

(2009) 09 MP CK 0003
Madhya Pradesh High Court
Case No: None

Laljee and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Sept. 7, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 360
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 323

Hon'ble Judges: Sushma Shrivastava, J

Bench: Single Bench

Judgement

Sushma Shrivastava, J.

Appellants have preferred this appeal challenging their conviction and order of sentence passed by Additional Sessions Judge, Rewa in S.T. No. 99/97, decided on 18.11.99.

2. Appellant No. 1 Laljee has been convicted u/s 148, 324, 323 read with Section 149 of IPC and sentenced to rigorous imprisonment for one year for the offences u/s 148, 324 of IPC respectively and to rigorous imprisonment for three months with fine of Rs. 500/- u/s 323/149 of IPC, while the other appellants No. 2 to 9 have been convicted u/s 147, 324 read with Section 149 and 323/149 of IPC and sentenced to rigorous imprisonment for three months, one year and three months each with fine of Rs. 500/- for the respective offences by the impugned judgment. All the sentences were directed to run concurrently.

3. According to prosecution, on 30.10.96 about 11 "O"clock in the morning at village Dagardua, when complainant Amritlal was harvesting paddy crop in his land bearing Khasra No. 91 and 92 alongwith his labours, appellants nine in number armed with weapons came there and raised an objection to cutting of the crop. Complainant Amritlal then told them that he is in possession of the land and case was pending in the High Court, one who wins will get the land, then appellants

began assaulting him by means of lathi, spade, sickle and katta causing injuries near his right eye. They also fired katta on his labour Jagannath causing firearm injuries. Ramesh, Siyadulari, and Satyaprakash also sustained injuries in the incident. Upon hue and cry Vishwanath Singh, Shivendra Tiwari and others came to their rescue. Out of fear complainant Amritlal did not go to Police Station Garh for lodging the report, however, he reported the matter at Police Station Civil Lines, which was recorded in the Rojnamcha. Injured Jagannath, Siyadulari, Satyaprakash and Amirtlal were sent for medical examination. Upon receipt of their medical reports and the X-ray report of injured Jagannath, offence was registered against the appellants at Police Station Garh and was investigated. Spot map was drawn. After due investigation, appellants were prosecuted u/s 147, 148, 149, 323, 307 of IPC and were put to trial.

4. Appellants denied the various charges framed against them u/s 147, 148, 307/149 and 323/149 of IPC and pleaded false implication due to enmity and land dispute.

5. According to appellants, there was a civil litigation between appellant No. 1 Laljee and complainant party, which was decided in favour of appellant No. 1 Laljee on 18.10.96; appellants Premlal and Dadulal, therefore, had gone to plough the field, but they were prevented by complainant party armed with weapons; the other appellants were not at all present on the place of occurrence. Appellants had also examined two witnesses in their defence.

6. Learned Additional Sessions Judge, after trial and upon appreciation of the evidence adduced in the case, came to hold that offence u/s 307 of IPC was not proved against the appellants, but found them guilty for committing riot and causing hurt to Jagannath by firearm and simple hurt to Amritlal, Satyaprakash, Siyadulari and Ramesh by hard and blunt object, convicted and sentenced them as aforesaid, by the impugned judgment, which has been challenged in this appeal.

7. Arguments of both the sides were heard. Record of the lower court perused.

8. The conviction of the appellants is founded mainly on the testimony of five eyewitnesses, namely, Amritlal (P.W-1), Satyaprakash (P.W-2), Siyadulari (P.W-3), Jagannath (P.W-5) and Ramesh Prasad (P.W-6) coupled with medical evidence and other evidence. Learned Counsel for the appellants submitted that the trial court erroneously convicted the appellants on the basis of inconsistent and unreliable testimony of the partisan witnesses and failed to appreciate the defence evidence properly. Learned Counsel for the appellants also submitted that the trial court failed to consider the plea of alibi taken by certain appellants and overlooked the fact that there was a judgment in favour of appellant No. 1 Laljee and appellants had right to plough the field and protect their possession, thus right of private defence was available to them.

9. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellants.

10. A perusal of the evidence on record reveals that P.W-1 Amritlal, P.W-2 Satyaprakash, P.W-3 Siyadulari, P.W-5 Jagannath and P.W-6 Ramesh Prasad are the injured eyewitnesses, their presence on the place of occurrence, therefore, can hardly be doubted. The first Information report was also lodged by P.W-1 Amritlal on the same day at Police Station Civil Lines, which was recorded in Rojnamcha by Head Constable Babulal Dwivedi (P.W-8) on 30.10.96 at 4.25 P.M., on the basis of which an offence was registered at Police Station Garh by S.H.O. Bhupendra Singh (P.W-10).

11. P.W-1 Amritlal deposed in his evidence that on 30.10.96 about 11 "O"clock in the morning, when he was harvesting crop in his southern field alongwith his labour, all the appellants, namely, Laljee, Dadulal, Premlal, Baidnath, Akhand Pratap, Virendra Prasad, Chatur @ Chaturbhuj, Badku and Raja armed with lathi, Sickle and Katta came there on a tractor; appellant Laljee asked him as to why he was cutting the crop, he then replied that he was in possession and had sown the crop, then appellant Laljee told him that he had won the case, but complainant asserted that he had also filed an appeal, therefore, he would cut the crop; thereafter appellants Akhand Pratap & Virendra Prasad grappled with him, when his son Satyaprakash and labour Jagannath etc. came to his rescue, appellant Laljee fired Katta injuring the left buttock of Jagannath (P.W-5). According to Amritlal (P.W-1), appellants also assaulted his son Satyaprakash (P.W-2), Ramesh (P.W-6), who had rushed to the place of occurrence, as well as to Siyadulari (P.W-3).

12. P.W-2 Satyaprakash, P.W-3 Siyadulari, P.W-5 Jagannath and P.W-6 Ramesh Prasad also corroborated the aforesaid incident and they specifically deposed about the presence of all the nine appellants on the place of occurrence and their involvement in the assault made on the injured persons; they also specifically deposed about firing Katta by appellant Laljee. According to Satyaprakash (P.W-2), he was assaulted by appellants Premlal & Chaturbhuj and when his aunt Siyadulari came there, she was also assaulted by appellant Dadulal causing injuries on back side of her left ear, when Ramesh came there, he was also assaulted by appellants Raja and Chaturbhuj. He also deposed that appellant Laljee had fired Katta causing injuries to Jagannath (P.W-5).

13. P.W-3 Siyadulari also deposed that when she had reached the place of occurrence in southern field, she had seen the appellants using force and appellant Laljee had fired Katta. According to P.W-3 Siyadulari, appellant Dadulal had caused injuries on her left ear.

14. P.W-5 Jagannath also deposed that on 30.10.96 about 10 "O"clock, when he was harvesting southern field of complainant Amritlal, appellants armed with lathi, Katta and Sickle came there, began abusing and assaulting and appellant Laljee had fired a katta causing injuries on his left buttock. According to P.W-6 Ramesh Prasad, when he saw the appellants abusing and assaulting Amritlal (P.W-1), he rushed to the place of occurrence alongwith Siyadulari (P.W-3) and Satyaprakash (P.W-2) and

witnessed that appellant Laljee had fired Katta and when he tried to help his father Jagannath, he was also assaulted by appellants Baidnath, Badku and Raja.

15. It is also evident from the testimony of Dr. A.A. Siddiqui (P.W-7) that on 30.10.96 on medical examination of Jagannath (P.W-5) he had found a punctured wound of 1/2 x 1/2 cm on the left side of his buttock in the upper part caused by firearm. This injury was, however, said to be simple. Dr. Atul Singh (P.W-9), upon X-ray examination of left buttock of Jagannath, had also seen a radio opaque well defined round shadow of metallic density over his left ilium suggestive of foreign body like pellet.

16. It is also borne out from the evidence of Dr. A. A. Siddiqui (P.W-7) that on medical examination of Siyadulari a lacerated wound of 2 x 1/2 x 1/2 cm was found over occipital region of her scalp at right side, which was also simple in nature and a lacerated wound of 1 x 1 cm above right eyebrow on the right side with clotted blood was found on the person of Amritlal (P.W-1) and there was also an abrasion of 1 x 1 cm over his face on right side with clotted blood. As per evidence of Dr. A.A. Siddiqui (P.W-7), certain simple injuries on the person of Satyaprakash (P.W-2) and simple injuries on the person of Ramesh Prasad (P.W-6) were also detected on their medical examination as per their MLC reports Ex.P-4 and Ex.P-5. The MLC reports of Jagannath (P.W-5), Siyadulari (P.W-3) and Amritlal (P.W-1) (Ex.P-2, Ex.P-3 and Ex.P-6) are also placed on record. There are no cogent reasons to discard the aforesaid medical evidence.

17. In view of the various injuries found on the person of complainant Amritlal (P.W-1), Satyaprakash (P.W-2), Siyadulari (P.W-3), Jagannath (P.W-5) and Ramesh (P.W-6), their presence on the place of occurrence, as already said, cannot be doubted. Although the aforesaid witnesses were cross-examined in extensor and also confronted with their respective police statements as to the omission of certain parts of their statement, which though suggestive of some exaggerations, is not such so as to cast any doubt on their presence on the place of occurrence. Even otherwise, it is not much significant if the aforesaid five witnesses were already cutting the crop in the field and remained present since beginning or they reached there upon hue and cry. The fact remains, as it transpires from the evidence, that they reached the place of occurrence sooner or later and became subject of assault or force at the hands of the appellants, whose presence is categorically deposed by each of them. In fact, it is clearly evident from the testimony of aforesaid injured eyewitnesses that all the nine appellants came together to the place of occurrence, where complainant Amritlal was harvesting the crop and some of them used force and assaulted them causing various injuries on their persons. It is also clearly evident from their testimony that appellant Laljee had fired a katta causing firearm injury on the left buttock of Jagannath (P.W-5). This injury, as described by Dr. A.A. Siddiqui (P.W-7), does not appear, as suggested, to be self inflicted.

18. Learned Counsel for the appellants submitted that there is a contradiction and inconsistency in the number of fires made by appellant Laljee in the testimony of P.W-1 Amritlal and P.W-5 Jagannath, but such discrepancy is not unnatural in the depositions recorded after lapse of time and does not render their whole testimony as unreliable, particularly when a firearm injury was found by Dr. A. A. Siddiqui (P.W-7) on the left buttock of P.W-5 Jagannath and radio opaque shadow was also seen in his X-ray examination by Dr. Atul Singh (P.W-9).

19. Although appellant No. 1 Laljee examined Branch Manager Heeralal (D.W-2) of Co-operative Bank, Garh in his defence to show with the help of attendance register that on the day of occurrence he was present on duty in the Bank, but D.W-2 Heeralal clearly admitted that he did not regularly check the signatures on the attendance register and there was no such checking-note on the attendance register after 12.10.96 and evidently appellant Laljee had not signed the attendance register before him. Thus, his evidence does not rebut the presence of the appellant Laljee on the place of occurrence, which was deposed to and established the by evidence of number of prosecution witnesses. Needless to emphasize that burden to prove the plea of alibi lies on the accused persons. The plea of alibi taken on behalf of appellant Laljee and certain other appellants has not been duly established by the evidence on record.

20. Learned Counsel for the appellants placing reliance on the testimony of another witness examined in defence, namely, Shivendra Kumar Tripathi (D.W-1), submitted that the complainant party was the aggressor. However, the evidence of D.W-1 Shivendra Kumar Tripathi does not inspire confidence. Had it been true, as deposed by him, that complainant party being armed with lathi, Sickle and katta were using the same and preventing appellants Dadulal and Premlal from ploughing the field, complainant party itself would not have sustained injuries; instead some of the appellants would have sustained injuries in the incident, but there is no such evidence on record that any of the appellants sustained injuries or any report was lodged by them against complainant party. Thus the evidence of D.W-1 Shivendra Kumar Tripathi is not found to be reliable.

21. As regards the exercise of right of private defence of property, learned Counsel for the appellants emphatically urged that there was a decision in favour of appellant Laljee against complainant party and there was no stay from the Appellate Court, appellants had right to plough the land, but admittedly, as documents filed by defence also indicate, the decision rendered in favour of appellant Laljee was subject to appeal and even the stay was declined by this Court much after the date of occurrence. Moreover, there was no substantive evidence on record to indicate that the crop, which complainant party was trying to cut, was sown by appellants so as to give rise to exercise of right of private defence of property on the part of appellants. Thus, the plea of right of private defence of person or property was not established from the evidence on record and it was rightly rejected by the trial court.

22. The mere fact, as submitted that by learned Counsel for the appellants, that the matter was reported by Amritlal (P.W-1) at Police Station Civil Lines Rewa, instead of Police Station Garh, in view of the explanation given by him in para 18 of his deposition, which appears to be quite natural and acceptable, does not create any doubt on the prosecution case.

23. In fact, upon scanning the entire evidence on record, the finding of guilt recorded by the trial court against appellant No. 1 Laljee u/s 148, 324, 323/149 of IPC and against other appellants u/s 147, 324/149 and 323/149 of IPC does not suffer from any infirmity so as to warrant any interference in appeal.

23. As regards the sentence, learned Counsel for the appellants submitted that appellant No. 1 Laljee was a public servant and appellant No. 4 was more than 70 years of age, the occurrence also took place about thirteen years back and the offences for which the appellants were found guilty are also optionally punishable with fine only, they should not be sent to jail after elapse of long passage of time; rather they should have been dealt with under the provisions of Section 360 of the Cr.P.C. and the benefit of probation should have been extended to them. Learned Counsel for the appellants also cited the decisions reported in [Prakash Vs. State of Madhya Pradesh](#), & [Ayub and others Vs. State of Uttar Pradesh](#), in this behalf.

24. Now in a case where as many as five persons were injured and Katta was also used, none of the appellants deserved the benefit of probation. However, considering all the facts and circumstances of the case, including the simple nature of injuries caused to all the five injured persons and the fact that about thirteen years have elapsed after the occurrence, in my opinion, interest of justice would be sub served if mere sentence of fine is imposed on the appellants for each of the offences in lieu of the impugned sentence of imprisonment.

25. Accordingly, the appeal is partly allowed. The conviction of the nine appellants, as recorded by the trial court, are upheld, but various sentences of imprisonment awarded to them are hereby set aside. However, appellant No. 1 Laljee shall pay an amount of fine of Rs. 1000 (One thousand only) for the offence u/s 148 of IPC, in default simple imprisonment for one month, an amount of Rs. 1000/- (One thousand only) for the offence u/s 324 of IPC, in default simple imprisonment for one month, and fine of Rs. 1000/- (one thousand only) for the offence u/s 323/149 of IPC, in default simple imprisonment for one month. Similarly, appellants No. 2 to 9 shall pay an amount of Rs. 1000/- (one thousand only) each for the offence u/s 147 of IPC, in default simple imprisonment for one month, fine of Rs. 1000/- (one thousand only) each in default simple imprisonment for one month, for the respective offences u/s 324/149 and 323/149 of IPC. Thus, the total amount of fine Rs. 3000/- (three thousand only) shall be paid by each of the appellants, to be deposited within three months from today. The amount of fine of Rs. 500/- (five hundred only) as imposed by the trial court on the appellants u/s 323/149 of IPC, if deposited, shall be deducted or adjusted in the amount of fine imposed on the appellants u/s 323/149

of IPC.

Appeal is accordingly disposed of.