
(2009) 08 MP CK 0109
In the Madhya Pradesh High Court

The State of Madhya Pradesh

APPELLANT

Vs

Rajesh Kumar and Lallu Prasad Tripathi and Others

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 323, 324, 325, 34

Citation : (2009) 08 MP CK 0109

Hon'ble Judges : Sushma Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sushma Shrivastava, J.—This judgment shall govern the disposal of Criminal Appeal No. 2233/2000 and Criminal Appeal No. 324/01, both preferred by State of Madhya Pradesh against appellate judgment dated 30.06.2000 passed by Special Judge, Rewa in Criminal Appeal No. 209/99 arising out of the judgment dated 09.08.99 passed by Judicial Magistrate First Class, Rewa in Criminal Case No. 502/97. Criminal Appeal No. 324/2001 is against acquittal of the respondents No. 1 to 4 u/s 323, 324/34 and 325 of IPC whereas Criminal Appeal No. 2233/2000 is for enhancement of the sentence imposed on respondents No. 2 to 4 by the impugned judgment.

2. Respondents No. 1 to 4 were tried for the offences u/s 323, 324/34 and 325/34 of IPC before Judicial Magistrate First Class, Rewa. As per prosecution allegations, on 24.6.93 about 8 "O'clock in the morning, when complainant Rajmani Dwivedi was going to his field at Kherwa alongwith his labourers Dongwa Kol and Khutiya Kol for putting soil in the field and reached near the house of the respondents, Heeramani Shukla intercepted and asked him not to put soil in the field. At the same time, the other respondents came there armed with farsa, lathi, danda and at the instigation of respondent Heeramani, respondent Santosh gave farsa blow on the scalp of complainant Rajmani Dwivedi. When he fell down, the other respondents also began assaulting him causing several injuries on his body with a fracture in his right ulna bone. The

matter was reported to the Police. On the basis of written report lodged by complainant Rajmani, an offence was registered against the respondents at Police Station, Semariya and was investigated. Injured Rajmani was sent for medical examination. After due investigation respondents were prosecuted u/s 341, 294, 323, 324, 325, 506B/34 of IPC and were put to trial.

3. After trial, learned Judicial Magistrate First Class, Rewa convicted and sentenced the respondents for the offences u/s 323, 324/34, 325/34 of IPC by judgment dated 09.08.99 passed in Criminal Case No. 502/97.

4. On appeal being preferred by respondents, the appellate Court set aside the conviction and sentence passed on respondent No. 1 Lallu and acquitted him of the charges u/s 323, 325, 324/34 of IPC; the conviction of respondents No. 2 and 3 u/s 324/34 of IPC and conviction of respondent No. 4 Santosh u/s 323/34 and 325/34 of IPC were also set aside, but the conviction of the respondents No. 2 and 3 u/s 323, 325/34 of IPC and as also the conviction of respondent No. 4 u/s 324 of IPC was affirmed by the impugned judgment. However, the sentences passed on them by Judicial Magistrate First Class, Rewa were modified and respondents No. 2 and 3 were sentenced to imprisonment till rising of the court with fine of Rs. 1200/- each, in default further rigorous imprisonment for two months u/s 325 of IPC and respondent No. 4 Santosh was sentenced to imprisonment till rising of the court with fine of Rs. 1,000/-, in default rigorous imprisonment for fifteen days, u/s 324 of IPC by the impugned judgment, which has been challenged in the two appeals.

5. Learned Counsel for the appellant/State submitted that the lower appellate court erroneously acquitted the respondent No. 1 of the charges u/s 323, 324/34 and 325 of IPC and it also erroneously acquitted the respondents No. 2 and 3 u/s 324/34 of IPC and respondent No. 4 u/s 323, 325/34 of IPC, despite there being cogent evidence of injured Rujmani Dwivedi (P.W-3) and the other dependable evidence against them in this behalf.

6. Learned Counsel for the State also submitted that the lower appellate court also erroneously reduced the impugned sentence of imprisonment of Respondents No. 2 to 4 to imprisonment till rising of the court, which was not warranted in facts and circumstances of the case for the offences u/s 324 & 325 of IPC.

7. Learned Counsel for the respondents, on the other hand, submitted that there was no cogent evidence against respondent No. 1 to warrant his conviction. He also submitted that the facts and circumstances of the case did not call for any severe punishment to respondents No. 2 to 4. He further submitted that the incident of the case is of the year 1993 and it would not be just and proper to enhance the sentence of imprisonment of respondents No. 2 to 4 and send them to jail after long passage of time.

8. Record of the lower court is perused. Injured Rajmani Dwivedi (P.W-3) has nowhere stated in his examination-in-chief that respondent No. 1 Lallu assaulted

him or was armed with lathi or danda. There is an omni bus statement against respondent No. 1 Lallu in Para 7 of his cross-examination. Similarly other eyewitness, namely, Ram Vishvas (P.W-2) has also not stated anything against respondent No. 1 Lallu. P.W-4 Surendra Kumar Pandey himself did not witness the incident. In fact, on over all consideration of the evidence available on record, the view taken by the lower appellate court that the offences u/s 323, 324, 325 of IPC were not proved against respondent No. 1, is reasonably possible view and is not found to be perverse so as to call for any interference. It is also well settled that in appeal against acquittal even if two views are possible, the view that favours the accused has to be adopted. As such acquittal of respondent No. 1 u/s 323, 324, 325/34 of IPC does not warrant any interference.

9. Similarly, the acquittal of respondents No. 2 and 3 u/s 324/34 of IPC and acquittal of respondent No. 4 Santosh u/s 323, 325/34 of IPC is also based on due appreciation of the evidence on record and is found to be proper and does not call for any interference. The appeal against acquittal filed by State against respondents thus has no merit and is hereby dismissed.

10. Considering the facts and circumstances of the case, particularly the fact that only one fracture in the right ulna bone of injured Rajmani Dwivedi was caused and fine of Rs. 1200/- each was already imposed on respondents No. 2 and 3 u/s 325 of IPC, the sentence of imprisonment till rising of the court imposed on them by the lower appellate court also calls for no interference, after such a long passage of time. Similarly, considering the facts and circumstances of the case including the fact that the offence u/s 324 of IPC is also optionally punishable with fine only, and when respondent No. 4 was adequately punished byway of fine of Rs. 1000/-, no case for enhancement of sentence of imprisonment on respondent No. 4 was made out. Thus, Criminal Appeal No. 2233/2000 also has no merit and the same is hereby dismissed.

Two appeals are accordingly disposed of.