
(2018) 01 MP CK 0045
In the Madhya Pradesh High Court
Case No : 620 of 2009

Shokeen and others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 320](#), [Section 374](#) - Compounding of offences - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 147](#)

Citation : (2018) 01 MP CK 0045

Hon'ble Judges : G.S. Ahluwalia

Bench : Single Bench

Advocate : Vijay Sundaram, R.K. Awasthi

Final Decision : Allowed

Judgement

1. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 31/8/2009 passed by the Additional

Sessions Judge, Karera, District Shivpuri in S.T. No.259/2008, by which the appellants have been convicted under Section 326/149 of IPC and

have been sentenced to undergo rigorous imprisonment of two years and a fine of Rs.500/- with default imprisonment.

2. The necessary facts for the disposal of present appeal in short are that on 8/3/2008 the complainant-Sultan Shah lodged a report that at about 8

PM all the appellants came to his house with common intention and they started abusing him and he was attacked by Lathi and stones causing

several injuries on his body. When his brother-Insar came to save him, then he too was assaulted by appellants by pelting stones and Lathis. His

wife Rati, son Shahid and daughter Sameena tried to intervene in the matter,

they too were assaulted by the appellants either by pelting stones or by Lathi, as a result of which, all the injured persons had suffered several injuries. The police registered the FIR for offence under Sections 147, 294, 336, 323 and 326 of IPC. The trial court by order dated 17/12/2008 framed charges under Sections 147 and 326/149 of IPC for causing injuries to the injured persons.

3. During pendency of the trial, it appears that an application under Section 320 of Cr.P.C. was filed for compounding the offence. The trial court

after considering the evidence, which has come on record, came to the conclusion that the grievous injury was caused to complainant-Sultan,

therefore, the appellants are guilty of committing offence under Section 326/149 of IPC, whereas simple injuries were caused to injured Insar, Rati,

Shahid and Sameena and, therefore, the appellants are also guilty of committing offence under Section 323 read with Section 149 of IPC. Since

the parties had already compromised the matter, therefore, the appellants were acquitted for causing simple injury to injured Insar, Rati, Shahid

and Sameena and they were acquitted from offence under Section 323/149 of IPC. Since the grievous injuries were caused to the complainant-

Sultan and the offence punishable under Section 326 of IPC is not compoundable, therefore, the appellants were convicted for offence under

Section 326 read with Section 149 of IPC and they were sentenced to undergo rigorous imprisonment of two years and a fine of Rs.500/- with

default imprisonment.

4. Being aggrieved by the judgment and sentence passed by the trial court, the present appeal was filed. During pendency of this appeal, an

application (IA No.10986/2013) was filed under Section 320 of Cr.P.C. by the appellants and the injured persons for compromise. The said

application was taken up for consideration by this Court on 4/4/2014 after the factum of compromise was got verified from the Principal Registrar

and by order dated 4/4/2014 the compromise application was rejected because the offence under Section 326/149 of IPC is not compoundable

and the following order was passed:-

.....The said application is not compoundable. Hence, compromise petition cannot be accepted. Yet it can be considered at the stage of final

hearing of the appeal.

Thus, this Court by order dated 4/4/2014 observed that the effect of compromise can be considered by the Court at the time of final hearing.

5. During pendency of this appeal, it appears that the appellant no.6-Kamlu alias Kamal Shah expired and after getting the factum of his death

verified, this Court by order dated 23/8/2017 observed that since Kamlu alias Kamal Shah (appellant no.6) has expired, therefore, this appeal

stands abated so far as the appellant no.6 is concerned.

6. It is submitted by the counsel for the appellants that the parties have compromise their dispute. Even during pendency of the trial, an application

under Section 320 of Cr.P.C. was filed and after considering the said compromise / compounding of offence the trial court acquitted the appellants

from offence under Section 323/149 of IPC for causing simple injuries to injured Insar, Rati, Shahid and Sameena. Even during the pendency of

this appeal, an application under Section 320 of Cr.P.C. was filed. Since the offence under Section 326 of IPC is not compoundable and,

therefore, in the light of the judgment passed by the Supreme Court in the case of Narinder Singh & Ors. v. State of Punjab & Anr. reported in

(2014) 6 SCC 466, the proceedings cannot be quashed on the basis of compromise at the appellate stage, therefore, this Court by order dated

4/4/2014 did not entertain the application filed under Section 320 of Cr.P.C. However, the effect of compromise can always be considered while

considering the question of sentence.

7. Heard learned counsel for the appellants and the counsel for the State.

7.1 So far as the conviction of appellants is concerned, the same has not been challenged with vehemence by the counsel for the appellants. Sultan

(PW-1) has specifically stated that he was beaten by the appellants. The MLC report Ex.P/15 corroborates the evidence of Sultan (PW-1). The

injuries were found to be grievous in nature. Since the findings of the trial court with regard to commission of offence have not been challenged,

therefore, the conviction of the appellants for offence under Section 326/149 of IPC is hereby affirmed.

7.2 So far as the question of sentence is concerned, undisputedly the appellants and the complainant had filed an application under Section 320 of

Cr.P.C. before the trial court, which was partially allowed and the appellants were acquitted from offence under Section 323/149 of IPC. A

similar application was filed before this Court, which was registered as IA No.10986/2013, but since the same is not maintainable at the appellate stage, therefore, the same has been rejected. However, it has also been observed in the order dated 4/4/2014 that the effect of this application shall be considered at the time of final hearing. Since the parties have resolved their dispute and they are residing peacefully and in harmony, therefore, this Court is of the view that the sentence awarded by the trial court can be modified.

7.3 From the record, it appears that the appellants were in jail from 1/5/2008 to 7/5/2008, i.e. six days. In the light of the compromise arrived at between the parties, this Court is of the view that the period of jail sentence already undergone by the appellants would serve the interest of justice by enhancing the fine amount.

7.4 Since Sultan had sustained grievous injuries, therefore, under the facts and circumstances of the case, where the application under Section 320 of Cr.P.C. was filed before the trial court as well as before this Court, the sentence awarded by the trial court is modified and it is directed that the period of jail sentence already undergone by the appellants would be sufficient.

7.5 Accordingly, the sentence of two years' rigorous imprisonment awarded to the appellants by the trial court for offence under Section 326/149 of IPC is reduced to the period already undergone by them and the fine amount is enhanced to Rs.2,500/-. The fine amount shall be payable within a period of three months from today.

8. It is made clear that in case if the fine amount is not deposited within a period of three months from today, then the sentence awarded by the trial court shall automatically get revived and the trial court shall be free to issue warrants against the appellants for undergoing the remaining jail sentence. Accordingly, the judgment and sentence dated 31/8/2009 passed by the Additional Sessions Judge, Karera, District Shivpuri in S.T. No.259/2008 is hereby affirmed with aforesaid modification. With aforesaid modifications the appeal succeeds and is hereby allowed.