
(2012) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 473 of 2003 and Criminal Revision No. 498/03

Sabir Ali and others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357
Penal Code, 1860 (IPC) — Section 307, 325, 34, 439, 439(4)

Citation : (2012) 3 JLJ 65 : (2013) 1 MPHT 173

Hon'ble Judges : S.K. Gangele, J;Brij Kishore Dube, J

Bench : Division Bench

Advocate : T.C. Bansal in Criminal Revision No. 498/03 and S.K. Shrivastava in Criminal Appeal No. 473/03, for the Appellant; T.C. Bansal for Respondents No. 1 to 3 in Criminal Appeal No. 473/03, Prabal Solanki, Public Prosecutor for Respondent/State in Criminal Revision No. 498/03, S.K. Shrivastava in Criminal Revision No. 498/03, for the Respondent

Judgement

Gangele, J.—The appellants-accused have filed this appeal against the judgment dated 29.8.2003 passed by the learned Additional Sessions Judge, Sironj, District Vidisha in Sessions Trial No. 27/96, convicting the appellants u/s 325/ 34 of IPC and thereby sentencing each of them to suffer one year rigorous imprisonment with fine of Rs. 2,000/-. The complainant has also filed a revision petition against the same judgment which has been registered as Criminal Revision No. 498/03. The grievance of the complainant in the" revision petition is that the learned trial Court has committed error of law in acquitting the appellants from the offence u/ s 307/ 34 of IPC.

2. Both, the cases have been tagged together because the criminal revision and appeal have been arisen out of the same judgment and hence, both the cases have been heard together and they are being decided by this common judgment.

3. Prosecution case in brief is that, on 14.7.1994, at around 9:00 o'clock, complainant, Haliman Bee wife of Sardar Khan had been doing household work

and was standing nearby her field of soyabean crop, at that time the accused persons came there with 25 to 30 see-buffalos and oxen and had forcibly took them in the field of the complainant. The complainant, Haliman Bee and her husband, Sardar Khan complained to the accused persons that why they had taken their animals in their field. On this, there was some hot talk between both the parties and during that event, the appellants inflicted injuries by farsa and lathi over the person of the complainant, Haliman Bee and her husband, Sardar Khan.

4. The report of the incident was lodged by dehati nalisi and the police registered the offence u/s 307/ 34 of the IPC. Both the husband, Sardar Khan and wife, Haliman Bee were medically examined and the doctor also referred them for X-ray, thereafter, the police investigated the case and filed charge-sheet u/s 307/ 34 of IPC against the accused persons.

5. The trial Court framed charges under sections 307/ 34 and 325/34 of IPC and after trial the trial Court held that the prosecution has failed to prove that the appellants caused offence u/s 307/ 34 of IPC, however, the learned trial Court found that the appellants committed offence u/s 325/34 of IPC and awarded sentence of one year rigorous imprisonment with fine of Rs. 2,000/- each.

6. Shri S.K. Shrivastava, learned counsel for the revisionist in the revision petition contended that the trial Court has committed an error of law in acquitting the appellants from the charge u/s 307/ 34 of IPC. He further contended that there is evidence of fracture of skull and fracture of ribs suffered by Haliman Bee and her husband, Sardar Khan. They also suffered number of injuries, hence, the offence u/s 307 IPC is made out and on this ground, revision has to be allowed. In support of his contention, learned counsel has relied upon following judgments :

- (1) Ayodhya Dube and Others Vs. Ram Sumer Singh,
- (2) K. Chinnaswamy Reddy Vs. State of Andhra Pradesh,
- (3) Manjappa Vs. State of Karnataka,
- (4) P. Suresh Kumar Vs. R. Shankar,
- (5) Dr Jacob George Vs. State of Kerala,
- (6) 2004 (2) MPJR SN 53 (Satyanarain and another v. State of M.P.);
- (7) Madhu Sonkar Vs. State of M.P. and Others,
- (8) R. Prakash Vs. State of Karnataka,
- (9) Hari Kishan Vs. Sukhbir Singh and Others,
- (10) Vimal Singh Vs. Khuman Singh and Another,
- (11) Mangilal Vs. State of Madhya Pradesh,

7. Contrary to this, learned counsel for the appellants-accused persons has contended that there are contradictions and omissions in the evidence of complainant, Haliman Bee and her husband, Sardar Khan, hence, the offence u/s 325/ 34 is not made out. He further submitted that looking to the nature of evidence and the fact that the appeal is pending since 2003 and the age of the accused, Swaroop Khan is near about 70 years and other two accused are the sons of Swaroop Khan, hence, the period of sentence awarded by the trial Court be reduced to the period already undergone by them.

8. We would like to consider first the contention of learned counsel for the revision petition that whether the trial Court has committed any error of law in acquitting the appellants from the offence u/s 307/ 34 of IPC or whether this Court in revisional jurisdiction can held that the appellants are guilty for an offence u/s 307/ 34 of IPC.

9. PW1 Haliman Bee in her evidence deposed that at around 8-9 o'clock in the morning she had been doing household work. She has her agriculture field near her residence, there was soyabean crop in the field, at that time accused persons forcibly took their animals in her field for the purpose of grazing, hence, her husband had gone to the field and asked the appellants that why they had done the aforesaid act. He also tried to keep away the animals from the field, in that event Swaroop Khan, Sabir Ali and Pappu had beaten her husband. Pappu had farsa and Sabir had lathi. Swaroop Khan had inflicted an injury by farsa over the back of her husband. She further deposed that she had fallen down over her husband in order to save him and then Swaroop Khan had inflicted an injury by farsa over her and Pappu also inflicted injury over her shoulder and other parts of the body. Thereafter, her son came to the spot and he had taken her to the home and they went to Sironj where the report was lodged and they were admitted in the hospital.

10. PW2 Sardar Khan husband of the complainant in his evidence deposed the same story that the accused persons forcibly took their animals in their field for the purpose of grazing, he asked the appellants that why they had done the aforesaid act. He also tried to keep away the animals from the field, in that event Sabir Khan caught hold of his hand and abused him. Then, Swaroop Khan came and inflicted farsa blow over his right ribs. Pappu also inflicted injury by farsa over his left leg. Thereafter, he fell down and four ribs had been broken. At that time, her wife, Haliman Bee came there and she tried to save him by falling herself over him, then, Swaroop Khan had inflicted injury by farsa over her head. Pappu inflicted injury by farsa over her person of the body and thereafter, all the accused persons had beaten him and his wife by back side of farsa, thereafter his son came and he brought them to hospital.

11. These two injured eye-witnesses were medically examined. Dr. R.K. Jain (PW3), who was posted as Assistant Surgeon at Primary Health Centre, in his evidence deposed that he had examined Sardar Khan aged 55 years and found following injuries over the person of the body.

- (1) Abrasion - 1"x1/2" left side face.
- (2) Contusion - 5"x2" right scapular region vertically.
- (3) Contusion - 6"x2" right scapular region horizontally.
- (4) Contusion - 6"x2" right scapular region horizontally.
- (5) Contusion - 6"x2" right scapular region horizontally.
- (6) Contusion - 3"x2" left scapular region horizontally.
- (7) Contusion - 3"x2" left arm upper 1/3.
- (8) Contusion - 4"x2" left side back at T12 spine.
- (9) Contusion - 5"x2" left side back at T10 spine.
- (10) Contusion - 6"x2" right side scalp at S4 spine.
- (11) Contusion - 2"x1" right scalp back at T10 spine.
- (12) Lacerated wound 2"x1" right elbow.
- (13) Lacerated wound 3"x1/2"x1/4" right left upper 1/3rd.

He further deposed that he had also examined Haliman Bee wife of Sardar Khan and found following injuries and advised for X-ray :

- (1) Incised wound - 3"x1-1/2" x bone deep, centre of skull.
- (2) Lacerated wound - 2"x1/2"x1/2" right scapular region.
- (3) Contusion - 3"x2" right gluteal region of hip.
- (4) Contusion - 2"x2" right knee.
- (5) Contusion - 2"x2" right elbow.

12. Dr. Ashok Kumar (PW13) has conducted X-ray and deposed that on 16.7.1994, he had conducted X-ray of Sardar Khan and found fracture in 8th and 9th ribs. X-ray report is Ex.P-11. He further deposed that he conducted X-ray of wife of Sardar Khan and found fracture in parietal bone. X-ray report is Ex.P-12.

13. The Hon"ble Supreme Court in K. Chinnaswamy Reddy (supra), held in regard to exercise of revisional jurisdiction by the High Court in para No. 7 as under :

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of section 439 forbids a High Court from converting a finding of acquittal into one of the

conviction and that makes it all the more incumbent on High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however, indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be where the trial Court has no jurisdiction to try the case but has still acquitted the accused, or where the trial Court has wrongly shut out evidence which the prosecution wished to produce or where the appeal Court has wrongly held evidence which was admitted by the trial Court to be inadmissible, or where material evidence has been overlooked either by the trial Court or by the appeal Court or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

14. In the present case, the trial Court has observed that the incident occurred on account of some quarrel in regard to grazing of see-buffalos and oxen. There was also no pre-intention. There is no opinion of the doctor that the injury inflicted over head of the complainant, Haliman Bee was dangerous to life. Although, there was fracture of skull and there was fracture in 8th and 9th ribs of Sardar Khan, however, he himself deposed in his evidence that the fracture was caused because he had fallen down, in such circumstances, in our opinion, it could not be held that the trial Court has committed grave error in acquitting the appellants from the charge of section 307 of IPC. The cases relied upon by learned counsel for revisionist are distinguishable on facts of the present case, hence, in our opinion, there is no merit in this revision petition. It is hereby dismissed.

15. In regard to merit of the appeal, the learned counsel for the appellants has submitted that there are contradictions and omissions in the evidence of Sardar Khan and Haliman Bee, hence, the evidence is not reliable. We are not in agreement in regard to submissions advanced by the learned counsel for the appellants. The FIR was lodged promptly. Both the witnesses who are injured have specifically deposed that they received injuries over the person of their body. Injuries were corroborated by the medical evidence of Dr. R.K. Jain (PW3) and Dr. Ashok Kumar (PW13). Weapons i.e. farsa, lathi were also recovered, in such circumstances, in our opinion, the appellants are guilty for an offence u/s 325/ 34 of IPC and the judgment of conviction u/s 325/ 34 is in accordance with

law.

16. Next question is that what sentence can be awarded to the appellants. The appellants have been facing criminal proceedings since 1994 and they are on bail. The appellant No. 2 Swaroop Khan is aged 70 years and rest of the appellants No. 1 and 3 are sons of the appellant No. 2. The appellant No. 1, Sabir Ali has undergone jail sentence of 22 days, appellant No. 3, Pappu @ Afsar Khan has undergone jail sentence of one month and 4 days. The appellant No. 2, Swaroop Khan is reported to be on bail from initial stage of trial, in such circumstances, in our opinion, it would not be in the interest of justice to send the appellants again in prison.

17. In our opinion, both the husband (Sardar Khan) and wife (Haliman Bee) suffered grievous injuries, there was fracture in the skull of Haliman Bee and there was also fracture in ribs of her husband, Sardar Khan. In our opinion, it would be in the interest of justice to award compensation to the injured persons in accordance with section 357 of the CrPC.

18. The Hon'ble Supreme Court in Hari Kishan and State of Haryana (supra), has held as under in regard to awarding of compensation to the victim of the offence :

10. Sub-section (1) of section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default.

19. Looking to the nature of injuries suffered by both the persons and the fact that they were also admitted in the hospital, it would be just and proper to award a compensation of Rs. 50,000/- (Rupees Fifty thousand only) to the injured persons and the sentence awarded to the appellants by the trial Court is reduced to the period as already undergone by them.

20. Consequently, the revision petition filed by the complainant is hereby dismissed. The appeal filed by the appellants is allowed to the extent that the appellants are hereby held guilty for an offence u/s 325/ 34 of IPC, however, the sentence awarded by the trial Court is reduced to the sentence already undergone by them. All the appellants are directed to pay a compensation of Rs. 50,000/- (Rupees Fifty thousand only) to complainant, Haliman Bee and her husband, Sardar Khan and each of them shall receive compensation of Rs. 25,000/-. The compensation shall be deposited by the appellants in the Court of Chief Judicial Magistrate, District Vidisha within a period of two months from today and victims shall be eligible to recover the compensation. The Chief Judicial Magistrate, District Vidisha shall inform the fact of deposit of compensation by the appellants to the victims and he shall also disburse the same to them.

21. If the appellants fail to deposit the compensation as ordered, they are directed to surrender before the learned trial Court immediately after expiry of two months from today to serve out the remaining part of the sentence, failing which the learned trial Court shall issue arrest warrants against them and also notices to their sureties and may pass necessary orders against them. The Registry is hereby directed to send the original record forthwith for necessary compliance.