
Deepak Namdev Vs State of Madhya Pradesh

Criminal Revision No.38 Of 2017

Court: Madhya Pradesh High Court

Date of Decision: Aug. 23, 2018

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 357, 397, 401#Indian Penal Code, 1860 " Section 279, 294, 307, 324, 326, 506II

Hon'ble Judges: Subodh Abhyankar, J

Bench: Single Bench

Advocate: Sandeep Mishra, D.K. Paroha

Final Decision: Disposed Off

Judgement

The present criminal revision has been filed under Section 397/401 of Cr.P.C. against the order dated 31.12.2016 passed by the Sessions Judge

Session division, Damoh, District Damoh (M.P.) whereby the learned Judge has confirmed the order dated 17.11.2016 passed in Criminal Case

No.3907/2008 by the Additional Chief Judicial Magistrate, District Damoh (M.P.) wherein the applicant has been convicted for commission of offence

punishable under Section 326 of IPC and sentenced to undergo two years rigorous imprisonment with fine of Rs.1000/-, each with default clause.

2. The facts giving rise to the present revision are that on 7. 09.2008 at around 7.30 pm when the PW/1 complainant Kamal @ Kallu and the

accused/applicant Deepak were sitting at Sandeep Choubey's grocery shop at that time the applicant demanded a sum of Rs.20/- from the

complainant and when he refused to pay the same, an altercation took place between them, however, at that time the applicant went back to his home.

It is alleged that in the night at around 9-10 pm when the complainant Kamal was sitting at Sandeep Choubey's shop and was talking to Nitin

Mishra, Bunty Purohit & Pappu, at that time the applicant came to the said shop from behind armed with a sword and assaulted the complainant 4-5

times because of this he received as many as five injuries on his left hand and head etc. when the other persons intervene, the applicant ran away

from the spot. The complainant was taken to the Jabalpur Hospital and the FIR (Ex. P/1) in the present case was lodged on 20.09.2008 under

Sections 324, 294 & 506 (Part-II) of IPC.

3. However, in the trial, after the evidence was led by the parties, vide order dated 17.11.2016 passed by the trial court, the applicant was convicted

under Section 326 of IPC and in an appeal preferred against the said order, the appeal was also dismissed by the lower appellate Court vide its order

dated 31. 12.2016 confirming the aforesaid order whereby the applicant was sentenced to 2 years R.I. and a fine of Rs.1000/-with default clause.

4. Learned counsel for the applicant has submitted that both the Courts below have heard and convicted the applicant as the eye witnesses PW-3

Pappu Sharma and PW-4 Nitin Mishra have been declared hostile. It is further submitted that the FIR lodged was hopelessly barred by time as the

same was lodged after the delay of 13 days from the date of incident and no satisfactory reason has been given for lodging the FIR with an inordinate

delay.

5. Learned counsel for the applicant has further submitted that the complainant was admitted in the hospital on 8. 09.2008 and was discharged on

12.09.2008. It is further submitted that the sword which has been recovered has not been done as per the procedure.

6. Learned counsel for the applicant, in the alternative has also submitted that the applicant has already spent 122 days of incarceration that would

come to 4 months and 2 days as on today out of 2 years of imprisonment. It is further submitted that there are no criminal antecedent of the applicant

and no purpose would be served if he is sent to jail at this juncture as he has already suffered substantial time in jail for injury in which the complainant

was required to be admitted for a period of around 5 days only. Thus, the learned counsel for the applicant has submitted that the sentence awarded to

him may be reduced to the one already undergone by him.

7. Learned counsel for the State on the other hand has opposed the prayer as there are concurrent findings of facts in the present case as both the

Courts below have rightly appreciated the evidence on record and have come to a conclusion that the applicant is liable to be convicted under Section

326 of IPC. The counsel has also drawn the attention of the testimony of PW-7 Dr. Sanjeev Gupta who has prepared the MLC (Ex. P-5) in which it

is clearly mentioned that the complainant had inter-alia received the following injuries:-

1. Flj esa ,d dVk gqvk ?kkao 5 x 1 lseh peM+h rd xgjk Fkk rFkk [kwu tek Fkk] ftls eSaus ,DIjs gsrq fy[kk FkkAA, A, A,

2. cka;s gkFk dh vxz Hkqtk esa dVk gqvk ?kkao

3. cka;s gkFk esa ,d dVk gqvk ?kkao

4. cka;s gkFk dh vxz Hkqtk esa dVk gqvk ?kkao 2 x 1 lseh Fkk] ftls eSaus ,DIjs gsrq fy[kk FkkAA,

5. nka; gkFk dh xnsyh esa dVk gqvk ?kkao 1 x 1 lseh FkkAA, A,

However, the counsel has admitted that there was no bony injury found in the X-Ray report, but the fact that grievous injuries were caused by the

applicant with the aid of sharp cutting weapon on the head and left hand, wrist of the complainant, the applicant has been rightly convicted under

Section 326 of IPC although otherwise it was a case falling under Section 307 of IPC.

8. Heard learned counsel for the parties and perused the record. From the record, this Court finds that both the Courts below have convicted the

applicant under Section 326 of IPC especially in relation to the injuries suffered by him on his head. The testimony of PW/1 complainant Kamal @

Kallu who has received grievous injuries for which he was referred to a Hospital at Jabalpur where he was operated upon as also the doctor PW-7

Dr. Sanjeev Gupta who has confirmed the said injuries have been rightly relied upon by the courts below. PW/9 Dr. Arun Kumar Varma was posted

at Mohanlal Hargovind Das Hospital Jabalpur has also confirmed that the Kamal had received grievous injuries on his head and left hand which was

also operated upon by Dr. Prashant Yadav, Plastic Surgeon. However, so far as the sentence part is concerned, it would be apt to refer to a decision

rendered by the Apex court in the case of Roy Fernandes v. State of Goa, (2012) 3 SCC 221 wherein the Apex court has dealt with the importance of

compensation and applicability of s.357 of Cr.P.C. in criminal jurisprudence in a sagacious manner. The relevant para of the same read as under:-

“38. Even in Hari Singh case, the Court granted a similar benefit to a convict under Section

325 who had been sentenced to undergo two years rigorous imprisonment. The Court in addition invoked its power under Section 357 CrPC to

award compensation to the victim, and determined the amount payable having regard to the nature of the injury inflicted and the paying capacity of

the appellant. This Court said: (Hari Singh case, SCC pp. 557-58, paras 10-11)

“10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on

accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but courts

have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment

of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by

the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto.

This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of

responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is

indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends

of justice in a better way.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each

case.

The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of

accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The

payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may

also be given. The court may enforce the order by imposing sentence in default.

39. Section 357 of the Code of Criminal Procedure embodies the concept of compensating the victim of a crime and empowers the courts to award a

suitable amount. This power, it goes without saying, shall be exercised by the courts having regard to the nature of the injury or loss suffered by the

victim as also the paying capacity of the accused. That the provision is wide enough to cover a case like the present one where the appellant has

been found guilty of offences punishable under Sections 323 and 325 IPC has not been disputed before us. Indeed Mr Luthra relied upon the

provision and beseeched this Court to invoke the power to do complete justice short of sending the appellant back to the prison. Ms Subhashini also in

principle did not have any quarrel with the proposition that the power was available and can be exercised, though according to her, the present being a

gross case of unprovoked violence against law abiding citizens the exercise of the power to compensate the victims ought not to save the accused

from suffering a deterrent punishment warranted under law.

40. Prof. Andrew Ashworth of Oxford University Centre for Criminological Research has in the handbook of Criminology authored by him referred

to what are called "Restorative and Reparative Theories" of punishment. The following passage from the book is, in this regard, apposite:

"Restorative and Reparative Theories

These are not theories of punishment, rather, their argument is that sentences should move away from punishment of the offender towards restitution

and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theories are therefore victim-centred, although in some

versions they encompass the notion of reparation to the community for the effective crime. They envisage less resort to custody, with onerous

community-based sanctions requiring offenders to work in order to compensate victims and also contemplating support and counselling for offenders

to regenerate them into the community. Such theories therefore tend to act on a behavioural premises similar to rehabilitation, but their political

premises is that compensation for victims should be recognised as more important than notions of just punishment on behalf of the State.

41. The provision for payment of compensation has been in existence for a considerable period of time on the statute book in this country. Even so, the

criminal courts have not, it appears, taken significant note of the said provision or exercised the power vested in them thereunder. The Law

Commission in its 42nd Report at Para 3.17 refers to this regrettable omission in the following words:

“3.17. Payments of compensation out of fine. “We have a fairly comprehensive provision for payment of compensation to the injured party

under Section 545 of the Criminal Procedure Code. It is regrettable that our courts do not exercise their statutory powers under this section as freely

and liberally as could be desired. The section has, no doubt, its limitations. Its application depends, in the first instance, on whether the court considers

a substantial fine proper punishment for the offence. In the most serious cases, the court may think that a heavy fine in addition to imprisonment for

long terms is not justifiable, especially when the Public Prosecutor ignores the plight of the victim of the offence and does not press for compensation

on his behalf.”

42. In *Manish Jalan v. State of Karnataka*, even this Court felt that the provision regarding award of compensation to the victims of crimes had not

been made use of by the Courts as often as it ought to be. This Court observed: (SCC p. 230, para 12)

“12. Though a comprehensive provision enabling the court to direct payment of compensation has been in existence all through but the experience

has shown that the provision has rarely attracted the attention of the courts. Time and again the courts have been reminded that the provision is aimed

at serving the social purpose and should be exercised liberally yet the results are not very heartening.”

43. In the above case the appellant had been convicted under Sections 279 and 304-A IPC. The substantive sentence of imprisonment was in that

case reduced by this Court to the period already undergone with payment of fine and a compensation of an amount of rupees one lakh to the mother

of the victim. Reference may also be made to the decision of this Court in *Rachh-pal Singh v. State of Punjab* where this Court emphasised the need

to assess and award compensation by the accused to the gravity of the offence, needs of the victim’s family as also the paying capacity of the

accused.”

Thus, on the touchstone of the aforesaid dictum, the sentence part of the judgment can be reconsidered, by imposing adequate conditions. Thus, taking

into account the fact that the complainant was admitted in the hospital for around 5 days and he has suffered grievous injuries on left hand as also a

head injury and other incised wounds on his body and also considering the fact that the applicant who belongs to a humble background has already

undergone a total period of 4 months and 2 days out of 2 years of incarceration, the sentence may be reduced to the one already undergone by him

subject to increase in the fine amount to additional Rs.40,000/- (Forty Thousand only) which may cover some of the expenses of the complainant who

has also stated that his treatment was still going on after a period of 2 years when he deposed in the court on 04.02.2010 whereas the date of incident

is 07.09.2008. This amount shall be deposited by the applicant in the trial Court within 2 months from the date of this order which shall be paid to the

complainant Kamal.

9. In the facts and circumstances of the case, this criminal revision stands disposed of as partly allowed and the impugned order dated 31.12.2016 is

hereby modified to the afore-said extent. The fine of Rs.40,000/ imposed on the applicant to be deposited by the applicant before the trial Court within

two months time from today and the same be remitted to the complainant Kamal and failing him to his surviving legal heirs by the trial court at the

earliest.

10. It is made clear that in case of any default on the part of the applicant to deposit the said amount within the period as aforesaid i.e. within two

months from today, the applicant shall be taken into custody and he shall suffer the remaining part of his jail sentence as provided in the impugned

order which shall stand revived. On compliance of this order, the applicant's bail bonds shall stand discharged.

11. Let a copy of this order be sent to the trial Court for its compliance and necessary action.

12. Certified copy as per rules.