

(2014) 05 MP CK 0192

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1018/2012

Rameshwar and Others

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 354(4)
Penal Code, 1860 (IPC) — Section 323, 324, 34

Citation : (2014) 05 MP CK 0192

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

Bench : Single Bench

Advocate : Jamuna Yadav, Counsel, Advocate for the Appellant; S.D. Khan, Government Advocate for the Respondent No. 1/State and Shri Hakim Khan, counsel for the respondent Nos. 2 to 6, Advocate for the Respondent

Judgement

N.K. Gupta, J.—The applicants have preferred the present revision against the judgment dated 29.3.2012 passed by the learned 1st Additional Sessions Judge, Tikamgarh in Criminal Appeal No. 23/2010, whereby the respondent Nos. 2 to 6 were acquitted from the charges of the offences punishable under Sections 324 or 324/34 of the IPC, but convicted for five counts charges of the offence punishable u/s 323/34 of the IPC. The respondent Nos. 2 to 6 were punished by fine only and the jail sentence directed by the trial Court was removed.

2. The prosecution's case in short is that on 2.12.2002 at about 3:00 p.m., the respondent Nos. 2 to 6 had tried to take tractor from the fields of the victim Barelal Yadav at village Bhadoura (Police Station Badagaon, District Tikamgarh). When, Mamta (PW-4) and Rameshwar (PW-5) objected to take the tractor from their fields then, the respondent Nos. 2 to 6 had assaulted them. When the complainant Barelal (PW-1) and his wife Rampi intervened then, they were also assaulted by the respondent Nos. 2 to 6. The victims were sent for their medico legal examination and after due investigation, a charge sheet was filed before the competent Magistrate.

3. The respondent Nos. 2 to 6 abjured their guilt. They took a plea that the respondent Nos. 2 to 6 were entitled to take the tractor from Mend of one Chhotelal and therefore, they were taking the tractor from that Mend. Actually, the victims went to kill the peacocks developed by the respondent Nos. 2 to 6 and thereafter, quarrel took place. However, no defence evidence was adduced.

4. The learned JMFC after considering the prosecution's evidence convicted the respondent Nos. 2 to 6 for the offences punishable under Sections 324 or 324/34 of the IPC and sentenced for one year R.I. with fine of Rs. 200/-. The respondent Nos. 2 to 6 were also convicted for four counts charges for the offence punishable u/s 323 of the IPC and sentenced for three months R.I. for each count and also directed, which was to undergo one by one. In appeal, the learned 1st Additional Sessions Judge acquitted the respondent Nos. 2 to 6 from the charges of the offences under Sections 324 or 324/34 of the IPC and convicted them for the fifth charge of the offence u/s 323 of the IPC. Their sentence was reduced to the fine of Rs. 1,000/- for each count of charge u/s 323 of the IPC.

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

6. The applicants have challenged the acquittal directed by the appellate Court for the offence under Sections 324 or 324/34 of the IPC as well as the sentence given for five counts charges of the offence punishable u/s 323 of the IPC.

7. The trial Court convicted the respondent Nos. 2 to 6 for the offence punishable u/s 324 of the IPC for the victim Rameshwar with the pretext that the accused Heeralal assaulted him on back of his head by an axe. In this context, the evidence given by Dr. R.S. Rana (PW-5/A) may be perused, who examined the victim Rameshwar and gave his report Ex.P/12. He found 12 injuries to the victim Rameshwar. According to his opinion, all the injuries were caused by hard and blunt object. Rameshwar sustained two lacerated wounds and out of them, one was on back of his head and second was on his left leg, whereas remaining wounds either were contusions or bruises. It is true that the victim Rameshwar claimed that he was assaulted by the co-accused Heeralal by an axe. However, looking to the nature of wounds, it appears that the axe used by the accused Heeralal was not sufficiently sharp and therefore, it cannot be said that the victim Rameshwar was assaulted by a sharp cutting weapon. If the axe was used for assault and it was not sufficiently sharp, also Dr. Rana found that all the injuries were caused by hard and blunt object then, it would be apparent that the prosecution failed to prove that the accused Heeralal caused the injuries to the victim Rameshwar by any sharp cutting weapon and therefore, Heeralal could not be convicted for the offence u/s 324 of the IPC and consequently, other respondents could not be convicted for that offence with the help of Section 34 of the IPC. Hence, the assault caused by Heeralal would fall within the purview of Section 323 of the IPC and therefore, the conviction reduced by the learned Additional Sessions Judge appears to be correct and the respondent Nos. 2 to 6 were convicted for five counts of charge u/s 323 of the IPC.

8. So far as the sentence is concerned, prima facie, it appears that the respondent Nos. 2 to 6 had caused so many injuries to five persons like Barelal, Mamta, Rampi Bai, Rameshwar and Gotiram. There was no right of private defence accrued to the respondent Nos. 2 to 6 and prima facie, due to that reason, the trial Court sentenced each of the respondent with three months R.I. for each count for the offence u/s 323 of the IPC but if the second view is considered, which is taken by the appellate Court then, it would be apparent that the respondent Nos. 2 to 6 were the first offender. The incident was not a preplanned incident. Barelal has accepted that the respondent Nos. 2 to 6 were trying to take their tractor from Mend of one Chhotu and still it was objected by Mamta. No map has been shown that the respondent Nos. 2 to 6 had any other way to take their tractor to their field. Under such circumstances, initially, there was no intention of the respondent Nos. 2 to 6 to cause harm to the applicants. According to the Provisions of Section 354(4) of the Cr.P.C., no Court shall pass a shorter sentence in such cases, which would be lesser than of three months and therefore, the trial Court sentenced the respondent Nos. 2 to 6 for three months R.I. Looking to the entire facts of the incident, where the respondent Nos. 2 to 6 were the first offender, there was no previous enmity between the parties and the incident was not preplanned then, it was not a case in which three months sentence could be granted.

9. Under such circumstances, the appellate Court could grant the sentence lesser than three months imprisonment but some reasons are required to be shown for grant of lesser sentence. If the facts are considered as such dependent of injuries then, three months sentence could be granted. If the sentence of till rising the Court alongwith fine is directed then, it would not be fruitful to the victims. There was no point in keeping the respondent Nos. 2 to 6 in the jail for a lesser period then, three months imprisonment. Under such circumstances, it was a fit case in which the maximum fine could be imposed and it was imposed for five counts charges of the Section 323 of the IPC so that an appropriate compensation could be given to the victims. In the present case, the appellate Court has given an appropriate compensation to each of the victims, who sustained the injuries in the incident and therefore, looking to the facts and circumstances of the case, the respondent Nos. 2 to 6 could not be sentenced for three months imprisonment and if a lesser sentence was granted then, there was no reason to grant a lesser sentence and to keep them in the jail for sometime.

10. On the basis of aforesaid discussion, the learned Additional Sessions Judge did not commit any mistake in not awarding a lesser jail sentence to the respondent Nos. 2 to 6. Looking to the peculiar facts of the case, where the respondent Nos. 2 to 6 were the first offenders, the incident was not a preplanned and there was no enmity between the parties prior to the incident, also nothing has been proved by the applicants that after the incident, the respondent Nos. 2 to 6 had repeated any crime of such nature, hence it is not a case in which any interference is required in the sentence granted by the appellate Court against the respondent Nos. 2 to 6. No illegality or perversity is

visible in the judgment passed by the appellate Court to that extent and therefore, no interference is required from the side of this Court by way of the present revision.

11. The respondent Nos. 2 to 6 could not be convicted for the offence punishable u/s 324 of the IPC either directly or with the help of Section 34 of the IPC. They could not be sent to the jail for the offences committed by them and therefore, no interference is required on the point of sentence. Consequently, the revision filed by the applicants cannot be accepted and hence, it is hereby dismissed.

12. The respondent Nos. 2 to 6 are on bail. Their presence is no more required before this Court and therefore, it is directed that their bail bonds shall stand discharged.

13. Copy of the order be sent to both the Courts below alongwith their records for information.