
(2013) 04 MP CK 0034

Madhya Pradesh High Court

Case No: Criminal Revision No. 632 of 2012

Laxminarayan and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision: April 15, 2013

Acts Referred:

- Penal Code, 1860 (IPC) - Section 294, 323, 325, 34, 506

Hon'ble Judges: N.K. Gupta, J

Bench: Single Bench

Advocate: A.D. Mishra, for the Appellant; Prakash Gupta, Panel Lawyer, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.K. Gupta, J.

The applicants were convicted for the offence punishable under sections 325/34 of IPC vide judgment dated 29.9.2011 passed by the learned JMFC, Sehore (Shri Upendra Pratap Singh) in criminal case No. 1549/2010 and each sentenced for 6 months" rigorous imprisonment with fine of Rs. 1,000/-. In criminal appeal No. 250/2011 vide judgment dated 28.3.2012, the learned Sessions Judge, Sehore partly allowed the appeal, the sentence for the offence punishable u/s 325 of IPC was reduced to the period from 6 months rigorous imprisonment to 1 month rigorous imprisonment. Being aggrieved with the judgments passed by both the Courts below, the applicants have preferred the present revision. The prosecution's case, in short, is that, on 19.7.2010, at about 7 p.m. in the evening, the victim Janki Bai (P.W. 1) alongwith her niece Vinita (P.W. 2) was going to house of Haricharan (P.W. 3) at village Khandwa (Police Station Doraha, District Sehore). Haricharan told her to go back to her house and he would call a Panchayat and therefore, she went to her house alongwith her niece. In the way, the applicants met her. They assaulted her by sticks, kicks and fists. She sustained so many injuries. The witnesses saved her. The complainant Janki Bai lodged an FIR, Ex. P/1 at Outpost-Shyampur, Police Station

Doraha against the applicants. She was sent for her medico legal examination to Community Health Center, Shyampur, where she was examined by Dr. H.P. Singh (P.W. 5), who gave his report, Ex. P/3. Two blunt wounds were found to the victim. One was near the right eye and second one was on the right hand. She was referred for her x-ray examination and it was found that her left humerus bone was fractured. X-ray report, Ex. P/5 was given by Dr. H.P. Singh himself.

2. The applicants abjured their guilt. They have stated that they were falsely implicated in the matter. Narayan Singh (D.W. 1), Manish (D.W. 2) and Laxminarayan (D.W. 3) were examined in defence.

3. The learned Judicial Magistrate First Class, Sehare, after considering the evidence adduced by the parties, acquitted the applicants from the charge of offence punishable u/s 294 and 506 (Part-II) of IPC but, convicted them for the offence punishable u/s 325/34 of IPC and sentenced them as mentioned above, whereas in the appeal filed by the applicants, their jail sentence was reduced to the period of 1 month's rigorous imprisonment.

4. I have heard the learned counsel for the parties.

5. After considering the evidence adduced by the prosecution, it appears that the victim Janki Bai (P.W. 1) and Vinita (P.W. 2) were the eye witnesses, whereas Haricharan (P.W. 3) and Vishnu Bai (P.W. 4) were not the eye witnesses. The victim Janki Bai has stated that when she was coming back from the house of Haricharan, the applicant Mohan assaulted her by a stick and therefore, she sustained injuries. Thereafter, the other applicants also assaulted her by kicks. The witness Vinita has stated in an omnibus manner that all of the applicants assaulted the victim. However, looking to the medical report, Ex. P/3, it appears that the victim Janki Bai sustained only two injuries caused by the applicant Mohan. The testimony of the victim Janki Bai is duly corroborated by the eye witness Vinita, timely lodged FIR, Ex. P/1 and medical report proved by Dr. H.P. Singh, it is proved beyond doubt that the applicant Mohan assaulted the victim for two times and voluntarily caused grievous hurt to the victim Janki Bai. It is alleged against the other applicants that they assaulted the victim Janki Bai by kicks but, no visible injury was found due to those kicks. However, they participated in the crime.

6. The applicants have examined the defence witnesses Narayan Singh (D.W. 1), Manish (D.W. 2) and Laxminarayan (D.W. 3) to show a strange fact that the victim fell in a ditch prepared by the employees of Public Health Engineering Department. However, such suggestion was not given to the victim Janki Bai. The defence witness Manish (D.W. 2) could not say anything about that incident. Under such circumstances, there was no utility of the defence evidence, to the applicants. It is proved beyond doubt that the applicants had voluntarily caused hurt to the victim and the applicant Mohan caused a grievous hurt.

7. So far as the common intention of the remaining applicants is concerned, it is apparent that the remaining applicants assaulted the victim Janki Bai by kicks. They did not have any arm in their hands and therefore, it is possible that they might not have any knowledge that by the assault, the applicant Mohan would cause a fatal injury to the victim Janki Bai. Hence, common intention of the applicants Laxminarayan and Jainarayan cannot be presumed with their co-accused Mohan. The applicants Laxminarayan and Jainarayan did not assault the victim by any weapon and they did not cause her a grave injury. Under such circumstances, they could not be convicted for the offence punishable u/s 325 of IPC either directly or with help of section 34 of IPC. They could be convicted for the offence punishable u/s 323 of IPC at the most. The learned JMFC as well as the learned Sessions Judge have committed an error of law in convicting the applicants Laxminarayan and Jainarayan for the offence punishable u/s 325/34 of IPC.

8. So far as the sentence is concerned, it appears that the incident took place in a spur of moment. The applicant Mohan was also the first offender, who gave only two blows to the victim and one was given with a force, so that the victim sustained a fracture. The appellate Court reduced his sentence for one month's rigorous imprisonment. However, he remained in the custody for 11 days during the pendency of this revision. Looking to his first offence, it would be proper that his sentence may be reduced to the period, which he has already undergone in the custody by enhancement of some fine amount. Remaining applicants are responsible for the offence punishable u/s 323 of IPC only. They assaulted the victim Janki Bai by kicks and therefore, sentence of 11 days appears to be sufficient for them.

9. On the basis of the aforesaid discussion, the revision filed by the applicants is hereby partly allowed. Conviction directed against the applicant Mohan for the offence punishable u/s 325/34 of IPC is hereby maintained but, his sentence is reduced to the period, which he has already undergone in the custody. However, fine is enhanced from a sum of Rs. 1,000/- to a sum of Rs. 10,000/-. The applicant Mohan is directed to deposit the remaining fine amount before the trial Court within two months from today, failing which he shall undergo for 6 months rigorous imprisonment in addition. The conviction as well as the sentence directed against the applicants Laxminarayan and Jainarayan for the offence punishable u/s 325/34 of IPC is hereby set aside. They are acquitted from the charges of offence punishable u/s 325/34 of IPC but, they are convicted for the offence punishable u/s 323 of IPC and sentenced with jail sentence for a period, which they have already undergone in the custody with fine of Rs. 1,000/-. The fine amount deposited before the trial Court shall be adjusted towards the fine imposed upon them. If fine is deposited then, a sum of Rs. 7,000/- be given to the victim Janki Bai W/o. Radheshyam, R/o. Village Khandwa, Police Station Doraha, District Sehore (M.P.), by way of a compensation.

10. The applicants were on bail. Their presence is no more required before this Court and therefore, it is directed that bail bonds of the applicants Laxminarayan and Jainarayan shall stand discharged, whereas the bail bonds of the applicant Mohan shall stand discharged, after his depositing the remaining fine amount before the trial Court.

11. A copy of the order be sent to both the Courts below along with their records for information and compliance. Attention of the learned JMFC, Sehore is invited to the provisions of section 68 of IPC.