
(2017) 05 MP CK 0023
In the Madhya Pradesh High Court
Case No : 1267 of 1997

Rahul Mathur

APPELLANT

Vs

The State Of Madhya Pradesh

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 374](#), [Section 207](#) - Power to examine the accused - Appeals from convictions - Supply to the accused of copy of police

Citation : (2017) 05 MP CK 0023

Hon'ble Judges : Ved Prakash Sharma

Bench : Single Bench

Advocate : Anil Ojha, Pankaj Wadhvani

Final Decision : Partly Allowed

Judgement

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short "the Code") is directed against judgment and order dated 24/11/1997 rendered by First Additional Sessions Judge, Shajapur, in S.T. No.207/1996, whereby appellant-Salim has been convicted under Section 325 of IPC for causing grievous hurt to Shakir (P.W.1) and has been sentenced to undergo 2 years R.I and to pay a fine of Rs.1,000/- with usual default stipulation.

2. The prosecution story, briefly stated, is that on 03/09/1996 around 3.00 pm appellant Salim went to house of complainant Jamila Bee (P.W.4) who was sitting in front of her house and started hurling abuses upon her, asking not to drain rain water towards his house. As per prosecution, complainant - Jamila Bee (P.W.4) agreed for this, however, in the meantime, Shakir (P.W.1), the grand son of Jamila Bee (P.W.4) came there. Allegedly, appellant Salim assaulted Shakir (P.W.1) by stick, thereafter, he came armed with sword and threatened Shakir (P.W.1) to kill by sword. In the meantime, Jamila Bee (P.W.4) reach there for rescue of Shakir (P.W.1). Her another grand son Gulam Shabir (P.W.2) also

reached there, who allegedly, was also assaulted by appellant-Salim with stick. In the meantime, co-accused Zahid and Zaleel also come to the spot and assaulted Jamila Bee (P.W.4) and her daughter-in-law Salma (P.W.6).

3. Complainant - Jamila Bee (P.W.4) on the same day @ 3.30 pm, lodged F.I.R. (Ex.P/3) regarding this incident against appellant-Salim on the basis of which a case was registered against appellant - Salim and co-accused Zahid and Zaleel. During the course of investigation, spot map (Ex.P/9) was prepared. Appellant-Salim as well as co-accused Zahid and Zaleel were arrested. A "lathi" was seized vide Ex.P/12 from Salim, while a stick was recovered vide Ex.P/13 from Zaleel. Jamila Bee (P.W.4), Shakir (P.W.1), Gulam Shabir (P.W.2) and Salma Bee (P.W.6) were sent for medical examination. Doctor A.R. Awadiya (P.W.5), vide M.L.C (Ex.P/4) found one lacerated wound in between her left little finger and ring finger. Diffused swelling with tenderness was found in the fourth metacarpal phalynx, of left hand of Gulam Shabir (P.W.2) vide report Ex.P/5. Two contusions respectively, on left fore-arm and right infra- scapular region were found on the person of Salma Bee (P.W.6) vide M.L.C Ex.P/6, while diffused swelling on the Parieto-occipital region of Shakir (P.W.1) was found vide report Ex.P/7. On X-ray examination, fracture on 5th metacarpal bone of left little finger was found on the person of Jamila Bee vide M.L.C Ex.P/1, while fracture on left parieto-temporal bone was found on the person of Shakir vide Ex.P/2. After usual investigation, a charge-sheet was filed before the Court of competent magistrate for offences under Sections 323 / 34, 325 / 34 & 307 / 34 of IPC.

4. The concerned Magistrate after, complying with necessary formalities under Section 207 of "The Code", committed the case to the Court of Sessions, from where it was made over to First Additional Sessions Judge, Shajapur. Charge for offence under Section 323 / 34 325 / 34 and 307 / 34 were framed against appellant-Salim and co-accused Zaleel, who abjured their guilt and claimed to be tried. As Zahid was found to be a Juvenile, therefore, he was separately charge-sheeted before the Juvenile Justice Board.

5. Prosecution, in order to bring home the guilt, examined as many as 9 witnesses before the trial Court including complainant Jamila Bee (P.W.4), Shakir (P.W.1) and Gulam Shabir (P.W.2) who are said to be injured persons, while Dr. A.R. Awadiya (P.W.5) and Dr. N.K. Gupta (P.W. 3) have respectively, conducted medical and X-ray examination. Apart this documents Ex.P/1 to Ex.P/14 were also marked in evidence.

6. The incriminating circumstances appearing against

the appellant in the prosecution evidence were brought to his notice during his examination under Section 313 of "The Code". Appellant-Salim, denied the same and claimed that he has been falsely implicated in the case. The learned trial Court on appreciation of oral and documentary evidence, vide impugned judgment, convicted and sentenced appellant-Salim as stated herein above. Conviction and sentence has been challenged on the ground that learned trial

Court has not properly appreciated the evidence on record and that serious infirmities and anomalies have been overlooked.

7. Per contra, learned Public Prosecutor, supporting the impugned judgment has submitted that the learned trial Court on due appreciation of evidence has convicted the appellant and, therefore, no ground is made out to interfere with the same.

8. Heard learned counsel for the parties and perused the record.

9. The testimony of Shakir (P.W.1), which has remained intact despite elaborate cross-examination, is clear and clinching on the point that on the date of alleged incident, he was assaulted by appellant-Salim with stick, thereby causing grievous injury on his head. His testimony stands corroborated with the testimony of Gulam Shabir (P.W.2), Jamila Bee (P.W.4) and Salma Bee (P.W.6), who are not only eye witness, but are also said to have sustained injuries in the same incident, which reassures about their presence on the spot.

10. The testimony of Dr. A.R. Awadiya (P.W.5) is clear, cogent and consistent on the point that vide report (Ex.P/7), he found swelling over head of Shakir (P.W.1) and that as per Dr. N.K. Gupta (P.W.3), on X-Ray examination, vide Ex.P/2, left parieto-occipital bone was found fractured. This testimony clearly indicates that appellant-Salim caused grievous hurt to Shakir (P.W.1), therefore, conviction recorded against the appellant for offence under Section 325 / 34 of "The Code" cannot be faulted with.

. As regards sentence, it is submitted by learned counsel for the appellant that appellant-Salim has faced a protracted trial which extended almost for a period of about 21 years. The further submission is that during this period the appellant was regularly attending the proceedings before the trial Court and before the appellate Court and thereby has indirectly suffered sufficient punishment. It is also submitted no criminal antecedents are attributable to the appellant and that again sending the appellant to jail will not serve any fruitful purpose; on the contrary, it may have the effect of reviving the old memories of hatred between the appellant and the complainant party.

Considering the length of trial and the long ordeal, through which the appellant has to pass, during past 21 years, the prayer made with regard to leniency in sentence appears to be just, reasonable and proper. The appellant, in this case, has remained in jail for a period of 8 days from 06/09/1996 to 13/09/1996. In the considered opinion of this Court, the interest of justice will be served if the appellant is sentenced with the undergone period and fine amount is raised from Rs.1,000/- to Rs.5,000/- out of which, Rs.4,000/- is paid as compensation under Section 357(1) of "The Code".

11. Accordingly, the appeal is partly allowed. Conviction recorded against the appellant is hereby maintained. The sentence is reduced to the already undergone period of 8 days and a fine amount of Rs.5,000/-, out of which

Rs.4,000/- shall be paid as compensation under Section 357(1) of "The Code".

12. Resultantly, the appeal stands partly allowed as above.

Certified copy as per rules.