

(2020) 02 MP CK 0048

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.4568, 5189-2019

Surendra Singh And Rajpal And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 320, 374

Indian Penal Code, 1860 — Section 34, 148, 149, 294, 307, 313, 323, 324, 325, 326

Citation : (2020) 02 MP CK 0048

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Vivek Singh, Yogesh Gupta

Final Decision : Partly Allowed

Judgement

1. This judgment shall also govern for disposal of Criminal Appeal No.4568/2019 as the common question of law is involved in both the appeals.

2. The appellants have preferred the present appeal under Section 374 of Cr.P.C., being aggrieved by judgment dated 14/05/2019 passed by the IV

Additional Sessions Judge, Dewas, District- Dewas in S.T. No.256/2018, whereby they have been convicted for offence punishable under Sections

148, 323, and 307/149 of the I.P.C. and sentenced them to undergo rigorous imprisonment of 2 yrs, 3 months and 7 years with fine of Rs.500/-,

Rs.500/- and Rs.1,000/- respectively and in default of payment of fine, 2 months, 1 month and six months additional rigorous imprisonment. Their jail

sentence shall be run concurrently.

3. For the sake of brevity, the facts narrated in Criminal Appeal No.5189/2019 are as under:-

4. On 20.2.2018 the complainant Jitendra was sitting at his shop with his

maternal uncle Babusingh, at that time, appellant Rakesh came at the shop of Jitendra and demanded a pouch. Complainant asked for paying the money on which there was an altercation between complainant Jitendra and appellant Rakesh. After ten or fifteen minutes appellants Rakesh, Surendra Singh and Shubham armed with lathi and appellant Rajpal armed with sword came at the shop of complainant Jitendra and appellant Rakesh, Shubham and Surendra Singh caused injury to complainant Jitendra by lathi. On hearing the shout of Jitendra, Babusingh came to intervene and appellant Rajpal gave a sword blow on the head of Babusingh, appellant Sarwan and Jaisingh also came on the spot armed with lathi and exhorted rest of the appellants. Injured were taken to the hospital from where Lalusingh was referred to MY. Hospital, Indore as his condition was not good. The Police reached the hospital where Dehati Nalishi Ex.P/1 was lodged under Sections 307, 323, 294, 34 and 324 of the IPC and on the basis of which, F.I.R. at Crime No.306/2018 (Ex.P/20) was registered. Thereafter, investigation got started and statements of witnesses were recorded under Section 161 of Cr.P.C. The accused persons were arrested vide arrest Memo Ex.P/11 to P/16. From the possession of complainant Jitendra blood stained pant and shirt of injured Babusingh was seized vide Ex.P/3 and from the possession of the appellants the alleged weapons were seized vide seizure memo Ex.P/5 to P/10. All the seized articles were sent for F.S.L. examination vide letter of S.P. Ex.P/21 to Jhuman Ghat Rau and the F.S.L. report was proved at Ex.P/23. The accused persons were arrested. On completion of the investigation, the accused person was duly charged for offence under Sections 307, 323, 294, 34, 324 of the IPC and put to their trial.

5. On committal, the accused persons abjured their guilt and stated that they have been falsely implicated in the matter. On considering the evidence, the trial Court has convicted and sentenced the present appellants for offence as indicated hereinabove. Hence, the present appeal.

6. Learned counsel for the appellants submits that, the appellants have been convicted for offence under Section 307/149 of the IPC for having causing injury to Babusingh, but as per medical evidence of Dr. Devndra Arya (P.W. 10) the nature of injury is simple in nature. The incident as per the prosecution story took place on a trivial issue and there was no previous

enmity between the complainant as well as the appellants and injured

Babusingh sustained a single injury. Therefore, believing the prosecution story that is the ocular evidence and the medical evidence no offence under

Section 307/149 of the IPC would be made out, at the most it would be an offence under Section 324/149 of the IPC.

7. Learned counsel for the appellants further submits that, the matter was compromised between the parties and the compromise has duly been

verified before the Principal Registrar of this Court on 26.8.2019. To bolster his submissions, learned counsel for the appellants has relied on the

judgment passed by the Apex Court in the case of Ishwar Singh Vs. State of Madhya Pradesh reported in AIR 2009 SC 675 has held as under:-

13. Now, it cannot be gainsaid that an offence punishable under Section 307 of IPC is not a compoundable offence. Section 320 of

the Cr.P.C., 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time,

however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise

between the parties for the purpose of reduction of sentence.

14. In the cases of Jetha Ram vs. State of Rajasthan reported in (2006) 9 SCC 255 ;Murugesan and others vs. Ganapathy Velar

reported in (2001) 10 SCC 504 and Ishwarlal vs. State of M.P. reported in JJ 1983 (3)SC 366 (1) thereby the Court while taking into

account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though

the offences were not compoundable. But it was also stated that in Mahesh Chand vs. State of Rajasthan: reported in AIR 1988 SC

2111 such offence was ordered to be compounded.

15. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code

ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant

deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant

circumstance which, the Court may keep in mind.

16. In the instant case, the incident took place before more than fifteen years;

the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he is not released on bail. Considering the totality of facts and circumstances, in our opinion, ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused No.1) is reduced to the period already undergone.

17. For the foregoing reasons, the appeal deserves to be partly allowed and accordingly 6 allowed by maintaining the conviction

recorded by the trial court and confirmed by the Appellate Court but by reducing the sentence already undergone by the appellant.

The sentence of payment of fine is not disturbed. If the appellant has not paid the amount of fine, he will pay such amount within four weeks from today.â??

In the case of Bankat and another vs. State of Maharashtra; reported in 2005 Cr.L.R.(SC)17, where the conviction was under Sections 325 and 326

read with Section 34 of IPC it has been held that:

16. â??However, considering the fact that the parties have settled their dispute outside the Court, the fact that 10 years have elapsed

from the date of the incident, and the further fact that the appellants have already undergone several monthsâ?? imprisonment, ends

of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of

Rs.5000/- on each of the accused under Section 326 read with Section 34 of IPC. In default of payment of fine, the appellants concerned

shall undergo imprisonment for a further period of six months. We also refrain from imposing any separate sentence on the other

counts of offences. Out of the fine amount, if realized, a sum of Rs.4000/- also be paid to each of the injured as compensation.â??

In the case of Mohan Barman and another vs. State of Assam and another: reported in (2008) 1 SCC (Cri.) 161, where the offence under Section 313

read with Section 34 of IPC considering the similar issue the Honâ??ble Supreme court has held that:

â??10. The first decision on this point was High Court of Madhya Pradesh 7 CRA No.5354/19 rendered by this Court in Ram Pujan

and others vs. State of Uttar Pradesh, wherein the trial court had convicted the accused under Section 326 of IPC which is a non-

compoundable offence and had sentenced the accused to four years R.I. The High Court took into consideration the compromise

between the appellant-accused and the injured and reduced the sentence to two years R.I. This Court, after observing that the fact of

compromise can be taken into account in determining the quantum of sentence, reduced the sentence to the period already undergone

which was little more than four months and further imposed a fine of Rs.1500/- on each of the appellants. Surendra Nath Mohanty and

another vs. State of Orissa is a decision of a Bench of three learned Judges. It was observed that in view of the legislative mandate

contained in Section 320 of Cr.P.C. an offence can be compounded only in accordance with the provisions of the said Section. The Court

followed the view taken in the case of Ram Pujan and having regard to the fact that the parties had compromised and a period of ten

years had elapsed from the date of the incident reduced the sentence of five years R.I. imposed under Section 307 and 326 of IPC to

the period of sentence already undergone which was three months and also imposed fine of Rs.5000/-â??

11. There are several other decisions of this Court wherein factor of compromise has been taken into consideration and the sentence

has been reduced mostly to the period already undergone and they are Bankat and another vs. State of Maharashtra, Badrilal vs. State

of M.P. and Jetha Ram and others vs. State of Rajasthan.

12. Following the view taken in the above noted cases we are of the opinion that the complainant and the principal accused having

already married it will be in the interest of justice if the sentence is reduced to the period already undergone. The appeal is accordingly

partly allowed. The conviction of the appellants under Section 313 IPC is maintained but the sentence is reduced to the period already

undergone which appears to be about ten months. The fine imposed upon the appellants is also set aside. The appellants are on bail.

Their sureties and bail bonds are discharged.â??

8. In such circumstances, learned counsel for the appellants submits that the Courts below had failed to appreciate the evidence and there are material omissions and contradictions in the testimony of the prosecution witnesses. Therefore, he prays that the appeal be allowed and the impugned judgment be set aside.

9. Learned Public Prosecutor, on the other hand, has submitted that the judgment of the Trial Court is in accordance with law and does not require any interference and prays for dismissal of the appeal.

10. Having heard the learned counsel for the parties and also perused the record.

11. As far as the present case is concerned, conviction under Section 323/149 of the IPC, the appellants are entitled for acquittal as Section 323 read with 149 of the IPC is compoundable offence.

12. As far as Section 307 /149 of the IPC is concerned, the appellants deserves to be acquitted and instead they should be convicted for the offence under Section 324/149 of the IPC for causing injury to injured Babusingh. The appellants have been convicted for the offence under Section 148 of the IPC which again happens to be a compoundable offence and, therefore, the appellants deserves to be acquitted.

13. As far as the conviction part under Section 324/149 of the IPC for causing injury to Babusingh is concerned, in Cr.A. No.5189/2019 appellant

No.1 Surendra has under gone a total period of 2 months and 19 days and appellant No.2 Rajpal has undergone 9 months and 2 days. As far as

Cr.A.No.4568/2019 is concerned, appellant No.1 Shubham and appellant No.3 Rakesh had undergone a period of 2 months and 6 days and appellant

No.2 Jaysingh and appellant No.4 Sarvan has undergone a period of 3 months and 12 days in total. Undisputedly, the matter has been compromised

between the parties who are neighbours and residing in same village and the dispute no longer exists.

14. In the light of the aforesaid, the appeal is partly allowed. The appellants are acquitted from offence under Sections 323/149 and 148 of the IPC.

The conviction of the appellants for offence under Sections 307/149 is converted into one offence under Section 324/149 of the IPC and their jail

sentence is reduced to the period already undergone. In Cri.A No. 5189/2019 appellant No.2 Rajpal is in custody since the date of judgment, he be released forthwith. The bail bonds and the surety bonds of the appellants are hereby discharged.

15. Original signed judgment be retained in Cri.A. No.5189/2019 and a copy whereof be placed in the record of Criminal Appeal No.4568/2019.

16. A copy of this judgment be sent to the concerned trial Court for compliance.