

**(2002) 04 MP CK 0057**

**Madhya Pradesh High Court**

**Case No:** Criminal Revision No. 941/95

Ram Govind and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** April 17, 2002

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 149, 325

**Citation:** (2002) 3 MPHT 301 : (2003) 1 MPLJ 59

**Hon'ble Judges:** U.N. Singh, J

**Bench:** Single Bench

**Advocate:** P.R. Bhave, for the Appellant; Chanchal Sharma, Panel Lawyer, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Uma Nath Singh, J.

This criminal revision impugns the judgment dated 19-12-95 passed by the learned Sessions Judge, Sidhi in Criminal Appeal No. 9/93, whereby order of conviction of all the applicants under Sections 325/149 and 147, IPC has been affirmed, but while not interfering with a sentence of six months R.I. each u/s 147, IPC, the learned Appellate Court has reduced the sentence of one year R.I. under Sections 325/149, IPC to six months R.I. each. However, the fine amount of Rs. 100/- each, thereunder, has been maintained

As per narration of facts on record, the incident took place on 5-2-86 at 9 o'clock over possession of a disputed land amongst three real brothers namely, accused Yagyasharan (since released on probation) and injured witnesses, Ramvishal (P.W. 1) and Ramsakha (P.W. 2). Brijesh (applicant No. 3) is son of accused Yagyasharan and other accused, namely Ram Govind (applicant No. 1), Sambhoo Prasad (applicant

No. 2) and Awadhlal (since released on probation) are his brothers-in-law. On the date of occurrence, as per prosecution case, accused applicants were harvesting crops which was prevented by the complainant side. It infuriated the accused who grappled with and assaulted Ramvishal (P.W. 1) and Ramsakha (P.W. 2). Under the circumstances, on the FIR (Ex. P-1) of Ramvishal (P.W. 1), prosecution machinery was set in motion and after investigation, the accused-applicants were put on trial under Sections 147, 323, 324 and 325/149, IPC.

On a proper appreciation of evidence on record, the Trial Court acquitted the accused of the charges under Sections 323 and 324 read with Section 149, IPC but convicted them under Sections 147 and 325 read with Section 149, IPC. Accordingly, under Sections 325/149, IPC, the applicants herein were sentenced to one year rigorous imprisonment with a fine of Rupees one hundred each and u/s 147, IPC, six months" rigorous imprisonment each. However other accused namely Yagyasharan and Awadhlal were given benefit of probation, therefore, not visited with said sentence. In the appeal before the learned Sessions Judge, Sidhi, conviction of the accused-applicants under Sections 325/149 and 147, IPC was maintained with modification of sentence as above. Hence this criminal revision.

Heard Shri P.R. Bhave, learned Counsel for the applicants and Smt. Chanchal Sharma, learned Panel Lawyer for the State and perused the records.

Shri Bhave, learned Counsel for the applicants, contended that both the sides are closely related and the incident had originated in a dispute over a family land. Shri Bhave argued that though the applicants had raised a plea of self-defence before the Courts below, it was not properly appreciated and rejected sans substance. Mr. Bhave submitted that it is an incident of 5-2-86 and now since a period of more than 16 years has passed, the Court may take a lenient view in the matter of sentence, as this Court in similar circumstances, in other cases sentenced the accused to the periods already undergone and increased the fine amounts. Mr. Bhave, in support of his last submission relied on the judgment of this Court in the matter of Vijay Singh v. State of M.P. 1994 (II) MPWN (77) page 98. In this matter the applicant was tried along with 8 others for causing assaults on Hamansingh (P.W. 1) resulting in fracture of his nasal bone. The applicant was convicted u/s 325, IPC and sentenced to undergo R.I. for four months. On appeal, the conviction and sentence was affirmed. In revision before this Court, though the conviction of the applicant u/s 325, IPC was maintained, but the sentence was modified to the period of 20 days already undergone by the applicant. Further he was directed to pay a fine of Rs. 1000/- within a period of one month.

Mr. Bhave placed further reliance on another judgment of this Court in the matter of Havaldar Singh v. State of M.P. 1995 (I) M.P.W.N. (194) page 275. In revision, conviction of the applicant u/s 325, IPC, was maintained but his sentence was reduced to period already undergone i.e., three days imprisonment, although he had already deposited a fine of Rs. 5000/- imposed by the Trial Court. As per facts,

the applicant was found guilty of causing blows to the complainant which had resulted in impairment to one of the eyes of the complainant. Moreover, the Court also took into consideration a long lapse of time between the date of offence and the disposal of revision.

Smt. Chanchal Sharma, Panel Lawyer appearing for the State, opposed the contentions of Mr. Bhave by submitting that in view of the nature of injury resulting in fracture, the impugned judgment does not, call for interference on the question of sentence.

On a reappraisal of the rival contentions I find that it is a case which calls for interference in view of the fact that both the parties are closely related as accused Yagyasharan is the real brother of injured witnesses P.W. 1 and P.W. 2, namely Ramvishal and Ramsakha. As mentioned hereinabove, other accused are also closely related to the complainant side. Further from the evidence of Ramvishal (P.W. 1), it is not clear that the complainant side was in possession of the land. On the contrary, it is mentioned in his cross-examination that in respect of same incident, the complainant side, (Ramvishal and Ramsakha) was also facing a criminal case. That apart, the incident took place on the disputed land over which both the parties claimed title which is also subject-matter of a civil litigation. Moreover, since a period of more than 16 years has elapsed from the date of incident, the submission of Mr. Bhave to take a lenient view in the matter of sentence deserves consideration.

In the premises discussed hereinabove, I hold that the impugned judgment of conviction of the accused applicants u/s 147, IPC as also under Sections 325/149, IPC does not call for interference. However, in the facts and circumstances of the case, as Mr. Bhave submits that each of the accused/applicants has remained in custody for a period of six days, they are sentenced to the period already undergone by them, i.e. 6 days R.I. each on both counts. But looking to the nature of injuries suffered by both the injured witnesses the fine amount of Rs. 100.00 awarded by the Courts below in respect of each of the accused is enhanced to Rs. 1000/- each. And the fine amount shall be deposited by the accused applicants within a period of two months, from the date of judgment, failing which, each of the accused applicants shall undergo a simple imprisonment of three months.

Accordingly, the criminal revision is allowed in part.