
(2012) 09 MP CK 0224

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2371 of 1998

Raju Kachhi @ Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324

Citation : (2012) 09 MP CK 0224

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Y.K. Gupta, for the Appellant; Ajay Tamrakar, Panel Lawyer for the State, for the Respondent

Judgement

N.K. Gupta, J.—The appellants have preferred this appeal against the judgment dated 29.9.1998 passed by the learned First Additional Sessions Judge, Sehore in S.T.No.157/1995, whereby the appellants were convicted for the offence punishable under sections 324 of IPC and each sentenced for 1 year's rigorous imprisonment with fine of Rs. 1,000/-. In default of payment of fine, each of them was to undergo for 2 months rigorous imprisonment. Prosecution's case, in short, is that, on 3.8.1995, at about 2.30 p.m. in the noon, the victim Omprakash (P.W.8) was going on bicycle to provide lunch to his wife Shyama Bai (P.W.9) near Ganesh Mandir road, Sehore. On the way, the appellants stopped the victim Omprakash. The appellant Raju had a Farsa, Satish had a rod, Lakhan had a daggar and Amar Singh had a knife. They assaulted by such weapons to the victim Omprakash. On shouting of the victim Omprakash, Shyama Bai (P.W.9) and other witnesses reached to the spot to save the victim. Shyama Bai informed her family members and thereafter, Savitri Bai, Gendalal and Ramesh came to the spot. Gendalal took the victim Omprakash to the District Hospital, Sehore, whereas, Shyama Bai lodged an FIR, Ex. P/20 before the Police Station Mandi, District Sehore. Dr. M.K. Jain (P.W.5) examined the victim Omprakash and gave a report, Ex. P/16. He found 6 incised wounds to the victim situated at right forearm, right arm, back of the head, left elbow, right ring finger and right

shoulder, whereas one blunt injury was found at right upper arm. He referred the victim for his radiological examination. After due investigation, a charge-sheet was filed for the offence punishable u/s 307 of IPC and for other offences before CJM, Sehore, who committed the case to the Sessions Court, Sehore and therefore, it was transferred to the First Additional Sessions Judge, Sehore.

2. The appellants abjured their guilt. They did not take any specific plea in the matter. However, Shri M.D. Sharma, Naib Tahsildar (D.W.1) was examined as a defence witness.

3. The learned Additional Sessions Judge, after considering the evidence adduced by the parties, acquitted the appellants from the charge of offence punishable u/s 307 of IPC but, convicted them for the offence punishable u/s 324 of IPC and sentenced them as mentioned above.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the appellants has submitted that the appellants were the youths of 20 to 25 years of age at the time of the incident. They were the first offenders. They could be released on probation. They have faced the trial and appeal for the last 17 years. They remained in the custody for 14 days during the trial. Under such circumstances, they may not be sent to the jail again.

6. On the other hand, the learned Panel Lawyer has submitted that the conviction and sentence directed by the trial Court appears to be appropriate.

7. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the appellants have not challenged their conviction on merits and therefore, there is no need to discuss that point in detail. According to the statements given by the victim Omprakash (P.W.8) and eye witness Shyama Bai (P.W.9) along with timely lodged FIR, Ex. P/20 and medical report proved by Dr. M.K. Jain (P.W.5), it is apparent that each of the appellants had assaulted the victim Omprakash by sharp cutting weapon and therefore, each of them was responsible for the offence punishable u/s 324 of IPC.

8. So far as the sentence is concerned, it is true that the appellants were the first offenders but, each of them was above 21 years of age and therefore, age is not a ground for grant of probation. They assaulted the victim in such a bad manner and therefore, there is no other ground to release them on probation. However, they were the first offenders, looking to their age, their future is to be considered, they remained in the custody for 14 days during the trial and they faced the trial and appeal for the last 17 years. Under such circumstances, looking to the facts and circumstances of the case and the aforesaid situation, it would be proper that the appellants may not be sent to the jail again. However, some heavy fine amount may be imposed upon them.

9. Consequently, the appeal filed by the appellants is hereby partly allowed. Conviction directed against the appellants for the offence punishable u/s 324 of

IPC is hereby maintained but, sentence is reduced to the period, which they have already undergone in the custody but, fine amount is enhanced from a sum of Rs. 1,000/-to a sum of Rs. 5,000/-. The appellants are directed to deposit the remaining fine amount before the trial Court within two months from today, failing which, each of them shall undergo for 6 months rigorous imprisonment. If fine is deposited then the victim Omprakash S/o Kishanlal, R/o Sugar Factory Square, Sehore shall get a sum of Rs. 12,000/-by way of a compensation, out of that fine amount.

10. Presence of the appellants is no more required before this Court and therefore, it is directed that their bail bonds shall stand discharged. Copy of the order be sent to the trial Court along with its record for information and compliance.