

(2024) 11 MP CK 1298

In the Madhya Pradesh High Court, Indore Bench

Case No : Criminal Appeal No. 2440 of 2023

Raju And Others

APPELLANT

Vs

The State Of Madhya Pradesh

RESPONDENT

Date of Decision : 29-11-2024

Acts Referred:

Code of Criminal Procedure 1973 — Section 357(3), 374

Indian Penal Code 1860 — Section 34, 300, 302, 304, 323, 325, 326

Citation : (2024) 11 MP CK 1298

Hon'ble Judges : Prem Narayan Singh, J

Bench : Single Bench

Advocate : Vivek Singh, H.S.Rathore

Judgement

Prem Narayan Singh, J

1. This criminal appeal is preferred under section 374 of Cr.P.C. by the appellant being aggrieved by the judgment dated 31.01.2023, passed by learned A.S.J., Ratlam, in S.T. No..200291/2015 whereby the appellants have been convicted for the offence punishable under Sections 304/34 and 323/34 of IPC and sentenced for 10,10 years RI and 6,6 months RI with fine of Rs.2000/-, 2000/- and 1000/-,1000/- with default stipulations.

2. Prosecution case in brief is that on 10.08.2015, the complainant Mohan alongwith the deceased Munna was going to his home. The appellants were standing near the house of appellant Badri. Thereafter, appellant Raju has assaulted complainant Mohan by stick on his back and appellant Badri has assaulted the complainant and the deceased Munna by kicks and fists. Appellant Raju has assaulted the deceased Munna with stick, due to which, the deceased has received injuries. Thereafter, deceased Munna was succumbed those injuries. thereafter, Munna was collapsed down. Thereafter, the deceased was taken to the hospital where he has died.

3. The police party, after following due procedure, arrested the accused person

and registered the case against the appellants. After due investigation, charge-sheet was filed against the appellants under Sections 323/34 and 302/34 of IPC. They abjured their guilt and took a plea that they had been falsely implicated in the present crime and prayed for trial.

4. In support of the case, the prosecution has examined as many as 13 witnesses namely Mohan (PW-1), Rahul (PW-2), Pemabai (PW-3), Banti alias Bantu (PW-4), Badrilal (PW-5), Dr. B.L. Manmgliya (PW-6), Dr. Mukesh (PW-7) Ajay (PW-8), Yashwant (PW-9), Babulal (PW-10), Karulal (PW-11), Lalsingh (PW-12), Rangu (PW-13). No witness has been adduced by the appellants in his defence.

5. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 31.01.2023 and finally concluded the case and convicted the appellants for commission of the said offence under the provisions of Sections 323/34, 304/34 of IPC.

6. Learned counsel for the appellants, being crestfallen by the aforesaid finding of the Trial Court, submitted that the allegation against the appellant Raju is of causing injury by stick on the back of the deceased and allegation against appellant Badri is of causing injury by kicks and fists. No independent witness has been examined and witnesses are related and interested witnesses, thus on the basis of their testimonies, the appellant can not be convicted. As per Postmortem report (Ex.P-5), the death was caused due to injury of spleen, the appellant had no knowledge regarding spleen, hence, the offence under Section 304 of IPC cannot be made out against them and if the case of the prosecution is taken as it is, the case of the prosecution would not travel more the offences under Section 325 of IPC.

7. Alternatively, counsel for the appellants has further argued on the point of sentence also and prays that since the appellants are in jail from more than two years out of the 10 years, their jail sentence be reduced to the period already undergone. It is further submitted that the appellants deserve some leniency as the appellants already suffered the ordeal of the trial since 2015 i.e. for a period of 09 years. It is further submitted that this appeal be partly allowed and the sentence awarded to the appellants be reduced to the period already undergone by enhancing the fine amount and giving compensation amount.

8. Learned Govt. Advocate has opposed the prayer and submitted that the learned trial Court has rightly convicted the appellants by sentencing them appropriately. Hence, prays for dismissal of the appeal.

9. I have considered rival contentions of the parties and perused the record.

10. In view of the evidence available on record and the contentions advanced by counsel for both the parties, this Court has to decide the question as to whether the findings of learned trial Court regarding conviction under Section 304 of IPC, are correct in the eyes of law and facts or not?

11. In this case, the prosecution has relied upon the testimony of witness Mohan (PW-1)/complainant. He has stated that he and Munna were coming towards village Mortuka and as they have reached to the house of Badri, appellant Raju was standing there with Lathi. Raju has caused injury by Lathi to him. Thereafter, both the appellant Raju and Badri have assaulted Munna with Lathi on his head and he has become unconscious. Munna has taken to the hospital and thereafter, he was died in the Ravti Hospital. Testimony of this witness has not been controverted in his cross-examination.

12. Witness Rahul (PW-2) deposed in his statement that appellant Badri used kicks and fists in the crime and appellant Raju has used Stick and assaulted Mohan and Munna due to which deceased Munna has received many injuries and the deceased has become unconscious. Eye-witness Pemabai (PW-3)/ wife of the deceased has stated that Raju has badly assaulted the deceased Munna with the help of stick and appellant Badri has assaulted the complainant and deceased by kicks and fists. Witness Banti alias Bantu (PW-4) has also supported the statements of Pemabai (PW-3) and Rahul (PW-2). The statements of these witnesses have not been shaken in their cross-examination on material points.

13. That apart, Dr. Mukesh (PW-7) who has initially examined the deceased stated that he found that the skull and both the lungs have become pale, the liver has also become pale. There was multiple lacerated wounds above the spleen of the deceased (measuring 5 X 2 X 1 c.m.). He given his opinion that the death was occurred due to these injuries, heavy bleeding and failing of heart and breathe. However, in his cross examination he has admitted that the injuries can be received by a person if he, in high speed, falls by abdomen side by motorcycle. He has conducted the post-mortem examination and given postmortem report as Ex.P-5.

14. Learned counsel for the appellants has expostulated that all witnesses are related and interested witnesses, thus on the basis of their testimonies, the appellants cannot be convicted. Certainly, the witnesses are related to each other. On this aspect in the case of "Dilip Singh vs. State of Punjab" reported as AIR 1953 SC 364, the full Bench of Hon'ble Supreme Court observed in para 26 as under:

"26. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

15. So far as the arguments regarding non-availability of independent witnesses is concerned, it is well settled that no criminal case can be overboarded due to non-availability of independent prosecution witnesses. In this regard, the following verdict of landmark judgment of the Hon'ble Apex Court rendered in

the case of Appa Bhai vs. State of Gujarat AIR 1988 SC 696 is worth referring here as under:

"10.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused....."

16. In view of the aforesaid preposition of law only on the basis of the fact that no independent witness has supported the case of prosecution, the prosecution story which has not been supported by eye witness and medical evidence, cannot be wiped out. Even the ground of enmity has also not been raised by the defence. The defence raised in the statement of accused persons regarding fallen down from motor cycle has neither established by cogent evidence by the defence nor any defence witness has been examined in this regard. In these circumstances, it can be well assumed that the appellants have beaten the deceased by stick and by kicks and fists on his spleen due to that injury the deceased succumbed. Now the question is as to whether the death of the deceased would be treated as culpable homicide not amounting to murder under Section 304 of IPC, it is contended that the death was occurred due to injury of rapture in spleen. So far as the injury caused by stick is concerned, causing injury by stick and one blow of stick can be the reason of death but the offence would not come under the purview of Section 304 of IPC.

17. In view of the contention raised by the counsel for the appellants, it is found that the spleen of deceased was ruptured and there are multiple wounds above the spleen. Certainly, this injury can be the reason of death. of the deceased. Now, the question arises as to whether the finding of the learned Trial Court regarding Section 304 of IPC is sustainable or not ? On this aspect, the illustration (b) of Section 300 of IPC is relevant to quote here:-

(b). Knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

18. Now, the question is as to whether the appellants are knowing the fact that the deceased is suffering under labouring of spleen or not. Actually, at this point, nothing is adduced by the prosecution in this regard neither the prosecution has submitted anything nor the defence has furnished anything. During the course of argument, learned counsel for the appellants has contended that since there was no knowledge regarding labouring of spleen of the deceased, the offence punishable under Section 304 of IPC could not be made out and at the most the case of prosecution will come under the purview of Section 325 of IPC.

19. In the light of aforesaid provision, it is evident that if the prosecution did not adduce any evidence regarding the appellants' knowledge of deceased enlarged spleen, the said injuries would not be sufficient to cause death in ordinary course of nature. Therefore, Section 302 or 304 of IPC will not be attracted. It is also pertinent to mention that in this case, only a stick was used by the appellant Raju and appellant Bardri has used kicks and fists which are not sufficient in ordinary course of nature to cause death of the deceased.

20. On this aspect, the law laid down by the Hon'ble Apex Court in the case of Mohd. Ishaq Mohammad vs. State of Maharashtra [1979 Law Suit (SC) 212] is worth referring here as under:-

"We have heard learned Counsel for the parties and have gone through the judgment of the High Court and of the Sessions Judge. The occurrence in the course of which the deceased was assaulted, took place suddenly and after hot exchange of abuses, which took place between the deceased and the appellants. The appellants are said to have assaulted the deceased with sticks. There is no evidence to show as to which of the appellants struck the fatal blow on the deceased. Having regard therefore to the circumstances of the present case and the nature of injuries sustained by the appellants, we are unable to agree with the High Court that the case falls under Section 302. There is no evidence of any intention on the part of the appellant either to cause death of the deceased or cause such injuries of which the appellant could have the knowledge that it was likely to cause death although it cannot be doubted that the appellant had the common intention to cause grievous hurt to the deceased by lathis. Thus the offence falls under Section 325/34 and not under Section 302 or 304(1) . It appears that the appellants have already served their sentences or at any rate a substantial part of it. For these reasons, therefore, we would allow this appeal to this extent that the conviction of the appellants are altered from that under Section 302/34 to one under Section 325/34 and the sentences are reduced to five years in each case."

21. On the same point, Hon'ble Apex Court in the case of Ratan Singh, Ran Singh & Anr. vs. State of Punjab [1988 Law Suit (SC) 214] has observed as under:-

"2. Admittedly according to the prosecution's own case Ran Singh and Rattan Singh were carrying lathis which could be described as hard and blunt object. Such injuries on the person of the deceased were either on hands or on feet and

at best what could be attributed to them could be injuries resulting in fractures. None of these two appellants could be convicted for causing injuries individually which could make out an offence under Section 302. At best they could only be convicted under Section 325 of IPC only."

22. In Mahendra Singh vs. State of Dehli Administration [AIR 1986 SC 309], it is held that grievous hurt caused by blunt weapon like lathi, can fall within section 325 of IPC and not under Section 326 of IPC. Likewise, in another case, Halke vs. State of M.P. [AIR 1994 SC 951], wherein it is held that the accused caused death of deceased by inflicting blows on him with stick. Head injury proved to be fatal and deceased died after a week. In this case, the accused was held liable and punished under Section 325 of IPC. The following excerpts of the aforesaid judgement is worth to refer here:-

"9.....No doubt the injury on the head proved to be fatal after lapse of one week but from that alone it cannot be said that the offence committed by the two appellants was one punishable under Section 304 Part II IPC. The injuries found on the witnesses are also of the same nature and for the same they are convicted under Section 325 of IPC."

23. Having gone through the evidence available on record, since the deceased had suffered a stomach injury which endangers to his life as suggested under the clause it is established that the deceased was unconscious and he expired during the course of treatment. The medical evidence also does not bring out that the injury which was caused, was fatal injury in ordinary course of nature to cause death. Hence, in the considered opinion of this Court, the appellants can only be attributed for committing the offence punishable under Section 325 of IPC.

24. On substratum of the aforesaid analysis in entirety, the appellants cannot be convicted under section 304 of IPC but rather the appellants would be convicted only under Section 325 of IPC. As such, the impugned judgment passed by learned trial court qua the conviction of the appellants under Section 304 of IPC, is hereby set aside and the appellants are convicted under Section 325 of IPC.

25. Now, coming to the question of sentence, the appellants are in jail from more than two years. The appellants have already suffered the ordeal of this case since 09 years, hence, looking the nature of injury, sentence of four years under Section 325 of IPC would meet the ends of justice.

26. Resultantly, the appeal is partly allowed and the appellants are convicted under Section 325 of IPC and sentenced for 4-4 years R.I. with enhanced fine of Rs.10,000/-,10,000/-. In case of failure to deposit the fine amount, he shall further to undergo for 3-3 months S.I. So far as the sentence and conviction regarding Section 323/34 of IPC is concerned, the same shall be maintained. Out of the total fine amount, Rs.20,000/- shall be paid to the legal representative of accused Munna as compensation under Section 357(3) of Cr.P.C. by the trial Court.

27. The appellants are in jail. They be released forthwith, if not required in any other criminal case, after completion of the aforesaid sentence and after depositing the fine amount.

28. The order of the learned trial Court regarding disposal of the seized property stands confirmed.

29. A copy of this order be sent to the learned trial Court concerned for information.

Certified copy, as per rules.