
(2011) 02 MP CK 0053

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2320 of 2006

Ram Sevak and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2011) 02 MP CK 0053

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Judgement

G.S. Solanki, J.—The Appellants have preferred this appeal against the impugned judgment dated 29/11/2006 passed by Third Additional Sessions Judge, Sagar in S.T. No. 192/2005, whereby the Appellants have been convicted u/s 325/149 of IPC and sentenced to RI for four years and fine of Rs. 5,000/-(each) with default stipulations and u/s 323/149 of IPC and sentenced to RI for six months (each) and Appellants No. 1,2,3,4,6,8,11,12,13 & 14 additionally convicted u/s 147 and sentenced to RI for six months and fine of Rs. 1,000/-(each) with default stipulations. The Appellants No. 5, 7,9, & 10 additionally convicted u/s 148 of IPC and sentenced to RI for one year and fine of Rs. 1,000/-(each) with default stipulations.

2. Being aggrieved the Appellants filed this criminal appeal u/s 374(2) of the Code of Criminal Procedure.

3. The facts of the prosecution case in short are that on 27/03/2005 at about 12"00 O'clock complainant Durga Prasad (PW-6) went to village Gadholi alongwith Veerendra (PW-2), Sumer and Shivraj. They were going towards the village from the house of Man Singh. Accused Gangaram having Katrana, Raja Sahay having Tabal Raja having iron rod, Mehtab having Lathi, Nandram having Lathi, Badan having Farsha, Ramswaroop having Lathi, Ram sevak s/o Hallu having Lathi, Leeladhar having Lathi, Ghanshyam having Lathi, Ramsahay having

Rod, Khuman having Lathi and Shivdayal having Lathi came there and accused Gangaram told that Durga Prasad made his son, Sarpanch.

4. Due to the rivalry from Sarpanch election Gangaram assaulted by katarna to Durga Prasad (PW-6) but same was stucked to Virendra PW-2. Second blow of Katarna was made on the foot of Durga Prasad. Accused Ram Prasad assaulted complainant by Tabal. Appellant Badan assaulted Veerendra, therefore, complainant Durga Prasad-PW-6, Veerendra PW-2 and Sumer, Gaya Prasad received injuries on the hue and cry and assuming that Viredndra had been died. Accused persons ran away from the spot. Complainant Badri Prasad lodged report Ext-1 at police station Gopalganj District Sagar injured and persons were sent for medical examination. They were examined by Dr. B.R. Agrawal (PW-4). Appellants were arrested and after usual investigation they were charge sheeted before trial Court.

5. The trial Court framed the charges u/s 147, 148, 307/149, 323/149, 325/149. The Appellant/accused abjured the guilt and pleaded false implication.

6. On perusal of evidence on record the trial Court acquitted the Appellant/accused u/s 307/149 of IPC. However, they have been convicted and sentenced as mentioned herein above.

7. Learned Counsel for Appellant submitted that trial court committed error in not appreciating the evidence on record, in its proper perspective. He further submitted that trial Court held all Appellants guilty u/s 325/149 of IPC. He further submitted that the trial court failed to see the fact that incident was occurred in village and initially there was only four Appellants at the time of incident and afterward on hue and cry other Appellants were assembled there, therefore there was no unlawful assembly, whom committed the offence in furtherance of their common object. He further submitted that Appellants Gangaram, Badan, Ramsahay s/o-Suraj Singh and Ram Sahay s/o.-Paran Singh were remained in custody more than 11 months and others also remained in custody not less than 5 months, therefore, in the event of conviction they may be convicted for jail sentence already undergone and fine.

8. Learned Counsel for state justified and supported the judgment and finding of the trial Court.

9. I have perused the impugned judgment, evidence and other material on record. Complainant Badri Prasad PW-1 admitted in para 8 of his cross examination that primarily Appellant Gangaram, Mehtab, Raja and Badan were assembled and Appellant Gangaram absued Durga Prasad and assaulted him by Katarna which was strucked to the Veerendra PW-2. Durga Prasad PW-6 in para 8 of his cross examination admitted that he and other injured persons proceeded with Appellants/accused and all of were singing song of Holi (Fag). He further admitted that all accused persons were not came together in beginning but they were assembled afterward.

10. By careful screening of aforementioned statement of complainant and injured persons, it is clear on record that primarily complainant and accused persons were singing song of Holi (Fag) and thereafter Gangaram, Mehtab, Raja and Badan all four were came together and assaulted complainant and other persons and thereafter other accused persons came with their weapon of offence and assaulted the complainant party.

11. It is clear from aforementioned evidence on record that primarily there was no unlawful assembly and trial Court failed to appreciate these facts on record, therefore the finding of the trial Court in regard to unlawful assembly and offence committed in furtherance of common object of the assembly is not sustainable in the eye of law, therefore, these findings is liable to be set aside.

12. In aforementioned circumstances we have to assess the individual liability of Appellants/accused persons.

13. Complainant Badri Prasad PW-1 deposed that Appellant/accused Gangaram assaulted Durga Prasad by Katarna but same Katarna was hit to the Virendra PW-2 but this fact was not supported by Durga Prasad and Veerendra himself. However, Veerendra deposed that when Gangaram assaulted Durga Prasad he came to rescue and Appellant Badan assaulted him by Farsha on his head.

14. Dr. B.R. Agrawal (PW-4) examined the Veerendra PW-2 and found a lacerated wound measuring 3" x 1", boned deep and he was advised for x-ray.

15. Dr. Ganesh Diwakar PW-5 deposed that he examined injured Virendra and took x-ray and found limier fracture in frontal part of the head. X-ray report is Ext-P-10.

16. Durga Prasad deposed that Appellant/accused Gangaram assaulted him by Katarna on his left leg. However, Dr. B.R. Agrawal (PW-4) found lacertaed wound on left leg place and Dr. Ganesh Diwarkar PW-5 found communated fracture on tibia bone of left leg. He further deposed that Khuman has assaulted by Lathi on his fingers. Dr. Ganesh Diwakar PW-5 found a fracture on 4th and 5th metacarpal bone of left hand, his X-ray report is Ext-P-11.

17. In these circumstances Virednra PW-2 received fracture on his head which was caused by Badan Appellant/accused.

18. Durga Prasad Pw-6 received fracture on Tibia bone of his left leg which was caused by Appellant/accused Gangaram and fracture on metacarpal bone of Durga Prasad was caused by accused/Appellant Khuman.

19. In these circumstances accused Badan Gangaram and Khuman are liable to be convicted u/s 325. Other Appellant/accused persons who were came on spot afterward having their respective weapon of offence. According to Dr. B.R. Agrawal injuries on the body of Badri Prasad was of simple in nature and caused by hard and blunt object, therefore, all other Appellant/ accused persons are guilty of offence u/s 323 of IPC.

20. In these circumstances, the trial Court committed the illegality in not appreciating the evidence on record in its proper perspective. Thus, the appeal is partly allowed. The Appellants Badan, Raja & Ram Sahay S/o.-Suraj Singh are acquitted to the charges u/s 148 of IPC. The Appellants Ram Sevak, Laxmi, Leeladhar, Mehtab, Ghanshyam, Khuman, Nandram, Ramsahay s/o.-Paran Singh and Ramswaroop are acquitted to the charges u/s 147. All Appellants are acquitted to the charges u/s 325/149, 323/149 of IPC. Instead Appellants Badan, Gangaram and Khuman are convicted u/s 325 of IPC and all other Appellants are convicted u/s 323 of IPC.

21. Considering the facts and circumstances of the case in which incident was took place on the spur of moment and Appellants were in jail the Appellant Badan 11 months and 21 days, Gangaram 10 months and 21 days, Appellant Khuman about 4 months, if they are convicted for jail sentence to period already undergone and fine of Rs. 2,500/-(each) then in the ends of Justice would be met out. All other Appellants were in jail some are more than six months like Ramsevak, Nadram, Ramsahay and all other are not less than four months.

22. In these circumstances Appellants Ramsevak, Shiv Dayal, Laxmi, Raja, Leeladhar, Mehtab, Ramsahay s/o Suraj, Ramsahay s/o-Paran Singh, Nandram, Ramswaroop, Ghanshyam are convicted for the offence u/s 323 of IPC and sentenced to the jail sentence already undergone and fine of Rs. 1,000/-(each) their ends of Justice would be met out.

23. All the Appellants are on bail, their bail bond and security bond stands discharged, if fine amount already deposited, set off will be given by the Trial Court.