been convicted for the offence punishable under Sections 304(part-II)/34, 323/34, 452 of IPC, 1860 and sentenced to undergo 10 years, 3 months and 5 years RI with fine of Rs.25,000/-, Rs.1,000/- and Rs.5,000/- each with default stipulations.

2. Prosecution case in a nutshell is that on 10.01.2016, the children of deceased Madanlal were playing in the place just opposite to their house, then appellant Munshikha's son came there and started flying kite. When deceased Madanlal forbade him from flying kite and asked him to return back to his house, then Munshikha's son started hurling abuses and pelted stone on deceased's stomach thereafter, Madanlal and his children went inside their house. After some time,

appellant Munshikha and his two sons came to deceased's house, started hurling abuses. It is further alleged that the accused persons assaulted deceased and his father with sticks, kicks and fists, so also threatened to kill the complainant party. Deceased Madanlal received injuries in his stomach and his father sustained injuries in his forehead and left ribs. The injured persons were admitted in District Hospital, Mandsaur and as the injuries sustained by Madanlal were grievous in nature he was shifted to Maharaja Bhoopal Govt. Hospital, Udaipur wherein Madanlal died during treatment. In this case, dehatinalishi (Ex.-P/6) was registered on the report of deceased Madanlala and on the basis of that dehatinalishi, FIR was lodged for the offences under Sections 294, 323, 452, 34 & 506.(Ex-P/7).

3. The police party, after following due procedure, arrested the accused person and registered the case against the appellants. Since injured Madanlal died during treatment, Section 302 of IPC has been added. After due investigation, charge-sheet was filed against the appellants Munshikha and other co-accused persons before JMFC Mandsaur for offence under Sections 302, 323/34, 307/34, 294, 506-II and Section 452 of IPC, 1860. As Munshikha's son Sonu was a juvenile, he has been produced before the Juvenile Justice Board for further proceedings. The case against the appellants has been committed to the Court of Sessions, Mandsaur and in turn vide order dated 30.03.2016 the same was transferred to the Court of Fifth Additional Sessions Judge, Mandsaur. Thereafter, charges were framed under Sections 302, 307, 323 read with Sections 34 and Sections 294, 506 and 452 of IPC. In turn, appellants abjured their guilt and took a plea that they had been falsely implicated in the present crime and prayed for trial.

4. In support of the case, the prosecution has examined as many as 15 witnesses namely Lalu (PW-1), Mohanbai (PW-2), Mamta (PW-3), Mukesh (PW-4), Dr. Premchand Arya (PW-5), Ramnarayan Yadav (PW-6), Manish Lodha (PW-7) Zafar S/oo Lukman Khan (PW-8), Govardhan Rathore (PW-9), Dr. S.P. Gupta (PW-10), Zafar S/o Burekhan (PW-11), Dr. Mohammed Irfan (PW-12), Vikram Singh (PW-13) K.S. Choudhary (PW-14) and Dalchand (PW-15). No witness has been adduced by the appellants in their defence.

5. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 29.08.2023, finally concluded the case and convicted the appellants for commission of the said offence under the provisions of Sections 323/34, 304(Part-II)/34 and 452 of IPC 1860.

6. Learned counsel for the appellant, being crestfallen by the aforesaid findings of the Trial Court, submitted that there is no specific allegation for causing injuries against the appellant. No deadly weapon has been used in the offence. The incident occurred on the spur of the moment and there was no intention to cause death of deceased Madanlal. Hence, the offence under Section 304 of IPC cannot be made out against them and if the case of the prosecution is taken as it

is, the case of the prosecution would not travel beyond the offence under Section 325 of IPC.

7. Alternatively, counsel for the appellants has further argued on the point of sentence also and prays that since the appellants are in jail more than one year and 11 months out of the 10 years, their jail sentence be reduced to the period already undergone. It is further submitted that the appellants deserve some leniency as the appellants already suffered the ordeal of the trial since 2016 i.e. for a period of 08 years. It is further submitted that this appeal be partly allowed and the sentence awarded to the appellants be reduced to the period already undergone by enhancing the fine amount and giving compensation amount.

8. Learned Govt. Advocate has opposed the prayer and submitted that the learned trial Court has rightly convicted the appellants by sentencing them appropriately. Hence, prays for dismissal of the appeal.

9. I have considered rival contentions of the parties and perused the record.

10. In view of the evidence available on record and the contentions advanced by counsel for both parties, this Court has to decide the question as to whether the findings of learned trial Court regarding conviction under Sections 304 Part-II/34 and 452 of IPC, are correct in the eyes of law and facts or not?

11. In this case, the prosecution has relied upon the testimony of witness Lalu (PW-1). He has stated that on the date of incident, he, his wife and his daughter-in-law was inside the house and Madanlal was outside the house. Thereafter, Sonu came and Madanlal stopped Sonu from flying the kite then Sonu pelted a stone on the stomach of Madanlal, due to which Madanlal fell down. Munshikha, Rajun Sharhrukh and Sonu came there, entered into the house and assaulted Madan. Appellant Munshikha has assaulted him with a stick. Afterthat, injured was taken to the hospital and during treatment, the deceased died. Testimony of this witness has not been controverted in his cross-examination and this witness has also been supported by statements of Mohanbai (PW-2) and Mamta (PW-3). The statements of these witnesses have not been shaken in their cross-examination on material points.

12. That apart, Dr. S.P. Gupta, (PW-10) who has initially examined the deceased stated that he found that the deceased was admitted in the hospital after two days of incident and owing to injury, he was having stomachache and other stomach issues by which death can be caused. He deposed that due to injuries and damage to intestines and occurrence of septicaemia, there is possibility of death. Even after injuries received by injured, deceased was not admitted in the hospital after occurrence of incident. Further, Dr. Mohammad Irfan (PW-12), who has conducted post-mortem of the deceased (Ex.P/24), found lacerated wound inside of right side of stomach of the deceased (measuring 10 X 6 c.m.) and injury on downside of stomach (measuring 1 X 1 to 3 X 2 c.m.). He has also stated that the death of the deceased was caused due to damages in the intestines and septicaemia.

13. Learned counsel for the appellants has expostulated that all witnesses are related and interested witnesses, thus, on the basis of their testimonies, the appellants can not be convicted. Certainly, the witnesses are related to each other. On this aspect in the case of "Dilip Singh vs. State of Punjab" reported as AIR 1953 SC 364, the Full Bench of Hon'ble Supreme Court observed in para 26 as under:

"26. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

14. So far as the arguments regarding non-availability of independent witnesses are concerned, it is well settled that no criminal case can be overboarded due to non-availability of independent prosecution witnesses. In this regard, the following verdict of landmark judgment of the Hon'ble Apex Court rendered in the case of Appa Bhai vs. State of Gujarat, AIR 1988 SC696 is worth referring here as under:

"10.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused....."

15. In view of the aforesaid proposition of law only on the basis of the fact that no independent witness has supported the case of prosecution, the prosecution story which has been supported by eye witness and medical evidence, cannot be wiped out. Even the ground of enmity has also not been raised by the defence. In these circumstances, it can be well assumed that the appellants have beaten the deceased by kicks and fists on his stomach due to that injury the deceased succumbed. Now the question is as to whether the death of the deceased would be treated as culpable homicide not amounting to murder under Section 304 of IPC, it is contended that the death was occurred due to injuries on stomach.

16. Now, the question is as to whether the appellants are knowing the fact that the deceased is suffering stomach pain or not. Actually, at this point, nothing is adduced by the prosecution in this regard neither the prosecution has submitted anything nor the defence has furnished anything. During the course of argument,

learned counsel for the appellants has contended that since there was no knowledge regarding stomach pain of the deceased, the offence punishable under Section 304 of IPC could not be made out and at the most the case of prosecution will come under the purview of Section 325 of IPC.

17. In the light of aforesaid discussion, it is evident that if the prosecution did not adduce any evidence regarding the appellants' knowledge of deceased stomach pain and ailment of stomach, the said injuries would not be sufficient to cause death in ordinary course of nature. Therefore, Section 302 or 304 of IPC will not be attracted. It is significant to reveal that in this case, appellants only used kicks and fists which are not sufficient in ordinary course of nature to cause death of the deceased. It is also pertinent to mention that the deceased was died after two days from the incident of beating but rather not on the same day.

18. On this aspect, the law laid down by the Hon'ble Apex Court in the case of Mohd. Ishaq Mohammad vs. State of Maharashtra [1979 Law Suit (SC) 212] is worth referring here as under:-

"We have heard learned Counsel for the parties and have gone through the judgment of the High Court and of the Sessions Judge. The occurrence in the course of which the deceased was assaulted, took place suddenly and after hot exchange of abuses, which took place between the deceased and the appellants. The appellants are said to have assaulted the deceased with sticks. There is no evidence to show as to which of the appellants struck the fatal blow on the deceased. Having regard therefore to the circumstances of the present case and the nature of injuries sustained by the appellants, we are unable to agree with the High Court that the case falls under Section 302. There is no evidence of any intention on the part of the appellant either to cause death of the deceased or cause such injuries of which the appellant could have the knowledge that it was likely to cause death although it cannot be doubted that the appellant had the common intention to cause grievous hurt to the deceased by lathis. Thus the offence falls under Section 325/34 and not under Section 302 or 304(1) . It appears that the appellants have already served their sentences or at any rate a substantial part of it. For these reasons, therefore, we would allow this appeal to this extent that the conviction of the appellants are altered from that under Section 302/34 to one under Section 325/34 and the sentences are reduced to five years in each case."

19. On the same point, Hon'ble Apex Court in the case of Ratan Singh, Ran Singh & Anr. vs. State of Punjab [1988 Law Suit (SC) 214] has observed as under:-

"2. Admittedly according to the prosecution's own case Ran Singh and Rattan Singh were carrying lathis which could be described as hard and blunt object. Such injuries on the person of the deceased were either on hands or on feet and at best what could be attributed to them could be injuries resulting in fractures. None of these two appellants could be convicted for causing injuries individually which could make out an offence under Section 302. At best they could only be

convicted under Section 325 of IPC only."

20. In Mahendra Singh vs. State of Dehli Administration [AIR 1986 SC 309], it is held that grievous hurt caused by blunt weapon like lathi, can fall within section 325 of IPC and not under Section 326 of IPC. Likewise, in another case, Halke vs. State of M.P. [AIR 1994 SC 951], wherein it is held that the accused caused death of deceased by inflicting blows on him with stick. Head injury proved to be fatal and deceased died after a week. In this case, the accused was held liable and punished under Section 325 of IPC. The following excerpts of the aforesaid judgement is worth to refer here:-

"9.....No doubt the injury on the head proved to be fatal after lapse of one week but from that alone it cannot be said that the offence committed by the two appellants was one punishable under Section 304 Part II IPC. The injuries found on the witnesses are also of the same nature and for the same they are convicted under Section 325 of IPC."

21. Having gone through the evidence available on record, since the deceased had suffered a stomach injury and he expired during the course of treatment. The medical evidence also does not bring out that the injury, was fatal injury in ordinary course of nature to cause death. It is also worth to mention that dehatinalishi was lodged for the offence under Sections 452, 294, 323, 506 & 34 of IPC by deceased himself, that means at the time of dehatinalishi, intention of commtting murder was not visualized to the police authorities. Had the intention of causing death visualized, the FIR would have lodged under Section 307 of IPC. Hence, in the considered opinion of this Court, the appellants can only be attributed for committing the offence punishable under Section 325 of IPC.

22. On substratum of the aforesaid analysis in entirety, the appellants cannot be convicted under section 304 of IPC but rather the appellants would be convicted only under Section 325 of IPC. As such, the impugned judgment passed by learned trial court qua the conviction of the appellants under Section 304 of IPC, is hereby set aside and the appellants are convicted under Section 325 of IPC. So far as the offence under Sections 323/34 and 452 of IPC is concerned, it is well proved that the appellants have entered into the house of deceased/complainant and have caused simple injuries to deceased Madanlal

23. Now, coming to the question of sentence, the appellants are in jail for more than 01 year and 11 months. The appellants have already suffered the ordeal of this case since 08 years, hence, looking the nature of injury and its result, sentence of three years alongwith fine of Rs.50,000/- under Section 325 of IPC for each appellant would meet the ends of justice. Similarly, for the offence under Section 452 of IPC, punishment of three years R.I. alongwith fine of Rs.25,000/- for each appellant would be sufficient. In so far as the offence under Section 323/34 of IPC is concerned, in view of the facts and circumstances of the case, conviction and sentence for the offence under Section 323/34 of IPC, doesn't warrant any interference.

24. In the result thereof, the appeal is partly allowed and the appellants are convicted under Section 325 of IPC and sentenced for 3-3 years R.I. with enhanced fine of Rs.50,000/- from Rs.25,000/- and convicted under Section 452 of IPC and sentenced for 3-3 years R.I. with enhanced fine of Rs.25,000/- from Rs.5,000/-. The conviction and sentence under Section 323/34 of IPC is hereby affirmed. In case of failure to deposit the fine amount, they shall further to undergo for 3-3 months S.I. Out of the total fine amount, Rs.1,00,000/- shall be paid to the wife of deceased Smt. Mamta as compensation under Section 357(3) of Cr.P.C. by the trial Court. It is also clarified that their substantial sentence shall run concurrently while the fine will be deposited by each of the appellants in each offence separately.

25. The fine amount, if already deposited as well as the compensation amount paid, if any, shall be adjusted.

26. The appellants are in jail. They shall be released from the jail after completion of their respective jail sentence and subject depositing the fine amount or after completion of default sentence. It is clarified that default sentence will not run concurrently if the fine amount is not deposited by the appellants.

27. The order of learned trial Court regarding disposal of the seized property, if any, stands confirmed.

28. A copy of this order be sent to the concerned trial Court for necessary compliance.

29. Pending application, if any, stands closed. Certified copy, as per rules.