

(2019) 04 MP CK 0053

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 276 Of 1999

Pintu @ Gurubachan Singh S/O Mastram

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 307, 323
Arms Act, 1959 — Section 27, 39

Citation : (2019) 04 MP CK 0053

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : S.K. Vyas, H. Pathak, Nilesh Jagtap

Final Decision : Partly Allowed

Judgement

1. Being aggrieved by the judgment passed by ASJ, Barwaha in S.T. No.257/1997 on 23/01/1999 whereby the learned Judge has acquitted the appellant for the offence punishable under Section 307 of IPC and convicted him for the offence punishable under Section 323 of IPC and Section 27 of the Arms Act and sentenced him to undergo six months SI with fine of Rs.500/- and four years RI with fine of Rs.2,000/-, with defaults stipulations respectively.

2. Facts giving rise to the present appeal are that on 01/08/1997 at about 12:15 in the noon, the appellant armed with country made pistols reached in the Barwaha Civil Court premises and fired. Hearing the noise, Court Moharir Sardarsingh who was present in the Court of JMFC, Barwaha tried to catch the appellant but appellant fired on Sardarsingh with intention to kill him, fortunately Sardarsingh hold the hand of appellant and bullet fired on sky. Then again Sardarsingh tried to caught hold the appellant but any way, he fled away from the spot leaving his scooter and slipper. Due to this incident, Sardarsingh sustained injuries in his right leg and left leg. This incident was witnessed by Haji Yasin Khan, Manakchand Jain, Gulab Singh, Kishanlal and Dilip Puranik, Advocate.

3. Learned senior counsel appearing on behalf of the appellant submits that sanction has not been obtained by the prosecution before prosecuting the appellant. He submits that under Section 39 of the Arms Act provides that no prosecution shall be instituted against any person without previous sanction of the District Magistrate. He further submits that arms in question was not produced before the sanctioning authority while obtaining the sanction and therefore, conviction is not proper. For the said purpose, he relied on judgment passed in the matter of Chunta vs. State of M.P. 1999 Cr.L.R.[M.P.] 80, Bapu vs. State of M.P. 2005 (4) MPLJ 176 and judgment passed in the matter of Rinkoo Khatri vs. State of M.P. 1998 (1) JLJ 240.

4. He further drawn my attention towards sanction memo i.e. Ex.P/11.

5. From perusal of the Ex.P/11 in which it does not mention that arms were produced before the sanctioning authority but only after perusal of the case-diary the sanction has been obtained. Even Investigating Officer (PW/10) has also stated that after perusal of the case-diary, the sanction has been granted, which was also shows that arms were not produced before the sanctioning authority. In such circumstance, he submits that conviction be set-aside under Section 27 of the Arms Act.

6. So far as, conviction under Section 323 of IPC is concerned, he submits that may be reduced to the period already undergone by the appellant.

7. Learned Government Advocate for the respondent/State has vehemently opposed the prayer and submits that the judgment passed by the trial Court is based on due appreciation evidence available on record, which does not warrant or call for any interference, therefore, the appeal deserves to be dismissed.

8. Heard learned senior counsel for the appellant as well as Government Advocate appearing on behalf of the State.

9. In the present case, appellant has been tried and charged under Section 27 of Arms Act and 307 and 323 of IPC. So far as Section 307 of IPC is concerned, appellant is acquitted from the offence. In Section 323 of IPC the appellant has been convicted for a period of 6 months SI and also he has been convicted under Section 27 of the Arms Act and sentenced to undergo 4 years RI.

10. In the present case for lodging the prosecution under Section 27 of the Arms Act, previous sanction from District Magistrate is required to be taken under Section 39 of the Arms Act.

11. This Court in the case of Chunta (Supra) has held that if the weapon is not produced before the sanctioning authority, the accused cannot be prosecuted in absence of legal sanction. Bapu (Supra) as well as in Rinkoo Khatri (Supra) also the same position.

12. In the present case, from perusal of the sanction memo i.e. Ex.P/11, it is clear that the weapon was not produced before the sanctioning authority and

sanction was granted on the basis of case-diary. The Investigating Officer also in his statement has admitted this fact. Thus, on the basis of this, the learned trial Court has committed error in convicting the appellant for committing the offence punishable under Section 27 of Arms Act, therefore, conviction of the appellant under Section 27 of Arms Act stands set-aside by allowing appeal in part.

13. So far as Section 323 of IPC is concerned, However, considering the fact that the appellant has undergone 1 year 7 months of the sentence and under the circumstance, considering the judgments cited by the learned counsel for the appellant and also considering the nature of the incident, keeping in view the fact that appeal is pending since 1999 and other facts and circumstances of the case, in my considered opinion, the ends of justice would be sub-served, if the sentence of the appellants is reduced to the period already undergone. Therefore, I partly allow the appeal by modifying the sentence, I confirm the sentence of 6 months SI i.e. the period which has already been suffered by the appellant.

14. The order of the learned trial Court regarding disposal of the case property is hereby confirmed.

15. With the aforesaid modification, the appeal is partly allowed and disposed off accordingly.

16. Copy of this judgment be sent to the concerned lower Court alongwith the record for its information and compliance.

C.C. as per rules.