
(2013) 07 MP CK 0142

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 257 of 1997

Nathu Singh and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 148, 149, 302, 304II, 323

Citation : (2013) 07 MP CK 0142

Hon'ble Judges : G.S. Solanki, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

G.S. Solanki, J.—This appeal has been filed by the appellants u/s 374(2) of the Cr.P.C. being aggrieved by conviction and sentence recorded by the learned Additional Sessions Judge, Panna vide order dated 27.1.1997 passed in S.T. No. 81/94 whereby appellant No. 3 Murat Singh has been convicted u/s 304-II of the IPC and sentenced to R.I. for 7 years and appellant Nos. 1 and 2 have been convicted under Sections 304-II /34, 323 of the IPC and sentenced to R.I. for 7 years and R.I. for 6 months. The facts, in short, giving rise to this appeal are that on 6.8.1994 at about 12:30 AM in the night, when Bakhat Singh (PW-6) was returning back from the house of Baredi, he was assaulted by appellants Natthu and Chandan Singh by stick. On hearing hue and cry of Bakhat Singh, his father Lalji came on the spot then co-accused Buddh Singh(since acquitted) and appellant Chandan Singh caught hold him and appellant Murat Singh assaulted him by a Stone. Complainant Premlal and other witnesses also reached there and then complainant Premlal (PW-5) lodged report (Ex. P-21) at P.S. Kotwali, District Panna. After registration of crime, injured were sent to the Hospital, they were treated by Dr. D.K. Jain (PW-2). He prepared MLC report (Ex. P-14, P-15) of Bakhat Singh and Lalji. Lalji was sent for X-Ray examination and admitted in the Hospital. During treatment, he succumbed to the injuries. His dead body was sent for post mortem examination. Dr. Vijay Kumar Diwan (PW-9) conducted

autopsy of the dead body of Lalji and prepared Post Mortem report (Ex. P-19). Appellants were arrested. Spot map was prepared. Blood stained earth and blood stained stone have been seized and sent to FSL, Sagar. (Ex. C-1) is FSL report of Asst. Chemical Examiner, FSL, Sagar.

2. After usual investigation, appellants were charge sheeted before JMFC, Panna, who in turn committed the case to the Court of Sessions. Learned Additional Sessions Judge framed the charges under Sections 148, 302, 302 /149, 450, 323 of the IPC.

3. The appellants abjured the guilt and pleaded false implication. They have examined Paul Pasana (DW-1) in their defence.

4. On appraisal of evidence on record, learned Additional Sessions Judge acquitted the appellants u/s 148, 302-302 /149, 450 of the IPC and convicted and sentenced the appellants as mentioned hereinabove, hence this appeal.

5. Learned counsel for the appellants has submitted that the trial Court has committed illegality in not appreciating the evidence on record in its proper perspective. Though main witness Bakhat Singh (PW-6) stated in his examination-in-chief that appellant Chandan and Buddh Singh (since acquitted) caught hold his father, but this important fact has not found place in his Police statement (Ex. D-1). Counsel has further submitted that eye-witnesses like Bakhat Singh (PW-6), Premlal (PW-5) and Santosh Singh (PW-8) stated that deceased Lalji was assaulted by appellant Murat Singh by a Stone. They have also stated that Pahalwan Singh and Natthu also assaulted him by Stick, but as per MLC report, deceased Lalji sustained two injuries on the face and eyelids. No injury was found on the other parts of the body. Thus, the trial Court has committed illegality in convicting appellants Natthu and Chandan u/s 304-II with the aid of Section 34 of the IPC.

Counsel has further submitted that the conviction recorded by the trial Court against appellants Natthu and Chandan u/s 323 of the IPC as well as conviction of appellant Murat Singh u/s 304-II of the IPC are well merited, therefore, he does not want to press the aforesaid convictions recorded by the trial Court. However, appellant Murat Singh has suffered the jail sentence of 3 years and 9 months, appellant Natthu has suffered jail sentence of 1 year 6 months and appellant Chandan has suffered the jail sentence of about 4 months and 11 days. The incident had taken place 19 years before. It would be in the interest of justice if the sentences of the appellants are reduced to the period already undergone.

6. Learned Panel Lawyer appearing on behalf of the State has supported the conviction and sentence recorded by the trial Court.

7. I have heard the learned counsel for the parties at length and gone through the impugned order and other material on record. As per prosecution, initially Bakhat Singh was assaulted by appellants Natthu and Chandan. This fact has

been corroborated by the statement of Bakhat Singh (PW-6) and other eye witnesses Premlal (PW-5), Santosh Singh (PW-8) and further corroborated by evidence of Dr. D.K. Jain (PW-2). In these circumstances, in my opinion, the trial Court has rightly recorded the conviction of appellants Natthu and Chandan u/s 323 of the IPC, same is hereby affirmed.

8. On a careful scrutiny of statements of Bakhat Singh (PW-6), Premlal (PW-5) and Santosh Singh (PW-8), it reveals that appellant Murat Singh assaulted deceased Lalji by using Stone, due to which Lalji sustained two injuries on his face, which were proved fatal to him. However, statement of Bakhat Singh (PW-6) to the effect that at the time of incident Lalji was caught hold by Buddh Singh and Chandan, appears to be doubtful because the same has not found place in the Police statement (Ex. D-1) of main witness Bakhat Singh as well as deceased Lalji has not sustained any injury on the other parts of his body, which shows that he was not assaulted by Stick. In these circumstances, in my opinion, the trial Court has committed illegality in recording the conviction of appellants Natthu and Chandan u/s 304-II with the aid of Section 34 of the IPC, same is liable to be set aside.

9. Consequently, the conviction of appellants Natthu and Chandan u/s 304-II /34 of the IPC is hereby set aside. They are acquitted to the charge u/s 304-II /34 of the IPC. However, conviction of appellants Natthu and Chandan u/s 323 of the IPC is hereby affirmed. Appellant Natthu has suffered jail sentence of 1 year 6 months and appellant Chandan has suffered the jail sentence of about 4 months and 11 days. The incident had taken place about 19 years before, in my opinion, no fruitful purpose is going to be served by again sending them to the jail after a lapse of about 19 years, therefore, jail sentence of appellants Natthu and Chandan for the offence under Sections 323 of the IPC, is reduced to the period already undergone. Appellants Natthu and Chandan are on bail, their bail bonds and surety bonds stand discharged.

10. Since conviction of appellant Murat Singh u/s 304-II of the IPC has not been challenged, therefore, same is hereby affirmed. He has suffered the jail sentence of 3 years and 9 months. Looking to the nature of offence proved against him, I am not inclined to reduce his jail sentence to the period already undergone. At the same time his jail sentence of R.I. for 7 years appears to be harsh, same is reduced to R.I. for 5 years. Appellant Murat Singh is on bail, his bail bonds and surety bonds stand discharged. He is directed to surrender before Additional Sessions Judge Panna for suffering remaining part of jail sentence, within 15 days from today failing which the trial Court is directed to proceed further in accordance with law.

11. Accordingly, the appeal is partly allowed to the aforesaid extent. Record of the trial Court be sent back immediately along with the copy of this judgment for information and necessary action.