
(2011) 01 MP CK 0038

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 944 of 1998

Pappu @ Shiv Narayan and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

Citation : (2011) 01 MP CK 0038

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Judgement

G.S. Solanki, J.—The Appellants have preferred this appeal challenging their conviction and order of sentence passed by Sessions Judge, Raisen in S.T. No. 34/92.

2. It is undisputed that Appellants have been convicted u/s 307 read with 149 of I.P.C. and Appellant Brij Mohan Rai and Narayan Rai were sentenced to undergo R.I. for 5 years and other Appellants were sentenced to undergo R.I. for 3-3 years. Appellant Brij Mohan Rai and Narayan Rai additionally convicted u/s 148 of I.P.C. and sentenced to undergo R.I. for 2-2 years and other Appellants were convicted u/s 147 of I.P.C. and sentenced to undergo R.I. for 1-1 year with a direction that all jail sentences to run together.

3. It is also undisputed that record of the trial Court was destroyed and reconstructed thereafter. It is also undisputed that complainant/injured Ramswaroop Rai(P.W.1) entered into a compromise with Appellants, same was filed before this Court. Since, offence u/s 307 of I.P.C. is not compoundable, therefore application for permission to compound the offence was put up in abeyance with a direction that fact of amicable settlement between the parties will be considered at the time of sentence.

4. The prosecution case in short is that on 22.09.1991 at about 9.30 a.m., complainant Ramswaroop Rai(P.W.1) when returning from market, near the

temple of Shankar ji Appellants encircled him and assaulted him. It is alleged that Appellant Brij Mohan and Narayan having sword. Appellant Ram Bhajan having stick, Appellant Ratirm having screw driver. Appellant Narayan assaulted by sword and Ratiram assaulted by screw driver, due to which ear of complainant was cut down. According to complainant witnesses Sitaram(P.W.2) and Shiv Kumar came over there, then Appellants fled away.

5. Complainant lodged the F.I.R. (Ex.p-1) in Police Station Bareli. Dr. R.G. Malani(P.W.9) examined him and referred to Hamidiya Hospital, Bhopal.

6. During investigation Appellants were arrested and weapon of offence were seized on their instance and after completing the investigation they were charge-sheeted.

7. Learned Sessions Judge framed the charges against the Appellants. They abjured their guilt and pleaded they are falsely implicated.

8. On appraisal of evidence on record, learned Sessions Judge convicted and sentenced the Appellants as mentioned herein above.

9. Learned Counsel for the Appellants submitted that trial Court committed error in not appreciating the evidence in its proper perspective. He further submitted that Dr. R.G. Malani(P.W.9) categorically admitted that grievous injury No. 3,4 and 5 were caused in single stroke and they were not dangerous to life. Despite this fact trial Court convicted the Appellants u/s 307 of I.P.C. which is not according to law. He further submitted that since complainant and Appellants entered into compromise, incident was took place in the year 1991 and at that time offence u/s 324 of I.P.C. was compoundable, therefore he prays to accept the compromise filed by the complainant and Appellants and consequently Appellants be acquitted to the charges levelled against them.

10. Learned Counsel for the State submitted that if court found that offence is only proved against the Appellants u/s 324 of I.P.C. then he has no objection to record the compromise filed by complainant and Appellants.

11. I have perused the impugned judgment and record of the trial Court especially statements of complainant Ramswaroop Rai(P.W.1), witness Sitaram(P.W.2) and Dr. R.G. Malani(P.W.9).

12. Dr. R.G. Malani(P.W.9) deposed that injury No. 3, and 5 were not dangerous to life. He further admitted that injury No. 3 and 5 were only grievous in nature and all other injuries were simple in nature. Though, he advised for x-ray but prosecution could not file any x-ray report of complainant. Dr. R.G. Malani also admitted that injury No. 3,4 and 5 could be caused by one stroke. In these circumstances, these injuries were caused by only one stroke which was not dangerous to life and other injuries were simple in nature. Since, no fracture was caused by any one of them, therefore in these circumstances, offence against the Appellants/accused was proved only u/s 324 of I.P.C. and in this way trial Court committed illegality in not appreciating the evidence on record in its proper

perspective.

13. On careful scrutiny of evidence of complainant, it reveals that primarily Appellant Pappu and Ratiram attacked on him and other accused came afterward and some accused were standing near the statue of Ganesh-ji, in these circumstances, it can not be said that there was a common object of Appellants to assault the complainant.

14. In these circumstances, appeal is partly allowed. Conviction recorded u/s 307/149, 147, 148 of I.P.C. and sentence awarded against the Appellants is hereby set aside. Instead Appellants/accused are convicted u/s 324 of I.P.C.

15. Since complainant and Appellants have been entered into compromise and complainant was identified by his counsel Shri J.P. Dhimole and Appellants were identified by their counsel Shri Pradeep Singh. Complainant and Appellants are resident of same town, now they are maintaining good relation and they have settled the matter mutually without undue pressure. In these circumstances, compromise filed by the parties is hereby verified and accepted and resultantly Appellants are acquitted to the charge u/s 324 of I.P.C.

16. The Appellants are on bail. Their bail bonds stand cancelled.