

(2012) 04 MP CK 0077

Madhya Pradesh High Court (Indore Bench)**Case No:** Criminal Appeal No. 1353 of 2002

Rajesh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: April 11, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 374
- Penal Code, 1860 (IPC) - Section 120B, 148, 149, 307, 323
- Probation of Offenders Act, 1958 - Section 3, 4, 6

Hon'ble Judges: S.R. Waghmare, J**Bench:** Single Bench**Advocate:** Umesh Sharma, for the Appellant; Amit Singh Sisodiya, learned Counsel, for the Respondent

Judgement

Mrs. S.R. Waghmare, J.

This appeal has been filed u/s 374 of the Cr.P.C. challenging the judgment dated 25/11/2002 passed by the Additional Sessions Judge Ujjain in S.T. No. 268/2002 convicting the accused appellant for offence u/s 323/34 of the IPC and sentencing the accused to undergo one year's R.I. each with fine of Rs. 500/-, in default of payment of fine he was to undergo additional six months' S.I. Brief facts of the prosecution case are that on the date of incident i.e. on 18.12.2001 at around 10.00 O'clock in the night, the complainant Prembai went to nearby forest to relieve herself, the accused Gopilal caught hold of her hair, hurled her on the ground and also abused her. She managed to escape from the clutches of the accused and reached home and narrated the story to her children. Immediately Anil, Prem Singh, Bhagat Singh, Lalita Bai and Leela Bai went to near by tea shop of accused Gopilal and asked him why he behaved such way and being irritated because of this, Gopilal, Santosh, Rajesh and Mukesh attacked all of them with iron rods, spades and logs. On getting information about the matter, co-accused Vijay Yadav also reached on the spot and chased them wielding a sword. Thereafter, the complainant and her

children went to Neelganga Police Station and reported the matter vide Ex.P/1. On the basis of the report, crime No. 722/2011 was registered by the police. After completion of the investigation the statements of the witnesses were recorded and the accused were arrested and duly committed to their trial.

2. The accused abjured their guilt and stated that they have been falsely implicated in the matter. However, on the basis of the evidence on record, the trial Court has acquitted all the accused from the offence u/s 307 of the IPC, but convicted them for offence u/s 324 of the IPC and sentenced the accused as herein above indicated. Being aggrieved, however only the appellants Gopilal and Rajesh have filed the present appeal. However, appellant No. 1 Gopilal has died during the pendency of the appeal. The appeal on behalf of appellant No. 1 is, therefore, abated.

3. Learned Counsel for the appellant has vehemently urged the fact that the conviction is contrary to the provisions of law. The Court below has failed to appreciate the evidence and there are material omissions and contradictions in the testimony of the prosecution witness, which have not been considered by the trial Court as well as the appellate Court. The medical report of the injured witnesses clearly indicates that nothing abnormal detected and the injured witnesses have not received any grievous injuries. Moreover Counsel submitted that the trial Court had already acquitted the appellant from the offence under Sections 148, 307/149 of the IPC and then under the circumstance the learned Judge had erred in convicting the appellants for offence u/s 323/34 of the IPC. Counsel further submitted that the appellant No. 2 is on government service and he was appointed on compassionate basis. Hence his services are likely to be affected adversely. Counsel placed reliance on *Roshan vs. State of M.P.* 2004 (II) M.P. Weekly Note {133} page 306 and [Satyabhan Kishore and Another Vs. The State of Bihar](#), and another whereby the Apex Court had held that whenever a person under 21 years of age is found guilty of an offence punishable with imprisonment but not with imprisonment for life; Section 6 of the Probation of Offender Act lays down an injunction not to impose a sentence of imprisonment upon such an offender unless for reasons to be recorded by it, the Court finds it undesirable to proceed with him u/s 3 or Section 4 of the said Act. Hence, Counsel prayed that the appeal deserves to be allowed and the judgment of trial Court be set aside. In the alternate, Counsel submitted that even if this Court was also satisfied regarding the conviction, the appellant No. 2 was in govt. service; very recently having got compassionate appointment in place of his father Gopilal and appellant No. 2 was only 20 years of age at the time of the incident, the custodial sentence may be reduced to the period already undergone or the Court may grant relief of the appellant under the Probation of Offenders Act.

4. Learned Counsel for respondent/State per contra submitted that the impugned judgment of the trial Court is in accordance with law and does not require any interference. He supported the impugned judgment and submitted that it is based on valid and cogent reasons and proper marshalling of evidence. Hence he prayed

that the appeal filed by the appellant be dismissed.

5. On considering the above submissions, I find that there is some substance put forth by the Counsel for the appellant. However, the impugned judgment is based on valid and cogent reasons and proper marshalling of evidence and no infirmity can be found with the impugned judgment of the trial Court. I have no hesitation in upholding the conviction of the accused for offence under Sections 323 of the IPC against the accused/appellants; It would be profitable to rely on Roshan (supra) considering the fact and circumstance of the case being similar to the case of Roshan, who was also in service of the Railways and being tried for offence under Sections 120-B and 323/34 of the IPC. However, considering the fact that the appellant No. 2 in the present case was only 20 years of age at the time of the incident and the appellant No. 2 being a government servant is likely to lose his job, in the event of sentence of imprisonment being maintained, I consider it expedient to give him the benefit of Section 4 of the Probation of Offenders Act. It is accordingly directed that the appellant shall be released on probation of good conduct u/s 4 of the Act. For this purpose, the appellants are directed to execute a personal bond for Rs. 3,000/-(Rupees three thousand only) with one surety in the like amount to the satisfaction of the trial Court within a period of three months from the date of this order, for keeping peace and good conduct for a period of one year from the date of furnishing the above bond. The trial Magistrate, while releasing the appellant on probation shall take undertaking from the appellant and his surety in writing that the appellant shall keep peace and good conduct and also shall abstain from violent behaviour for the aforesaid period of one year; and in case of breach of any of the conditions of the bond on the part of the appellant or his surety, the appellant shall appear before the trial Court, as and when so called, to receive the sentence if not undergone as has been awarded to him by the Court below, and in that case, the amount of his respective bond shall also be liable to be recovered from him.

6. With these observations and directions, the appeal is partly allowed. The sentence awarded to the appellant by the Court below vide impugned judgment shall stand modified to the extent indicated above. After the appellant furnishes a personal bond and surety bond, as directed above, the amount of fine, if has already been deposited by the appellants shall be refunded to him. A copy of this judgment be sent to the concerned lower Court for compliance.