

(2023) 02 CHH CK 0086
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 3479 Of 1999

Sukhsagar

APPELLANT

Vs

State Of Madhya Pradesh (Now State Of C.G.)

RESPONDENT

Date of Decision : 02-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 147, 294, 302, 336, 337
Code Of Criminal Procedure, 1973 — Section 386

Citation : (2023) 02 CHH CK 0086

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Arun Kochar, Ishwari Ghritlahre

Final Decision : Partly Allowed

Judgement

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 26.11.1999 passed by the IInd Additional District & Sessions Judge, Bilaspur (M.P. now CG) in Sessions Trial No. 489/97 whereby and where under, the appellants have been held guilty of commission of offence and sentenced as described below :-

Conviction

Sentence

U/s 304 Part-II of IPC

Appellant No.1 Ramnath

R.I. for 03 Years & Fine of Rs.500/-, in default of payment of fine further undergo R.I. for 01 month.

U/s 336 of IPC

Appellant No. 2 to 8

R.I. for 02 months.

2. Appellant No. 1 (Sukhsagar), Appellant No.5 (Deleram) and Appellant No.6 (Ramnath) have already expired during the pendency of the appeal as such so far as appeal relates to these appellants stands abated. The appellant Keshram, Gwal Kumar, Ramji, Soan, Dileram, Ramnath and Bishnoo remained in custody from 16/09/1995 to 20/12/1995 i.e. 03 month and 04 days whereas they have been convicted for 02 months u/s. 336 of I.P.C. Therefore, appeal so far as these appellants are concerned stands abated as they have already undergone the sentence more than sentence awarded to them. Now the appeal confines to the appellant No. 7 Radhe only. The record of the case would show that Radhe was granted anticipatory bail by the trial court during trial and after conviction bail has been granted to the appellant on 10/01/2000 as such he was not undergone jail sentence as awarded by the trial court.

3. Case of the prosecution in brief is that on the fateful day i.e. on 05/09/1995 at about 18:30 pm when complainant Lachhan, Ramnath, Ramnarayan, Manmohan, Jitendra, Dasoram were sitting at that time from the Ganesh Pandaal one Sujit has abused daughter of Prem. thereafter, the appellants gathered there and started abusing and throwing the stones to him, therefore complainant and other associated had gone into the house Manmohan. Thereafter, the complainant has lodged FIR on 05/09/1995 at Police Station- Masturi contending that due to stones which have been thrown, one Kunjram has suffered injury in his head. He was Medically Examined on 06/09/1995 and it is found that he has sustained one injury on his head measuring 3x1x2 cm. and others namely Sukhwara Bai, Jitendra, Rikhiram, Ramin Bai, Anjuna, Jagjivan, Ram Narayan , Bharat Lal, Buri Bai, Kishnoo, Gunaram, Dili Kumar have have sustained injury from the stones thrown by the appellants. The injured Kunjram had expired on 14/09/1995. The prosecution on the basis of complaint investigated the matter and submitted final report against the appellants for commission offence under Sections 147, 294, 336, 337 and 302 of the I.P.C.

4. The matter was sent by the learned trial court to the Sessions Judge, Bilaspur for trial. In order to prove the guilt of the accused, the prosecution has examined as many as 19 witnesses namely Dr. M.K. Rai (PW/1), Prabhaka Yadav (PW/2), R.Tigga (PW/3), Vishan Prasad (PW/4), Prem Chand (PW/5), Kishun (PW/6), Guna Ram (PW/7), Sukhwanti Bai (PW/8), Devkumar (PW/9), Dilip Kumar (PW/10), Budheswar (PW/11), Nikabai (PW/12), Mant Ram (PW/13), Matru Ram (PW/14), Janak Ram (PW/15), H.Kerkatta (PW/16), Bhagwantin Bai (PW/17), Jagjivan Ram (PW/18), Lochan (PW/19). Exhibited documents Ex.P/1-Ex.P/13A applications for medical examination of victim and opinions of the doctor. Panchnama (Ex.P/14 to Ex.P/15), Spot Map (Ex.P/16). (Ex.P/17) application for examination of dead body with postmortem report.(Ex.P/34). Duty certificate (Ex.P/18), Seizure Memo (Ex.P/19), statement of witnesses (Ex.P/20 to Ex.P/28), property seizure memo (Ex.P/29), death certificate of Kunjram (Ex.P/30), Morgue intimation (Ex.P/31), FIR (Ex.P/32) dated 05/09/1995,

statement of witness (Ex.P/33), letter written by Police Station incharge (Ex.P/36), Morgue intimation (Ex.P/37), statement of witnesses (Ex.P/38), arrest memo (Ex.P/39 to Ex.P/61), spot map (Ex.P/62), Panchanama (Ex.P/63), Patwari report (Ex.P/64), receipt of OPD (Ex.P/65), Bed head ticket of Kunjram (Ex.P/66).

5. Star witness of the prosecution is Bhawantin Bai PW/17 who has narrated the incident took place on 05/09/1995. In her examination-in-Chief she has categorically stated that Kunjram her father-in-law expired on account of injuries sustained by stones which were thrown by the appellant No.1 who already expired during the pendency of the appeal. Her father-in-law is assaulted by Sukhsagar, Resham, Mya, Chunu, Sunder, Sagar, Sushil, Sujit, Kesar, Tarachand, Geeta, Mohar, Ajay, Ramnath, Son, Dayal, Makram, Ramji, Gwal, Timak including the present Radhe and other accused has injured Kunjram by assaulting him. Prosecution has also examined Jagjivan Ram(PW/18) who is son of injured has stated that all the accused entered to the house and started throwing stones upon his father and caused injury on his left knee. This witness remained firm during cross-examination. Therefore, the learned trial court after appreciating the evidence and material available on record has convicted the appellant No.1 for commission of offence u/s. 304 Part-II of the I.P.C. R.I. for 03 years and all the other accused were convicted for commission of offence u/s. 336 of the I.P.C. for 03 months except Radhe who was granted anticipatory bail granted by the trial court and all the other appellant have undergone more than the sentence awarded by the trial court. Therefore, except Radhe the appeal stands abated.

6. The learned counsel for the appellant would submit that trial court without appreciating the evidence and material on record has convicted the appellant and the conviction against Radhe deserves to be set-a-side. Alternatively he would submit that the incident took place on 05/09/1995 and since then during trial he was appearing before the court and even after conviction he is regularly appearing before the trial court as directed by this court. She would further submit that the appellant has not misused the liberty granted to him and it was his first offence, thereafter he was not involved in any of the offence. She would further submit that incident was taken place on 05/09/1995 and now almost 28 years have already been lapsed. Therefore, kindly suspended in lieu of sentence of two months, the appellant may be awarded the sentence of fine .

7. The learned counsel for the State would submit that the the trial court has categorically considered the statement of Bhagwatin Bai who has narrated the incident took place and has clearly identified the person who have thrown stones and were involved in the commission of offence. Thus finding recorded by the trial court convicting the appellant u/s. 336 of the I.P.C. is legal, justified and does not warrant any interference. She would further submit that it is well settled position of law that the statement of injured person cannot be ignored by the court as he is the first person of the incident. She would further submit that there are slight contradiction and omissions in the statement of injured person which does not vitiate the prosecution case and would pray for dismissal of the

appeal.

8. In the light of the above stated legal position it is clear that the Bhagwatin Bai (PW/17) has categorically narrated name of the present appellant which remained unshaken during cross-examination. Thus the finding recorded by the trial court with regard to sentencing the appellant u/s. 336 of the IPC does not suffer from perversity or illegality which warrant interference by this court exercising its appellate power under section 386 of the Cr.P.C.. Therefore the order of conviction does not warrant any interference by this court.

9. Now this court has to examine whether there are mitigating factors available on record to interfere in the quantum of sentence awarded by the trial court. Considering the fact of incident took place on 05/09/1995 whereby 28 years have been lapsed and since then appellant is appearing before the trial court and even after admission of appeal by this court, appellant appearing before the trial court, thus for last 28 years appellant is appearing before the trial court and has not misused the liberty granted by this court during bail and also considering the sentence awarded u/s. 336 of the I.P.C., no minimum sentence has been prescribed by the statute and shall be punished with imprisonment of either description for a term which may be extended to 03 months or with fine which may be extended to two hundred and fifty rupees or with both.

10. Considering the provision of 336 of the I.P.C. and facts and circumstance of the case, I am of the opinion that the end of justice would be served if in lieu of jail sentence of 02 month awarded to the appellant, the appellants is awarded sentence of fine amount of Rs.5000/- while maintaining the conviction under section 336 of the I.P.C. The appellant shall deposit the fine within three months from today before the learned trial court, failing which the appellant shall undergo the sentence of two month as awarded by the trial court. The fine amount shall be payable to the survival victim or her legal representative by the concerning trial court.

11. With the aforesaid direction, the criminal appeal is allowed in part.