
(2009) 07 MP CK 0078
In the Madhya Pradesh High Court

State of Madhya Pradesh

APPELLANT

Vs

Bhagwandas and Others

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2009) 07 MP CK 0078

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—This appeal is directed by the State of Madhya Pradesh being aggrieved by the judgment dated 3.2.2000 passed by the IIIrd Additional Sessions Judge, Damoh in Criminal Appeal No. 7/99 setting aside the judgment passed by the Judicial Magistrate, Ist Class, vide dated 30.1.99, Damoh in Criminal Case No. 925/98 convicting the respondents u/s 147, 148, 149, 323 and 324 of IPC and sentencing to each of them u/s 323/149 and 324 r/w Section 149 of IPC for RI six months in each of the count u/s 323 and 324 r/w 149 of IPC, while no separate punishment was awarded u/s 147 and 148 of IPC. The punishment was directed to run concurrently.

2. The facts giving rise to this appeal in short are that on dated 1.10.93 at about 4 o'clock in the noon the complaint Saroj Kumar lodged a FIR at Police Station, Damoh, Rural contending that today at about 1 o'clock in the noon between him and Halke Yadav, the respondent No. 2 some quarrel regarding damage of the crop took place at the school, in which Halke Yadav caused him blows of stick on his right shoulder and left rib, for which to lodge the report his brother Dilip, Narmada and others went to Police Station. On their returning from the Police Station at about 4 o'clock the respondents lashed with stick and axe with their common object for causing the injuries to the complainant party came to the place of complainant and started the beating of Ramesh, Shiv Dayal, Dilip, Sudha Bhai and Uma Bai. Resultantly, they sustained injuries when Mukesh, Rambai and

Chhota Bhajju came to rescue them, then they were also subjected to beating by the respondents with the aforesaid means. The incident was witnessed by various villagers including Hirabai. Soon after the incident the FIR, Ex. P-1 was lodged with the Police, Damoh, Rural. After arresting the respondents and interrogating the witnesses on concluding the investigation the respondents were charge sheeted for the offenses u/s 147, 148, 149, 324 and 323 of IPC. On framing charges the respondents abjured the guilt, on which trial was held. On appreciation of the evidence the trial court held the respondents guilty and sentenced them, as referred to above. Such conviction and sentences were challenged by the respondents before the Subordinate Appellate Court. After hearing the parties, on re-appreciation of the evidence the appellate court held that the prosecution has failed to prove the offence against the respondents beyond reasonable doubt as the story put fourth by it has not been supported by any independent sources of evidence and by setting aside the judgment of trial court holding conviction has acquitted the respondents, on which the appellant - State of M.P. has come forward with this appeal.

3. Shri T.K. Modh, learned Dy. Advocate General after taking me through the evidence said that the case put fourth by the prosecution has been proved by the victims and their corresponding injuries are also proved by the doctors who examined them and prepared their MLC reports. In such premises, when the testimonies of victims are proved by medical evidence, then there was no scope for acquitting the respondents by discarding such evidence only on the ground that the same is not supported by any independent source of evidence. In such premises, he prayed for setting aside the judgment of the appellate court with further prayer for restoring and affirming the judgment of the trial court by allowing this appeal.

4. On the other hand Shri Y.K. Gupta, learned appearing Counsel for the respondents by justifying the impugned judgment said that the judgment of the trial court was rightly set aside on re-appreciation of the evidence by the appellate court. He also said that it is undisputed fact on record that there was some earlier enmity between the parties and in such circumstances the respondents-accused could not be convicted unless the story put fourth by the victims is supported by the independent source of evidence or the independent eye witnesses. In such premises, the impugned judgment of the appellate court do not require any interference. In alternative he said that on setting aside the judgment of the appellate court and restoring the conviction of the respondents awarded by the trial court, looking to the nature of the offence and considering the circumstance that alleged incident took place long back in the year 1993 and thereafter no criminal antecedents have been reported against any of the respondents and they being first offender be extended the benefit of Probation of Offenders Act and in any case if such benefit is not extended, then by adopting some lenient view their awarded jail sentences be remitted by imposition of some fine under the discretion of the court and firstly prayed for dismissal of the appeal and in alternative prayed to pass appropriate order in the light of his

alternative submission.

5. Having heard the Counsel at length, I have gone through the record of both the courts below and also perused the judgment.

6. The story put fourth in the FIR, Ex. P-1 has been proved by the complainant, Saroj Kumar, (PW-2) in his deposition, he specifically stated about the acts and active participation of the respondents in the alleged incident with further averments that the respondents had caused such injuries to the victims in furtherance of the common object of their unlawful assembly. His testimony is further supported by other injured witnesses Shiv Dayal, (PW-1), Ramesh Prasad Yadav, (PW-3), Mukesh Yadav, (PW-4), Umarani, (PW-5), Ramarani, (PW-6), Sudhabai, (PW-7), and Narmada Prasad Yadav, (PW-8). I have not found any inter se inconsistency in the deposition of the aforesaid examined witnesses. Even on going through their cross examinations, I have not found any circumstance destroying their versions stated in their chief.

7. The corresponding injuries of the victims, Ramarani, Sudharani, Saroj Kumar, Mukesh, Dilip Kumar, Shivdayal and Vinod Yadav are further proved by Dr. G.K. Jain who examined them and prepared their MLC report Ex. P-3 to Ex. P-11. While the injuries of Ramesh is proved by Dr. A.K. Tiwari who examined him and prepared MLC report, Ex. P-12.

8. Inspite availability of the aforesaid evidence the appellate court has acquitted the respondents by setting aside the judgment of the trial court on the ground that the story put fourth by the victims has not been supported by any independent source of the evidence and in view of earlier enmity between the parties, the testimonies of the victims could not be relied upon unless the same is supported by the independent source of evidence.

9. Nowadays it is settled proposition of law that in each and every case the independent corroboration or examination of the independent witness to support the prosecution case is not necessary. If the testimonies of the victims appear to be reliable and trustworthy in view of the other available circumstance and evidence on record, then the accused can be convicted on such evidence. In the present case it is apparent that story put fourth by the victims has been further proved by doctors who medically examined them and prepared their MLC reports, in which corresponding injuries were found on the respective persons of the victims. In such premises, it is revealed that the appellate court has committed a grave error and perversity in disbelieving the victims - prosecution witnesses and extending the acquittal to the respondents. In such premises, the judgment of the appellate court deserves to be and is hereby set aside. Consequently the judgment of the trial court convicting the respondents, as referred to above, is hereby restored and affirmed.

10. Coming to the question for extending the benefit of Probation of Offenders Act to the respondents is concerned, after perusing the MLC report of the victims and the depositions of the doctors and also keeping in view the nature of incident

alongwith other available circumstance of the case even after fifteen years from the date of the incident, I do not find fit to extend such benefit to the respondents. Accordingly such argument of the respondents" Counsel is hereby failed.

11. Coming to the another submission of the respondents" Counsel for remitting their jail sentences by imposition of some amount of fine under the discretion of the court is concerned, I have found some substance in it. The alleged incident took place long back before fifteen years in the year 1993 and since then the respondents are facing the mental agony of the case. In such premises, instead to send them to jail for facing the sentence awarded by the trial court, I deem fit to modify and remit their jail sentence by imposing some fine in both the Sections 323/149, 324/149, in which they have been punished and same is modified.

12. In view of the aforesaid discussion, by allowing this appeal the judgment of the appellate court acquitting the respondents is hereby set aside and by restoring and affirming the judgment of the trial court their awarded conviction is hereby upheld. However, the jail sentence of all the respondents is modified and the same is remitted by imposition of fine of Rs. 1000/- u/s 323/149 of IPC and Rs. 1500/- for the offence u/s 324/149 against each of the respondents. Such fine is to be deposited within 60 days from today, failing which the concerning respondent will have to suffer one month RI for each of the defaults. The trial court is directed to take appropriate step against the respondents, if the amount of fine is not deposited by them within the aforesaid period. It is also made clear that if at present the concerning trial court is not functioning then in that circumstances the aforesaid direction shall be complied with by the Chief Judicial Magistrate, Damoh.

13. The appeal is allowed with aforesaid observations and modification in the jail sentence of the respondents, as indicated above.