
(2009) 04 MP CK 0043
In the Madhya Pradesh High Court

Ramdhari Patel

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324
Probation of Offenders Act, 1958 — Section 4

Citation : (2009) 04 MP CK 0043

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Judgement

R.C. Mishra, J.—The appellant, though charged with the offence u/s 325 read with Section 149 of the IPC, stands convicted u/s 325 of the IPC and sentenced to undergo R.I. for two years and to pay a fine of Rs. 2,000/- and in default, to suffer S.I. for six months. The corresponding judgment passed on 28.09.1995 by the Second Additional Sessions Judge, Rewa in Sessions Trial No. 106/1990, is the subject matter of challenge in this appeal. By this judgment only, co-accused Shiv Bhajan, Tilakdhari, Badri Prasad and Ramsiya were acquitted of the offence punishable u/s 325 read with Section 149 of the IPC. Admittedly, no appeal has been preferred by the State against the order of acquittal.

2. In the light of the guideline laid down in Kewal Krishan Vs. Suraj Bhan and Another, , learned trial Judge, on the same day, delivered the judgment in the case registered as Criminal Appeal No. 1352/1995 in S.T. No. 17/1989 whereby Matukdhari, examined as PW8 in this case, and his sons namely Balmukund (PW1), Balkaran (PW4) and Chhotelal were convicted and sentenced for various offences. The appeal preferred against the judgment passed in counter case and registered as Criminal Appeal No. 1352/1995 is also being decided by a separate judgment today itself.

3. From the evidence of Matukdhari, the following genealogical tree reflecting that the appellant & the co-accused (since acquitted) as well as members of

complainant party, who, at the relevant point of time, were residing in village Rithi, are descendants of a common ancestor, may usefully be traced:

Jagannath | ----- | | | | Indrabhan
Matukdhari (PW8) Tilakdhari Shesmani | | Co-accused | | (since acquitted) |
----- | | | | Balmukund (PW1) Balkaran (PW4)
Chhotelal | | | | ----- | | co-accused |
Ramdhari (appellant) Badri Prasad (since acquitted) Mathura Prasad |
----- | co-accused | co-accused Shiv Bhajan (since
acquitted) Ramsiya (since acquitted)

4. The prosecution case, in short, may be stated thus:

(i) On 02.06.1988 at about 10.30 a.m., the appellant and the co-accused were cutting babool tree standing on the land falling in the share of Matukdhari (PW8) and on being objected to, all of them started assaulting him.

In the course of the joint assault, the appellant dealt tangi (small axe) blows on the head and right hand of Matukdhari.

(ii) In a seriously injured condition, Matukdhari was taken to the P.S. Civil Lines, Rewa where his son Balmukund (PW1) lodged the FIR (Ex.P-3). Accordingly, a case under Sections 147, 148, 323 and 324 read with Section 149 of the IPC was registered.

(iii) Dr. Y.S. Tiwari (PW5), after a preliminary examination, admitted Matukdhari to the hospital for treatment. Radiologist Dr. Anand Singh (PW7) found fractures in shaft of radius and ulna of Matukdhari.

5. Upon completion of the investigation, charge sheet in respect of the offences punishable under Sections 147, 148, 323 and 324 and 325 read with Section 149 of the IPC was presented against the appellant and the co-accused before Additional Chief Judicial Magistrate who committed the case to the Court of Session for trial.

6. The appellant abjured the guilt and pleaded false implication. In the cross-examination of members of the complainant party, the following suggestions were made:

(i) Neem tree, that was cut by Matukdhari and his sons with the assistance of Premlal, and the babool tree were jointly possessed by them.

(ii) the quarrel had ensued at the time when, despite being forbidden by the appellant and his brother Badri Prasad, Matukdhari and his sons continued with the cutting of Neem tree.

(iii) With intent to prevent cutting of the Neem tree, the appellant and the co-accused had expressed their intention to cut the babool tree and in the process, the appellant and his brother Badri Prasad were brutally assaulted by Matukdhari and his sons with tangis and lathies.

(iv) One of the tangi blows, aimed by Balmukund (PW1) at Badri Prasad, had landed on the head of Matukdhari.

In the examination, u/s 313 of the Code of Criminal Procedure, the appellant further pleaded that, even after being subjected to a joint assault, he was falsely implicated by the members of the complainant party with a view to concocting a defence.

7. The prosecution sought to prove the charge by examining 11 witnesses in all including the injured Matukdhari, his sons Balmukund & Balkaran and Premlal as the eyewitnesses to the incident.

8. The disturbing feature of this case is that the learned defence counsel did not prefer to bring the evidence as to the right to the babool tree and the existence of injuries allegedly received by the appellant and Badri Prasad. He was presumably under a misconceived notion that the evidence of the counter case would be looked into for deciding the points involved in this case. However, it is trite law that each case has to be decided on the basis of evidence adduced in that case only.

9. On consideration of the entire evidence on record, learned trial Judge, for the reasons recorded in the judgment under challenge, proceeded to hold that only the appellant was liable for causing injuries to Matukdhari. He, accordingly, convicted the appellant and sentenced him as indicated hereinabove.

10. Legality and propriety of the impugned conviction have been assailed primarily on the ground that it was not a case of free fight as held by learned trial Judge. According to learned Counsel for the appellant, the act of the appellant was protected under the right of private defence in view of the fact that he and his brother had sustained numerous injuries including those characterized as dangerous to life. However, the Deputy Government Advocate, while making reference to the incriminating pieces of evidence, has contended that the conviction was fully justified.

11. Dr. Y.S. Tiwari (PW5) proved existence of following injuries, as described in the report (Ex.P-4), on the body of Matukdhari:

(i) Lacerated wound on left side of parietal region size 3 cm x 1 cm x muscle, bleeding present with clotted blood.

(ii) Swelling 2" x 1 1/2" with lacerated wound 1" x 1/2" x muscle deep present on the dorsum of right forearm, middle region, bleeding with clotted blood present. Bony crepitus with abnormal movement.

12. In the light of medical evidence, the allegation made by Matukdhari (PW8) supported by his sons Balmukund (PW1) and Balkaran (PW4) that the appellant had used tangi to cause abovementioned injuries appeared to be exaggerated. Moreover, Premlal (PW9), the only independent witness, did not corroborate the allegation. Learned trial Judge, therefore, rightly concluded that sharp side of the

weapon was not applied to inflict the injuries.

13. The first informant Balmukund, his brother Balkaran, their father Matukdhari and Premlal (PW9) clearly admitted that the appellant and the co-accused had asked them not to cut the Neem tree. This also came in their evidence that the appellant and the coaccused had proceeded to cut the babool tree only after being unsuccessful in preventing them from cutting the Neem tree. As further admitted by Matukdhari, it was the appellant only who had brought the village Sarpanch Jokhulal to settle the dispute. It was also not denied that the Neem tree was situated in Raha Khet, that was partitioned amongst Matukdhari and his brothers including Indrabhan, the father of the appellant. However, as pointed out already, no evidence was led by the defence as to the appellant's right to the babool tree and consequences of the joint assault allegedly made by Matukdhari and his three sons on him and his brother Badri Prasad.

14. Learned Counsel for the appellant still contended that the Court can take notice of the judgment in the counter case whereby members of the complainant party were convicted and sentenced as under:

Convicted	Sentenced	to	accused	Name of the under Section
				Balmukund 325 of IPC
undergo R.I. for 2 years and to pay fine of Rs. 2000/- and in default, to suffer S.I. for 6 months.				
				Balkaran 307 of IPC
undergo R.I. for 7 years and to pay fine of Rs. 5000/- and in default, to suffer S.I. for 1 year.				
				Matukdhari 323 of IPC
undergo R.I. for 4 months and to pay fine of Rs. 500/- and in default, to suffer SI for 1 month.				
				Chhotelal 307 of IPC
undergo R.I. for 7 years and to pay fine of Rs. 5000/- and in default, to suffer S.I. for 1 year.				

15. But, the judgment in the counter case would be relevant for a limited purpose that is to know what was held in that case on the evidence appearing in that case only. In this view of the matter, the probability of the defence deserved rejection for want of evidence.

16. Accordingly, learned trial Judge did not commit any illegality in holding that the injuries sustained by Matukdhari were not caused in exercise of any right of private defence.

17. Law is well settled on the point that in a case of free fight, both the parties can be convicted for their individual acts. For this, the following observations made by the Supreme Court in Dwarka Prasad v. State of U.P. 1993 SCC (Cri.) 882 may be quoted:

A free fight is that when both sides mean to fight a pitched battle. The question

of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival party. In such cases of mutual fights, both sides can be convicted for their individual acts. As such once it is established by the prosecution that the occurrence in question is result of a free fight then normally no right of private defence is available to either party and they will be guilty of their respective acts.

18. In the face of overwhelming incriminating and reliable evidence on record as well as the well-settled position of law on the point, the conviction in question deserves to be maintained as wellmerited.

19. This brings me to the question of sentence. The appellant, at the relevant point of time, was aged about 60 years. Thereafter, a considerable period of nearly 20 years has already elapsed. Taking into consideration the social impact of the crime and other relevant circumstances particularly his age, interests of justice would be met that if the appellant is released on probation for a period of one year.

20. Consequently, the appeal is partly allowed. The impugned conviction of the appellant u/s 325 of the IPC is hereby affirmed. But the consequent sentences are set aside and, instead, it is directed that he shall be released on probation of good conduct, u/s 4(1) of the Probation of Offender Act, 1958, on his furnishing a personal bond of Rs. 15000/- to appear and receive sentence when called upon during the period of one year commencing from the date of bond and, in the meantime, to keep the peace and be of good behaviour with a surety in the like amount to the satisfaction of the trial Court.

21. The appellant is directed to remain present for the purpose in the trial Court at Rewa on 17.06.2009 at 11 am positively.