

(2017) 05 MP CK 0047

MADHYA PRADESH HIGH COURT

Case No: 1564 of 2003

NAVAL SINGH

APPELLANT

Vs

STATE OF MADHYA PRADESH

RESPONDENT

Date of Decision: May 26, 2017

Acts Referred:

- Indian Penal Code, 1860, Section 302, Section 34, Section 307, Section 323 -
Punishment for murder - Acts done by several persons in furtherance of com

Hon'ble Judges: J.K.Maheshwari, J.P.Gupta

Bench: Single Bench

Advocate: Y. K. Gupta, B.P. Pandey, Shiv Kumar Shrivastava

Judgement

1. The appellants have preferred the present appeal being aggrieved by the impugned judgment dated 5.8.2003 passed by the Sessions Judge, Sehore in S.T. No.130/01 whereby the appellants no.1 and 2 have been convicted under Section 302 / 34 of IPC and sentenced to undergo life imprisonment and appellant no. 3 has been convicted under section 323 of IPC and sentenced to undergo till rising of the court with fine of Rs.1000/-, in default of payment of fine, further three months RI.
2. In brief, the relevant facts of the case are that on 26.7.2001 at about 7 am, deceased Jagannath was cutting grass in his field, due to which, a quarrel took place between the deceased and the appellants accused. Appellants no.1 and 2 assaulted the deceased with lathis while appellant no. 3 assaulted the deceased with Darate. Mamta, minor daughter of appellant no. 1, assaulted by big stone on the head of the deceased. When the son Dharam Singh (PW-1) and wife Chinta Bai (PW-3) of the deceased tried to rescue him, the appellants also committed marpeet with them. On the same day i.e. on 26.7.2001 Dharam Singh, son of the deceased, lodged a report at the Police Station City Kotwali, Sehore, which was registered as Dehati Nalisi, Ex.P/1. Thereafter, injured Jagannath was taken to District Hospital, Sehore for treatment by his son Dharam Singh, from where, he was referred to Hamidia Hospital, Bhopal for further treatment and the doctor concerned also informed the

police. Thereafter, the matter was taken into investigation by the police. On account of the head injuries, he succumbed. The dead body of the deceased Jagannath was sent for postmortem examination and after receiving postmortem report Ex.P/16, the police registered crime no. 455/2001 for the offences under sections 302, 307, 323 / 34 of the IPC against the appellants / accused and after investigation was over, the police filed a charge sheet against the appellants / accused before the Court of CJM, Sehore, who on its turn committed the case to the court of Sessions for trial. Against minor Mamta, separate charge sheet was filed before the Juvenile Justice Board.

3. The learned trial Court framed a charge for the offence under Section 302 / 34 of the IPC against the appellants. The appellants / accused abjured their guilt and pleaded for trial. Their defense was that they are innocent and minor Mamta suddenly caused fatal injuries to the deceased. The appellants no.1 and 2 had no common intention with Mamta to cause the fatal injuries. The injury of appellant no. 1 has not been explained. There is possibility to assault the deceased in exercise of right of self defense.

4. Learned trial court after trial of the case and on the basis of the evidence and material came on record found the appellants no.1 and 2 Bhagwat Singh and Raju guilty of the offence under Section 302 / 34 of IPC and appellant no. 3 Smt. Aiju Bai of the offence under Section 323 of IPC and sentenced them as per the impugned judgment.

5. Being aggrieved by the aforesaid impugned judgment of conviction and order of sentence, the appellants have filed this appeal on the ground that the finding of the learned trial court is contrary to law, facts and circumstances of this case. Trial court has not scrutinized the prosecution case in its proper perspective which has resulted into great miscarriage of justice. There are lot of contradictions, omissions and improvements in the testimonies of the prosecution witnesses. Further it is also contended that the sentence is also very harsh. On behalf of the appellants it has also been contended that the injury led to the death of the deceased was caused by juvenile Mamta. It also appears from the evidence that said Mamta assaulted suddenly. Therefore, it cannot be said that the appellants had common intention with Mamta to cause deadly injury to the deceased. Other injuries sustained by the deceased were simple in nature. In such circumstances, the appellants can be hardly convicted for commission of offence under Section 323 of the IPC. In the view of the facts and circumstances of the case, prayer is made to allow the appeal and set-aside the impugned judgment of conviction and order of sentence.

6. Learned PL appearing for the respondent / State has argued in support of the impugned judgment and stated that the finding of conviction and sentence of the learned trial court is in accordance with law. Hence, the appeal be dismissed.

7. Having considered the rival contentions of both the parties and on perusal of the record, it is found that the nature of the death of the deceased Jagannath was homicidal and this fact has not been assailed here on behalf of the appellants. Apart from it, from the statement of Dr. R. S. Sisodiya (PW-11) who examined the deceased in the injured condition on 26.7.2001 near about 9:45 am, has stated that he found injuries on the person of Jagannath, which are as under :-

(1) Hematoma over skull and black eye Rt. Side. (2) One lacerated wound over right ear, 1/4 x 1/4" in size.

(3) Contusion over both legs, 3x 2 in size.

He has further stated that the injuries on the head of the injured appeared to be grievous and therefore, he was referred to Hamidiya Hospital, Bhopal for further treatment after preparation of the medical examination report Ex.P/19.

8. Dr. B. K. Athwal (PW-7) who conducted autopsy on 28.7.2001 at 1:30 pm, has stated that there were fractures on the head of the deceased Jagannath. Apart from it, on shoulder and left side of chest, one contusion was found and the death was taken place on account of complications of head injuries sustained by the deceased and the injuries were caused by hard and blunt object and nature of the death was homicidal. Autopsy report is Ex.P/16. The aforesaid medical evidence categorically establishes the fact that the deceased Jagannath was died on account of the aforesaid head injuries.

9. Now the question is that whether the appellants / accused persons and juvenile Mamta are responsible to cause the aforesaid injuries in their common intention. In this regard, the prosecution case is mainly based on the statements of Dharam Singh (PW-1) who is son of the deceased and Chintabai (PW-3) who is wife of the deceased. On perusal of statements of the aforesaid witnesses it is found that according to them, the aforesaid head injuries of the deceased were caused by Juvenile Mamta with a big stone. It has also been stated that at that time, other co-accused persons were also assaulting the deceased. Appellants no. 1 and 2, Bhagwat Singh and Raju with lathis and appellant no. 3 Smt. Aju Bai with darate. It has also been stated by the aforesaid both witnesses that initially appellants no. 1 and 2, Bhagwat Singh and Raju assaulted the deceased Jagannath and thereafter, appellant no. 3 Smt. Aju Bai assaulted with darate but suddenly juvenile Mamta appeared there and picked up a big stone and threw it on the deceased which hit on his head and caused fatal injury.

10. In the aforesaid circumstances, it cannot be said that the appellants / accused persons and the juvenile Mamta had common intention to cause fatal injury to the

deceased. The aforesaid both witnesses have also stated that when Mamta assaulted the deceased with a big stone, appellant / accused Bhagwat Singh threw that stone away at some distance with a view to restrain Mamta to assault again. Considering the aforesaid circumstances, it appears that the appellants / accused had no common intention with the Juvenile Mamta to cause deadly injury to the deceased Jagannath. The appellants had common intention to cause simple injury to the deceased as they caused to the deceased.

11. On behalf of the appellants / accused it has also been submitted that in the incident, appellant accused Bhagwat Singh had also received grievous injuries on left hand as stated by Dr. Rajesh (DW-1), according to him, there was one fracture on the left hand of Bhagwat Singh and nature of the injuries was grievous. He also prepared MLC report Ex.P/3. On behalf of the prosecution, no explanation has been given about the aforesaid injuries. Hence, the genesis of the incident has not been put forth before the court below which shows that the prosecution has not come with clean hand. Hence, the prosecution story cannot be believed and the aforesaid circumstances also establish the fact that the appellants / accused assaulted in exercise of right of self defense. Therefore, they cannot be convicted for the alleged offences.

12. The aforesaid contention advanced on behalf of the appellants / accused has no much force as the injuries were not visible, therefore, it cannot be said that aforesaid both eye witnesses have voluntarily not explained the aforesaid injuries and on that point, they are lying before the court. Similarly, no one has deposed before the court below that the aforesaid injuries were caused during the incident. Simply on the basis of the statement of the doctor, it cannot be inferred that the said injuries were caused during the incident. Therefore, non- explanation of the aforesaid injuries has no adverse effect on the credibility of the aforesaid eye witnesses.

13. In view of the aforesaid discussion, we are of the view that as the appellants / accused had no common intention with the juvenile Mamta who caused deadly injury to the deceased, the appellants cannot be convicted or held responsible for causing death of the deceased in furtherance of common intention with the juvenile Mamta. Hence, the conviction and sentence awarded by the trial court to the appellants no. 1 and 2 for the offence under Section 302 / 34 of the IPC is not sustainable in the eyes of law. Hence, the appeal is partly allowed. The conviction and sentence awarded by the trial court to the appellants no. 1 and 2 for the offence under Section 302 / 34 of the IPC is hereby set-aside and for causing simple injuries to the deceased Jagannath by the appellants no. 1 and 2, they are convicted under Section 323 / 34 of the IPC.

14. So far as sentence is concerned, from the record it appears that the appellant no. 1 Bhagwat Singh has remained in jail during trial from 31.7.2001 till 8.11.2001 (3 months 8 days) and thereafter from the date of judgment i.e. 5.8.2003 till 24.1.2004

(5 months 19 days) and the appellant no. 2 Raju has remained in jail during trial from 30.7.2001 till 5.9.2001 (1 month 6 days) and thereafter from the date of judgment i.e. 5.8.2003 till 24.1.2004 (5 months 19 days). Thus, the appellant no. 1 Bhagwat has undergone total 8 months 27 days in jail and the appellant no. 2 Raju has undergone total 6 months 25 days in jail. Therefore, they are sentenced to the aforesaid period already undergone by them in jail. The appellants no. 1 and 2 are on bail, their bail bonds stands discharged.

15. So far as the appellant no. 3 Smt. Ajju Bai is concerned, the conviction under section 323 of IPC and sentence thereof awarded by the trial court to the appellant no. 3 is hereby affirmed.

16. A copy of this order be sent to the trial court and the jail authorities concerned for information and necessary action.