

(2010) 11 MP CK 0035

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2945 of 1998

Rajmani Singh and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 307

Citation : (2010) 11 MP CK 0035

Hon'ble Judges : Naresh Kumar Gupta, J

Bench : Single Bench

Judgement

N.K. Gupta, J.—This criminal appeal is filed by the Appellants being aggrieved by the judgment dated 27/11/1998 passed by the 4th Additional Sessions Judge, Rewa in ST No. 45/94, whereby the Appellants were convicted and sentenced as under:

Conviction U/S (IPC)

Sentence

Fine (Rupees)

In default

148

1 year RI

447

2 months RI

307/149 (2 counts)

2 years RI

300/-each

3 months RI

325/149

6 months RI

323/149 (3 counts)

3 months RI

All the sentences were to run concurrently.

2. Prosecution case, in short, is that at village Bhatlo Ke Itma Tola there was a land namely Bhirawali Bandhi bearing Survey No. 043 of area 0.18 acres possessed by the complainant Gopal Singh. On 20/12/1992 at about 2:30 PM in the afternoon the Appellants gathered on the land in question having deadly weapons like guns, sticks etc. They started kopar (plough) of that land. Virendra Singh son of the complainant Gopal Singh rushed to his house and intimated Gopal Singh about the act of the Appellants. The complainant Gopal Singh went to the field and requested the Appellants not to take possession of the land, but in the reply the Appellants assaulted the complainant Gopal Singh. Appellant Deputy @ Raj Bahadur Singh assaulted Gopal Singh by a stick, whereas the Appellant Rajmani Singh assaulted the complainant Gopal Singh on his head by the base of the gun. On shouting of Gopal Singh, Harsh Narayan Singh, Kirti Pratap Singh, Virendra Singh, Arvind Singh and Gangesh Singh went to the field, but they were also assaulted by the Appellants with the sticks. Each of them had sustained many injuries. Out of the injured persons, Arvind sustained as many as four injuries including one fracture on left parietal region and he had the symptoms of brain haemorrhage. Victim Kirti Pratap sustained as many as six injuries including one fracture on left frontal bone and symptoms of brain haemorrhage were also found. Victim Harsh Narayan sustained as many as six injuries including one fracture in left index finger. Complainant Gopal Singh sustained as many as seven injuries on his body. It was suspected that he sustained fracture on left scalp, but in the X-ray report, no fracture was found. Similarly, Virendra sustained as many as six injuries including one fracture on left patella bone, but in the X-ray report, no fracture was found. Similarly, Gangesh sustained as many as six injuries on his body. All the injured persons were taken to the Police Station, City Kotwali, Rewa where the complainant Gopal Singh lodged an FIR Ex.P-1. All the injured persons were sent to the hospital for their medical examination and treatment. After due investigation, a challan was filed by the Station Officer, City Kotwali, Rewa before the Chief Judicial Magistrate, Rewa against the Appellants for commission of offence punishable under Sections 147, 148, 294, 323, 447, 506B, 325, 307 read with Section 149 of IPC.

3. The Appellants-accused abjured their guilt and took the defence that they were in the possession of the land in dispute and they did not assault the complainant and other victims, on the contrary the complainant and his companion viz. Harsh Narayan, Gangesh and Arvind had assaulted accused/

Appellants Ran Bahadur and Rajendra Singh causing them injuries. In the defence, as many as 15 documents were submitted before the trial Court. Ramdas (DW-1), Dr. A.K. Pathak (DW-2), Laxmaniya (DW-4) and Santsharan Singh (DW-5) were examined from the side of the defence.

4. After considering the evidence adduced by the parties, the learned 4th Additional Sessions Judge, Rewa convicted each of the Appellants for commission of offence punishable under Sections 148, 447, 325/149, 323/149 (3 counts) and 307/149 (2 counts) of IPC and inflicted the aforesaid sentence.

5. I have heard the learned Counsel for the parties.

6. Learned Counsel for the Appellants-accused has submitted that the Appellants did not assault any one. However, if it is found that they assaulted any victim, then that act was under the right of private defence, because the complainant party was the aggressor. The complainants started the quarrel and assault. Also the land in dispute was in the possession of the Appellants, and therefore they had a right of private defence to retain the land in dispute. In the alternate, learned Counsel for the Appellants-accused has further submitted that looking to the injuries of Arvind and Kirti Pratap, it is true that they sustained fracture on their head, but no offence u/s 307 of IPC is made out. It may come under the purview of Section 325 of IPC. The Appellants-accused have faced the trial and the appeal for last 18 years and therefore it would not be appropriate to send them back to the jail after elapse of so many years.

7. On the other hand, learned Counsel appearing on behalf of the State has supported the impugned judgment and has submitted that the Court below has not committed any illegality in convicting and sentencing the Appellants-accused.

8. Looking to the statements of the various witnesses and evidence of Dr. A.K. Khare (PW-6) and Dr. A.K. Mishra (PW-11), it is very much clear that victim Gopal Singh, Arvind, Gangesh, Virendra, Kirti Pratap and Harsh Narayan had sustained 4-6 injuries on their body, out of them Arvind sustained a fracture on the left parietal region and he was suffering from vomiting etc. at the time of medical examination. Similarly the victim Kirti Pratap sustained a fracture on the left frontal bone and he was also suffering from vomiting etc. Victim Harsh Narayan sustained a fracture on his right index finger. Except these injuries, all the injuries of various victims were found simple. The Appellants-accused have claimed their right of private defence in two counts, first the right of private defence of the land in dispute and second the right of private defence on their person.

9. Learned Counsel for the Appellants-accused in support of his contention, has placed reliance on the judgment of the Hon''ble Apex Court in the case of Masalti Vs. State of U.P., to show that the witnesses examined by the prosecution were interested one, and therefore their evidence cannot be believed. In the present case, the prosecution has examined almost all injured witnesses and also two independent witnesses viz. Indrapal Singh (PW-5) and Ram Khilawan (PW-7). No

material contradiction was found in the evidence of the eye-witnesses. Some of the eye-witnesses have mentioned that accused Balendra Singh assaulted the complainant Gopal Singh by stick causing injury on his left feet, accused Ran Bahadur assaulted Gopal Singh by stick causing injury on his feet, accused Rajmani caused injury on the head of Gopal Singh by base of the gun. Ran Bahadur also assaulted Gangesh by stick. But, all the injured eye-witnesses have stated that all the Appellants had participated in the assault and caused injuries to the victims. It is true that none of them have mentioned the specific name of the Appellants, who caused injury to them. However, there were six victims in the matter and each of them sustained 4-6 injuries whereas there were so many assailants, therefore it was not possible for them to locate that whose blow was received by whom at what place of their body. However, looking to the number of injuries and number of the victims, it can be accepted that all the Appellants had participated in assaulting the victims.

10. Learned Counsel for the Appellants-accused has submitted that Dr. A.K. Pathak (DW-2) has proved the injuries of Ran Bahadur and Rajendra Singh by which it is clear that life of Ran Bahadur and Rajendra Singh was in danger, as they were beaten by the complainants of this case, and therefore right of private defence was accrued to the Appellants. Similarly, he has further submitted that it was a case of free-fight, and therefore the Appellants-accused cannot be convicted. If the injuries of Rajendra and Ran Bahadur are considered, then Ran Bahadur sustained one incised wound on his forehead of a very small size and he sustained one contusion on his right forearm, whereas Rajendra sustained a contusion on his left elbow and one contusion on his right forearm. If the victims were armed at the time of incident and they were aggressors, then certainly they must have shown their strength in equal manner and they could not sustain 4-6 injuries in the incident, and on the contrary the Appellants must have sustained at least 4-6 injuries. It is nowhere proved that the complainant Gopal Singh and his companion went with some arms, therefore if they went to the field without any arm to stop the Appellants to take possession of the field, it cannot be said that they were aggressors.

11. It is clear from the evidence that the Appellants were ready with sticks and guns etc. to continue the possession of the field, which they took at the time of the incident, therefore it appears that the Appellants started assaulting the victims, and hence no right of private defence accrued to the Appellants-accused. If the Appellants Rajendra and Ran Bahadur sustained too small injuries, then by such injuries it cannot be said that they had the right of private defence. There is no need to explain such injuries by the prosecution.

12. Similarly, the complainant Gopal Singh (PW-1) was suggested that the land in dispute was given to his mother by a lease. That land was given by his father to one Ram Bharosa Sonar in a gift, but Gopal Singh did not accept the suggestion that after the death of Ram Bharosa Sonar, his grand-son Ramdas Soni transferred that land to one Yadunandan Prasad Mahapatra and Yadunandan

Prasad Mahapatra sold that land to Mehgua Kol. Similarly, the land was sold by Mehgua Kol to Rajendra Singh and there was a possession of the Appellant Rajendra Singh since 15/1/1969. The defence proved a chain of transfer of the land, but the defence could not prove that Mehgua Kol sold the land to Rajendra. Laxmaniya (DW-4) daughter of Mehgua Kol has deposed before the Court that his father purchased the land in dispute from one Sonar and sold the same to some Thakur, but she could not tell as to which Thakur the land was sold. Looking to the entire transactions, it appears that the land was so small and it was given as a gift to one Ram Bharosa Soni and then Yadunandan Prasad Mahapatra. By the document Ex.D-11 it appears that the land in dispute was sold to Mehgua Kol on 22/6/1951 for a consideration of Rs. 17/-only. However, it was to be proved by the Appellants that they were in possession of the land in question at the time of incident and were cultivating the land from 1969 and in support khasra entries could be produced before the trial Court, and therefore contention of Gopal Singh can be accepted that the complainant party was in possession of the land in dispute at the time of incident and the Appellants took the possession of that land forcefully on the date of incident, hence since there was no possession of the Appellants prior to the date of incident, they had no right of private defence to save the land in dispute. They were encroachers on the land in dispute on the date of incident. When the actual possessor Gopal Singh went to stop the Appellants to encroach upon the land in dispute, then no right of private defence had accrued in favour of the Appellants-accused against the complainant Gopal Singh. In such circumstances, the contention of learned Counsel for the Appellants cannot be accepted that the right of private defence either of the property or a person was accrued to the Appellants at the time of incident.

13. Learned Counsel for the Appellants-accused has submitted that looking to the injuries of Arvind and Kirti Pratap, no offence u/s 307 of IPC is made out. It is true that Dr. A.K. Khare (PW-6) and Dr. A.K. Mishra (PW-11) proved the injuries of Arvind and Kirti Pratap. Each of these victims had sustained a fracture on their head, but their treatment record was not proved before the trial Court and it is nowhere proved that they sustained brain haemorrhage or they were treated for that brain haemorrhage and remained in the hospital for a long period of time. Looking to the injuries sustained by all the six victims, it would be clear that they were beaten without aiming any vital part of the body. They sustained injuries on the head, back, fingers, hands, feet and other parts of the body. The victims Arvind and Kirti Pratap could not even say that whose stroke caused fracture on their head, therefore it cannot be said that any of the Appellants was interested to cause death of either Arvind or Kirti Pratap, though they were brutally beaten. But looking to their total injuries, intention of the Appellants cannot be attributed to cause death of either Arvind or Kirti Pratap. Therefore, though Arvind and Kirti Pratap sustained fracture on their scalp, but due to those grievous injuries, it cannot be said that offence u/s 307 of IPC is made out.

14. Learned Counsel for the Appellants-accused has placed his reliance on the

judgment of the Hon'ble Apex Court in the case of Lallan Rai and Others Vs. State of Bihar, , in which it was observed that the victim sustained one incised wound on the left cheek, another incised wound on the back of the neck, a penetrating wound on the back of waist and incised wound on the right side of chin. There were multiple fractures of scalp bone, but it was directed that though the complainant sustained grievous hurt, but offence established was of Section 326 of IPC in the aforesaid case.

15. In the light of the above decision, if the evidence of the present case is considered, then it would be clear that there was no intention of the Appellants-accused to kill anyone. They assaulted the victims without aiming any vital part of the body, and therefore though the victims Arvind and Kirti Pratap sustained a fracture on their scalp. However, the overt-act of the Appellants-accused comes under the purview of Section 325 of IPC, therefore it would be proper to alter their conviction from Section 307 (2 counts) to Section 325 (2 counts) of IPC.

16. As discussed above, it is very much clear that each of the Appellants participated in the alleged incident and they had assaulted six victims, therefore the offence punishable u/s 148 of IPC is properly made out. It is very much clear that the complainant Gopal Singh and his party were in possession of the land in dispute, hence the Appellants-accused not only entered into the land in dispute but assaulted the victims, therefore the offence punishable u/s 447 of IPC is also made out. Similarly, each of the Appellants had assaulted various victims, therefore as per the provisions of Section 149 of IPC, the Appellants were responsible for commission of offence punishable u/s 323 (3 counts) and Section 325 (3 counts) of IPC. Therefore, except the offence punishable u/s 307 of IPC, the conviction directed by the trial Court seems to be proper and no interference can be made in that conviction.

17. Learned Counsel for the Appellants-accused has submitted that out of these Appellants, Rajmani Singh and Ran Bahadur Singh were 60 years of age at the time of incident, whereas the Appellants Deputy alias Raj Bahadur Singh and Munendra Singh were young youth of less than 21 years of age at the time of incident, therefore they be released on probation.

18. It is clear that none of the Appellants was below 18 years of age at the time of incident, therefore the benefit of Probation of Offenders Act, 1958 cannot be given to them as a right, because they tried to take the possession of the land in dispute with force and assaulted six persons brutally, therefore looking to the act of the Appellants, they cannot be released on probation with the help of the provisions of the Probation of Offenders Act, 1958.

19. Learned Counsel for the Appellants-accused has further submitted that the trial Court has inflicted maximum sentence of two years for commission of offence u/s 307 read with Section 149 of IPC, whereas the jail sentence inflicted for other offences was directed to run concurrently. At present the Appellant Rajmani Singh remained in custody for 105 days, Appellants Mahendra Pratap

Singh and Satendra Singh remained in custody for 81 days, whereas other Appellants-accused remained in custody for 21 days.

20. In the present case, the incident took place in the year 1992 and at present 18 years have been elapsed so the Appellants-accused have faced trial and appeal for last 18 years, hence looking to the entire crime and the fact that the Appellants are ready to deposit the fine amount, the interest of justice would be served if the Appellants are released on the period which they have already undergone with increase of fine amount.

21. On the basis of aforesaid discussion, the appeal of the present Appellants deserves to be partly allowed. Accordingly, it is partly allowed. The conviction of the Appellants-accused for commission of offence punishable u/s 307 read with Section 149 (2 counts) is altered to Section 325 read with Section 149 (2 counts) of IPC. Their other conviction for commission of offence punishable under Sections 148, 447, 325/149, 323/149 (3 counts) of IPC is hereby maintained. Their jail sentence is reduced to the period which they have already undergone, but fine amount is imposed on the Appellants-accused, which is as under:

Conviction U/S (IPC) Sentence (Rupees) Default sentence

148 Already undergone with fine of Rs. 400/- 1 month RI

447 Already undergone with fine of Rs. 400/- 1 month RI

325/149 Already undergone with fine of Rs. 1000/ 6 month RI

325/149 Already undergone with fine of Rs. 1000/ 6 month RI

325/149 Already undergone with fine of Rs. 1000/ 6 month RI

325/149 Already undergone with fine of Rs. 1000/ 2 month RI

325/149 Already undergone with fine of Rs. 1000/ 2 month RI

325/149 Already undergone with fine of Rs. 1000/ 2 month RI

The Appellants-accused are directed to deposit the fine amount within a period of two months from today. If fine amount is not deposited within the stipulated period, then the trial Court will be free to execute the default sentence.

22. At present the Appellants-accused are on bail, therefore their bail bonds shall stand discharged.

23. The trial Court has ordered to confiscate the gun seized in the alleged crime. It is very much clear that nobody fired with the gun, but it is alleged that the said gun was used like a stick. There is no identification of the gun that the same was used in the incident, which was seized by the police, and therefore it would not be proper to confiscate the gun. Accordingly, it is directed that Appellant-accused Ran Bahadur Singh may take the said gun back, which was seized in the alleged incident.