

(1987) 09 MP CK 0005

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 36 of 1986

Ramlal Satnami and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-09-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320
Penal Code, 1860 (IPC) — Section 147, 149, 323, 325

Citation : (1990) 35 MPLJ 123 : (1990) MPLJ 123

Hon'ble Judges : P.C. Pathak, J

Bench : Single Bench

Advocate : J. Choudhary, for the Appellant; B.P. Singh, Government Advocate, for the Respondent

Judgement

P.C. Pathak, J.

In a prosecution under sections 147, 307/149, 452, 325/149 and 323/149, Indian Penal Code, the appellants Ramlal, Chetram Shyamlal, Ashok and Bilwa @ Chowalal were found guilty and sentenced :

Under section 147, Indian Penal Code - R.I. for three months Under section 323/149, Indian Penal Code - R.I. for three months Under section 325/149, Indian Penal Code - R.I for six months Under section 452, Indian Penal Code - R.I. for two years and a fine of Rs. 250/-, in default R.I. for three months.

The learned trial Court held that the appellants having formed an unlawful assembly and made preparations to cause hurts, committed trespass into the house of Kashinath (P.W.2) and voluntarily caused grievous and simple hurts to Badri (P.W.4), Deuti Bai (P.W.3), Birjhia Bai (PW5), Prakash (P.W.8) and Laxman (P.W.9). The appellants and complainants viz. Badri, Deuti Bai, Birjhia Bai, Prakash and Laxman have applied for permission to compound the offence u/s 325/149 and have also filed composition deed in respect of offence u/s 323/149, Indian Penal Code.

All the appellants, so also the complainants Badri, Deuti Bai and Laxman appeared in the Court. These three complainants were questioned with reference to the facts on record and I am satisfied that all the three are complainants involved in the case. Badri stated that Birjhia Bai is his widowed mother. She could not come to the Court because of old age and illness. He however, confirmed that she compromised the offences with the appellants and put her thumb impressions on both the applications and the affidavit sworn by her before the Judicial Magistrate, First Class, Raipur. Deuti Bai confirmed her thumb impression on both the applications as also on her affidavit. She is the real sister of Badri. Laxman confirmed his thumb impressions on the applications so also on his affidavit. He further stated that complainant Prakash is his real brother and he put his thumb impressions on the application and the affidavit in his presence. Since he has left the village to earn his livelihood and his address is immediately not available, he could not come to the Court. Both parties reside in the same village and they have patched up their differences and are leading a peaceful and harmonious life. Therefore, the permission to compromise may be granted.

Even though Birjhia Bai and Prakash did not appear before me to confirm the compromise and putting thumb impressions on the applications, there is reliable evidence on record to hold that they signed the compromise deed and the application for permission to compromise. Even otherwise Badri, being the "Karta" of his family, he can be treated as agent of his mother. I am satisfied that all the complainants Badri, Deuti Bai, Birjhia Bai. Prakash and Laxman have compounded the offences and the same is real, legal and valid in law.

Considering the nature of offence and the voluntarily composition by the parties, it will be conducive for their peaceful life of both parties to grant the permission. In consequence of the permission and the compromise, all the appellants stand acquitted of the charges under sections 323/149 and 325/149, Indian Penal Code. Their convictions and the respective sentences must therefore, be set aside.

The appellants were also convicted under sections 147 and 452, Indian Penal Code. Both these offences are not compoundable even with the permission of the Court. Learned counsel for the appellants submitted that they were convicted for the offences of rioting. Their common object was to use force and cause hurt to the complainants. The offences under sections 323 and 325 having been compounded, the common object to use force or hurt also disappears, with the result, it automatically entails acquittal of the accused of the offence u/s 147 as well. Similar argument was advanced in respect of offence u/s 452, Indian Penal Code. Reliance was placed on State Vs. Bherulal Dagadulal Jain and Others, and Ramphal Gope and Others Vs. The State of Bihar, The submissions cannot be accepted. In order to prove commission of rioting so also house trespass with preparation to cause hurt, proof of causing hurt is not essential. That being so, the appellants cannot claim automatic acquittal of the charges under sections 147 and 452, Indian Penal Code. A Division Bench of this Court in State of M. P.

v. Rukman 1968 MPLI 700 rejected the same argument. Ramphal's case (supra) was also cited before the Division Bench but that case was distinguished. The essence of an offence u/s 143 is the combination of several persons united in the purpose of committing a criminal offence and such a combination in itself constitutes an offence distinct from the criminal offence which these persons agree to commit. So though the law may allow the later offence to be compounded, the effect of such combination is not to annul the common object charged and the prosecution u/s 143 will not fall. See State Vs. Mohan and Others, .

I may also usefully note that most of the High Courts have taken similar view and held the composition of offences under sections 325 and 323, Indian Penal Code does not entail acquittal of the charges u/s 147. See State of U.P. Vs. Janni and Others, , Emperor v. Jarnally and Ors. AIR 1925 Lah. 464. Even the Patna High Court in Deonarain Rai and Others Vs. State of Bihar, , took similar view. The Orissa and Andhra Pradesh High Courts also seem to have taken the same view.

Learned counsel for the appellants next argued that the sentences awarded to the appellants under sections 147 and 452, Indian Penal Code be reduced in view of the compromise. It was pointed out that the appellants remained in jail from 24-12-1985, the date of delivery of judgment by the learned Additional Sessions Judge to 22-1-1986. It does appear that the appellants remained in jail for about a month. Considering that the parties have patched up their differences and wish to lead ,a peaceful and harmonious life, the sentences undergone by them must be treated sufficient to meet the ends of justice and I order accordingly. The Supreme Court in Rajinder Singh Vs. State (Delhi Administration), sentenced the appellants under sections 147 and 452, Indian Penal Code to the period undergone.

The appeal is partly allowed. The convictions and sentences of the appellants under sections 323/149 and 325/149, Indian Penal Code, so also the sentences awarded to them thereunder are hereby set aside and they are acquitted. Their convictions under sections 147 and 452, Indian Penal Code are maintained and they are sentenced under both these offences to the period undergone by each of them. The sentences awarded to the appellants for these offences are hereby set aside and be substituted by the sentence awarded by this Court.