
(2018) 04 MP CK 0160

In the Madhya Pradesh High Court

Case No : Criminal Revision No.485, 473 OF 2010

Surendra Goswami And Anr

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 25-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 323, 325, 504
Probation of Offenders Act, 1958 — Section 5(1)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2018) 04 MP CK 0160

Hon'ble Judges : G.S. AHLUWALIA, J

Bench : Single Bench

Advocate : Amit Lahoti, Rukuvendra S. Ghuraiya

Final Decision : Dismissed

Judgement

This common judgment shall also dispose of criminal revision No. 473/2010 which has been filed by the complainant for enhancement of sentence.

2. Both the criminal revisions have been filed against the judgment dated 10/5/2010 passed by Dharminder Singh, Fourth Additional Judge to the Court

of First Additional Sessions Judge, Gwalior in Criminal Appeal No. 146/2010 by which the appeal filed by applicant Surendra Goswami was allowed in

part and the sentence awarded by the trial Court was modified whereas the appeal filed by complainant Surendra Mishra for enhancement of

sentence was dismissed. The Court of JMFCÂ Gwalior by judgment dated 19/3/2010 passed in Criminal Case No. 13003/2006 had convicted

applicant Surendra Goswami for an offence under Section 325 of IPC and had awarded simple imprisonment of six months and a fine of Rs.1000/-

with default imprisonment.

3. The necessary facts for the disposal of the present revision, in short, are that on 16/3/2006 at about 11:00 am, the complainant Surendra Mishra was getting, watering of his under-construction house. At that time, when applicant Surendra Goswami was passing from the place of incident, then some drops of water had fallen on him, as a result of which, he started abusing the complainant Surendra Mishra. When the complainant objected as to why applicant Surendra Goswami is abusing him, then applicant Surendra Goswami picked up a wooden log lying on the spot and assaulted in between the elbow and wrist of the right hand of the complainant, as a result of which, he sustained injury. The complainant went to the police station to lodge the FIR. However, at the first instance, the cognizance was not taken by the police and he was sent to JA Hospital, Gwalior for treatment and only after getting x-ray report of the right hand of the complainant in which a fracture of radius bone was found, Crime No. 311/2006 was registered against applicant Surendra Goswami for offence under Sections 323, 325 and 504 of IPC. The spot map was prepared and the statements of the witnesses were recorded. Applicant Surendra Goswami was arrested and a charge-sheet was filed for offence under Sections 323, 325 and 504 of IPC. The Trial Court, by order dated 17/11/2006, framed charge under Sections 323, 325 and 504 of IPC.

4. Applicant Surendra Goswami abjured his guilt and pleaded not guilty.

5. The prosecution, in order to prove its case, examined Surendra Mishra (PW-1), Surajpal Singh (PW-2), Satyendra Singh Jadon (PW-3), L.S. Baghel (PW-4), Dr. S.K. Maheshwari (PW-5), Dr. S.K.S. Bhadkaria (PW-6), Mahesh Kumar Sharma (PW-7) and Alok Singh Bhadoriya (PW-8).

6. Applicant Surendra Goswami examined Satyapal Giri in his defence as DW-1.

7. The trial Court, after recording the evidence of the parties and considering the submissions, convicted applicant Surendra Goswami for offence under Section 325 of IPC and sentenced him to undergo simple imprisonment of six months and a fine of Rs.1000/- with default imprisonment.

8. Being aggrieved by the judgment and sentence passed by the trial Court, applicant Surendra Goswami as well as the complainant Surendra Mishra filed two different criminal appeals. The criminal appeal filed by applicant Surendra Goswami was registered as Criminal Appeal No. 146/2010 whereas the criminal appeal filed by complainant Surendra Mishra was registered

as Criminal Appeal No. 193/2010. Applicant Surendra Goswami

had filed an appeal for seeking setting aside the judgment and sentence passed by the trial Court and sought his acquittal whereas the appeal filed by

complainant Surendra Mishra was for enhancement of sentence. The appellate Court, by a common judgment dated 10/5/2010 passed in Criminal

Appeal Nos. 146/2010 and 193/2010, dismissed the appeal filed by the complainant Surendra Mishra and upheld the conviction of applicant Surendra

Goswami, but modified the sentence awarded by the trial Court and the jail sentence awarded by the trial Court was set aside and applicant Surendra

Goswami was directed to be released on probation of good conduct on furnishing probation bond to the satisfaction of the trial Magistrate in the sum

of Rs.20,000/- with one surety with an undertaking to keep peace and to be of good behavior during the period of one year and, meanwhile, to appear

and receive sentence whenever called upon to do so and the fine amount of Rs.1,000/- was enhanced to Rs.12,000/- with default imprisonment. Out

of the fine amount of Rs.12,000/-, it was directed that an amount of Rs.10,000/- shall be paid towards the compensation to the complainant whereas

the remaining amount of Rs.2,000/- was converted into the cost of proceedings under Section 5 (1) of the Probation of Offenders Act, 1958.

9. Being aggrieved by the dismissal of the criminal appeal No. 193/2010, complainant Surendra Mishra has filed criminal appeal No. 473/2010 whereas

applicant Surendra Goswami has filed Criminal Revision No. 485/2010 challenging the judgment passed by the Fourth Additional Judge to the Court of

First Additional Sessions Judge, Gwalior in Criminal Appeal No.146/2010.

10. Challenging the conviction recorded by the Courts below, it is submitted by the counsel for the applicant that the Courts below have not

appreciated the evidence which has come on record and has failed to consider that the Investigating Officer, at the initial stage, had come to a

conclusion that no such incident has taken place, therefore, the conviction of applicant Surendra Goswami is bad in law. Although, none appears for

complainant Surendra Mishra to press criminal revision No. 473/2010, but the grounds raised in the memo of revision are considered because while

deciding the criminal revision No. 485/2010, adequacy of the sentence imposed by the appellate Court shall also be under consideration. It is

mentioned in the memo of revision that the manner in which the offence is

committed by applicant Surendra Goswami, the sentence awarded by the appellate Court is inadequate and it should be enhanced and applicant Surendra Goswami should be awarded the rigorous imprisonment of seven years.

11. Heard the learned counsel for applicant Surendra Goswami and considered the grounds raised in criminal revision No. 473/2010.

12. Surendra Mishra (PW-1) has specifically stated that the watering of his under-construction house was going on and few drops of water fell on the applicant, who was bypassing the area. The applicant started abusing the complainant and when it was objected by him, the applicant picked up a wooden log lying on the spot and assaulted on his right hand resulting in fracture of his radius bone.

13. Although, the counsel for the applicant has tried to challenge the correctness of the allegations made by complainant Surendra Mishra by referring to the evidence of L.S. Baghel (PW-4), who had stated in his examination-in-chief that after initial investigation, it was found that no incident has taken place and, accordingly, a final report was prepared, but since the said final report was not accepted by the superior officers, therefore, the charge-sheet was filed for getting the matter adjudicated from the Court.

14. So far as the evidence of L.S. Baghel (PW-4) is concerned, it is the stand of this witness that he found that no such incident has taken place, therefore, he had prepared the final report. As the final report prepared by this witness was not accepted by his superior officers and under the CrPC, the superior officers are competent to issue instructions to the subordinates, therefore, the superior officers directed to file the charge-sheet so that the matter may be adjudicated upon by the Court. Under these circumstances, it cannot be said that the evidence of complainant Surendra Mishra (PW-1) is untrustworthy or unreliable.

15. Furthermore, the evidence of Surendra Mishra (PW-1) is corroborated by the evidence of Satyendra Singh Jadon (PW3), who had witnessed the incident and he specifically stated that as some drops of water had fallen on the applicant because of watering of the under-construction house of the complainant, therefore, the applicant started abusing the complainant and when the complainant objected to it, the applicant picked up a wooden log lying on the spot and assaulted the complainant as a result of which, the

complainant fell down. This witness intervened in the matter. In

cross-examination, this witness has specifically clarified as to why he was present on the spot.

16. Although, this witness can be said to be a chance witness, but the evidence of the chance witness cannot be rejected merely on the ground that

they are a chance witness. Further the evidence of Surendra Mishra (PW-1) is corroborated by the medical evidence.

17. Dr. S.K.S. Bhadkaria (PW-6) has stated that on examining the complainant Surendra Mishra, he had found swelling on his right elbow which could

have been caused by a hard and blunt object and he had referred the patient for x-ray and his MLC report is Ex.P-6. Only two questions were put to

this witness in his cross-examination and he admitted that such type of injury could be caused to the victim because of fall or because of clash with

some hard and blunt object.

18. Dr. S.K. Maheshwari had taken the x-ray of the right hand of complainant Surendra Mishra and had found that complainant Surendra Mishra had

suffered the fracture of radius bone of the right hand. The x-ray report is Ex.P-5 and the x-ray plate is Ex. P-5A. Only one question was put to this

witness in cross-examination and he admitted that the fracture could have been caused because of fall from a vehicle. Although, a suggestion was

given to complainant Surendra Mishra that he had suffered an injury because of fall from the scooter, but the same was denied.

19. Applicant Surendra Goswami has admitted in his statement under Section 313 of CrPC that because of the property dispute, he has been falsely

implicated. Applicant Surendra Goswami has examined Satyapal Giri in his defence as DW-1. Satyapal Giri has also stated that because a property

dispute was going on between the applicant and the complainant, therefore, the applicant has been falsely implicated.

20. Thus, it is clear that a property dispute is going on between the complainant and the applicant. The applicant and the complainant are undisputedly

not related to each other, therefore, the property dispute cannot be said to be a family dispute. It is the case of complainant Surendra Mishra (PW-1)

himself that as the watering of his under-construction house was going on and few drops of water had fallen on the applicant, therefore, he started

abusing the complainant. Thus, it is clear that the said incident can be said to be

a property dispute which has been admitted by the applicant in his statement under Section 313 of CrPC as well as which has been admitted by the defence witness Satyapal Giri in his examination-in-chief itself.

21. Thus, it is clear that the prosecution has succeeded in establishing beyond reasonable doubt that watering of the under-construction house of the

complainant Surendra Mishra was going on and when applicant Surendra Goswami was bypassing the locality, few drops of water had fallen on

applicant Surendra Goswami and by way of reaction, Surendra Goswami started abusing complainant Surendra Mishra and when it was objected by

complainant Surendra Mishra, then the applicant picked up a wooden log lying on the spot which is used as a building material and assaulted the

complainant causing fracture of radius bone of the right hand of the complainant.

22. Thus, This Court is of the considered opinion that the prosecution has established beyond reasonable doubt that the applicant has committed an

offence punishable under Section 325 of IPC.

23. So far as the question of sentence is concerned, it is well established principal of law that the sentence has to be as per the gravity of offence and

the manner in which the offence was committed is also to be considered.

24. It is clear that the house of the applicant as well as the complainant are situated nearby. The watering of the underconstruction house of the

complainant was going on and since the applicant was bypassing the area, therefore, some drops of water had fallen on the applicant. Falling of drops

of water when the watering of an under-construction house is going on cannot be said to be a deliberate act on the part of the complainant. The

applicant is alleged to have got annoyed and started abusing and when it was objected by the complainant, the applicant picked up a wooden log lying

on the spot and gave a single blow to the complainant resulting in fracture of radius bone of his right hand. Thus, the manner in which the incident is

alleged to have taken place, it is clear that the wooden log which was lying on the spot was a building material used for construction of the house and

the abuses by the applicant were objected by the complainant, therefore, he picked up one of the wooden log lying on the spot. It is not the case of the

prosecution that applicant Surendra Goswami thereafter went to some other place in order to have some weapon in his hand, therefore, it is clear that

the entire incident took place in a heat of passion as already observed by this

Court. Falling of water drops because of watering of a under-construction house cannot be a deliberate act on the part of the complainant, therefore, it cannot be said that the complainant had provoked the applicant. The watering of an under-construction house is visible even from a distant place, therefore, the applicant could have avoided, but unfortunately few drops had fallen on him and he lost his temper and started abusing the complainant and in a heat of passion gave a blow on the hand of the complainant by means of a wooden log lying on the spot itself.

25. Under these circumstances, this Court is of the considered opinion that the appellate Court did not commit any mistake in extending the benefit of Probation of Offenders Act to the applicant. Since, the complainant had sustained fracture of radius bone of his right hand, therefore, the appellate Court did not commit any mistake in enhancing the fine amount from Rs.1,000/- to Rs.12,000/-. Under the facts and circumstances of the case, this Court is of the considered opinion that the sentence awarded by the appellate Court is just and proper.

26. Consequently, the conviction of applicant Surendra Goswami for offence under Section 325 of IPC recorded by the JMFC, Gwalior by judgment dated 19/3/2010 passed in Criminal Case No.13003/2006 and the judgment of conviction and sentence dated 10/5/2010 passed by the appellate Court i.e. Fourth Additional Judge to the Court of First Additional Sessions Judge, Gwalior in Criminal Appeal No. 146/2010 is hereby affirmed.

26. Accordingly, Criminal Revision No. 473/2010 filed by the complainant Surendra Mishra for enhancement of sentence is dismissed as well as the Criminal Revision No. 485/2010 filed by applicant Surendra Goswami is also dismissed.