

Devendra Tiwari Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-16-2012

Appellant : Devendra Tiwari

Respondent : The State of M.P.

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR Single Bench:
Hon'ble Shri Justice N.K.Gupta,J.CRIMINAL APPEAL NO.417 OF 199.Devendra
Tiwari. Vs. State of Madhya Pradesh.

----- Shri Harpreet
Ruprah, Advocate for the appellant. Shri Ajay Tamrakar, Panel Lawyer for the
respondent/ State.

JUDGMENT

(Delivered on the 16th day of July, 2012) This criminal appeal is preferred by the appellant being aggrieved by the judgment dated 21/2/1997 passed by the Third Additional Sessions Judge Camp Rehli District Sagar in ST No.311/1994 whereby the appellant was convicted for commission of offence punishable under Section 326 of IPC and sentenced for three years' rigorous imprisonment with fine of Rs.1000/-. He has to undergo six months' imprisonment in default of payment of fine.

2. Prosecution case, in short, is that on 3.9.1994 at about 9:00 PM in the night the complainant Purshottam (PW-12) was coming back from Nai Bakhar to his house situated in Village Gunjora Police Station Garhakota District Sagar. The appellant who was standing behind a wall 2 Cr.A.No.417/1997 suddenly appeared with a katarna and assaulted the complainant by that katarna on his left head. On shouting of complainant, his wife Ramrani (PW-13), Anand (PW-1), Santosh (PW-3), Bharat (PW-5) etc. came to the spot and appellant ran away from the spot. He threatened the complainant that if he lodges an FIR, then he would kill him and he would set his house on fire. The complainant was taken in a tractor-trolley to the Police Station Garhakota where he had lodged an FIR Ex.P-11 on 4.9.1994 at about 1:20 AM in the night. He had also mentioned that one day prior to the incident, the complainant enquired as to whether the appellant had executed an agreement with one Rajpal without his authority, then the appellant accepted and told him that Rajpal shall cut the crop of Soyabeen in that field. The complainant argued to the appellant that his uncle has never executed such an agreement, and therefore the appellant should not enter in the agreement with Rajpal and thereafter the appellant abused him and went away. It was also mentioned in the FIR that the assault was caused by the appellant due to the quarrel which took place one day prior to the incident. The victim was directed to the hospital for his medical examination and treatment. Dr. M.L.Chauda (PW-4) examined the victim Purshottam and gave his report Ex.P-4. He found an incised wound of 13cm x 2.5cm x 2cm on left fronto parietal region. He referred the patient for X-ray examination. Dr. J.S.Diwakar (PW-8) after 3 Cr.A.No.417/1997 taking X-ray of the victim, gave his report Ex.P-10. He found a fracture of left fronto parietal region below the wound. The victim was admitted in the hospital and his treatment was done by Dr. A Kastawar (PW-11). After due investigation, a charge sheet was filed before the JMFC Rehli, who committed the case to the Sessions Court, Sagar and ultimately the case was transferred to the Third Additional Sessions Judge Sagar Camp Rehli District Sagar.

3. The appellant-accused abjured their guilt. He did not take any specific plea but he has stated that there was a dispute between Rajpal and complainant Purshottam and Rajpal had the possession of the land. The appellant signed an agreement as a witness only. No right or interest was created in the property in

favour of the appellant, and therefore there was no need for the appellant to fight with the complainant Purshottam. In defence Ramesh Kumar (DW-1) was examined to show that the victim Purshottam could not tell the name of the assailant till he reached the Police Station Garhakota.

4. The learned Third Additional Sessions Judge Camp Rehli after considering the evidence adduced by the parties acquitted the appellant for commission of offence punishable under Section 307 of IPC, but convicted him for commission of offence punishable under Section 326 of IPC and sentenced as mentioned above. 4 Cr.A.No.417/1997 5. I have heard learned counsel for the parties at length.

6. Learned counsel for the appellant has submitted that no right or interest in the property was created in favour of the appellant, and therefore there was no need to the complainant to make the issue with the appellant. Similarly, there was no need to the appellant to assault the complainant. Actually it was a matter of dark night and complainant could not see the actual culprit, and therefore the complainant has falsely implicated the appellant. In the alternate, it is prayed that the appellant remained in custody for 46 days, the incident took place in the year 1994, and therefore the appellant has suffered for the trial and appeal for last 18 years and therefore he may not be sent to the jail again. Learned counsel for the appellant has placed his reliance on the judgments of the Hon'ble Apex Court in the case of Pashora Singh & another Vs. State of Punjab., (AIR 1999 SC 1256) and in the case of Habbalappa Dundappa Katti & others Vs. State of Karnataka., [(2002) 10 SCC 197]. in which jail sentence was reduced to the period which was the period already undergone by the accused.

7. On the other hand, learned counsel for the State has submitted that the trial Court has rightly convicted and sentenced the appellant, and therefore no interference is warranted from the side of this Court. 5 Cr.A.No.417/1997 8. After considering the submissions made by learned counsel for the parties and looking to the evidence adduced by the parties, it is to be seen as to whether the appellant could not be convicted for the offence punishable under Section 326 of IPC?. And whether the sentence passed against the appellant can be reduced by this Court?.

9. The prosecution has examined the complainant Purshottam (PW-12) with eye-witnesses Ramrani (PW-13) wife of the complainant, Anand (PW-1), Surendra Kumar (PW-2), Santosh (PW-3) and Bharat (PW-5). Out of them, Anand and Surendra Kumar turned hostile. Bharat has stated that when he reached to the spot, he found the victim Purshottam to be unconscious. He did not claim that he saw the incident whereas complainant Purshottam and Ramrani have stated that the appellant assaulted the victim Purshottam by a katarna on his head. Santosh (PW-3) has claimed that he saw the incident from the distance of 100 ft. and it was the appellant who assaulted the victim by a katarna. In the cross examination , some contradictions were observed by the defence counsel in the evidence of the witnesses with their previous case diary statements given to the police. However, such contradictions are not material. It was not clearly suggested to the witnesses specially to the complainant that as to how he could see the appellant in a dark night, whereas some witnesses have accepted that it was a dark night. In that context, the evidence of Ramrani 6 Cr.A.No.417/1997 (PW-13) is of much importance. She has stated in her cross examination that at the time of incident she was running a flour mill in her house, and therefore a bulb was illuminated and she saw the incident in the light of that bulb. If the spot map Ex.P-6 proved by Inspector Bhupendra Singh Sengar (PW-9) is perused, then it is apparent that the incident took place in front of the door of the flour mill, and therefore it cannot be said that the place of incident was not illuminated. No suggestion was given to the witness Ramrani that at the time of incident, she was not running the flour mill. Under such circumstances, the evidence of Ramrani and Purshottam appears to be believable that there was sufficient light by which they could see the appellant.

10. One defence witness Ramesh Kumar (DW-1) was examined that the complainant did not inform anyone in the village that he was assaulted by the appellant, but this witness Ramesh has admitted in his cross examination that he did not give any statement to the police. When the police came to the village, he was not present, and therefore as to how the complainant gave the name of the appellant to the police, he could not know. Under such circumstances, it appears that Ramesh was not at all relevant witness to the case, and therefore by his evidence no doubt is created in the prosecution story. Similarly, Gulab (PW-14), who took the complainant Purshottam to the Police Station by his 7

Cr.A.No.417/1997 tractor was suggested in the cross examination that whether the victim informed him as to whom assaulted him and he said not There is no such version given by the witness Gulab in his case diary statement, and therefore it is possible that no talk had taken place between the complainant and Gulab to the fact that who assaulted the victim, and therefore if Gulab has admitted in the cross examination that he was not informed by the victim about the assailant, then it makes no difference, therefore by the evidence of Gulab, no doubt is created in the prosecution story.

11. In the FIR, the complainant has already stated that a hot talk took place between the complainant and the appellant one day prior to the incident, because the appellant had signed the agreement which was in favour of one Rajpal, who was a known criminal, and therefore Rajpal took the possession of the property on the basis of that fake agreement whereas agreement was not executed by the uncle of the complainant. The appellant has also confirmed about the talk and enquiry made by the complainant. Under such circumstances, it is established that temporarily there was an enmity between the parties. The enmity is a doubled edged weapon. Due to enmity, complainant can falsely implicate the accused, whereas the accused can assault the victim due to enmity, and therefore the evidence of the complainant party should be seen with care and caution. 8 Cr.A.No.417/1997 12. As it is discussed above that there was sufficient light by which the complainant could see the assailant, and therefore there is no doubt in the identification of the accused. It is not a case of robbery etc. so that it may be said that the assailant was not known. The complainant and the eye-witnesses have given the same version of assault that the appellant forcefully assaulted the victim only once. The version of the victim is totally corroborated by timely lodged FIR Ex.P-11 and medical reports given by Dr. M.L.Chauda (PW-4) and Dr. K.S.Diwakar (PW-8). A wound of similar nature was found on the head of the victim which could be caused by a katarna in such a manner. A fracture was also found below the wound. Under such circumstances, the testimony of the complainant and his wife is believable and it is proved beyond reasonable doubt that the appellant assaulted the victim Purshottam by a katarna on his head causing him a grievous injury.

13. It is apparent that the appellant had hidden himself prior to the incident, and therefore nothing has been done by the complainant by which a right of private defence could be accrued to the appellant. Similarly, the complainant had not done any act by which sudden or grave provocation was caused to the appellant. The appellant brought a katarna in his hands and held the katarna by both the hands and then assaulted in a forceful manner. Looking to the overt-act of the appellant, it is apparent that he knew 9 Cr.A.No.417/1997 the result of his overt-act. Under such circumstances, when the appellant assaulted the victim with the knowledge of result of his overt-act, without any right of private defence and without any sudden or grave provocation, then it is established that it is the appellant, who had voluntarily caused a grievous hurt to the victim, and therefore he is guilty of the offence punishable under Section 326 of IPC. The trial Court has rightly convicted the appellant for the said offence. No interference can be done with the conviction directed by the trial Court.

14. Learned counsel for the appellant has submitted that the appellant remained in the custody for 46 days during the trial, and therefore looking to the custody period, the period in which he has faced the trial and appeal and his age, which was 23 years at the time of incident, the appellant may not be sent to jail again. It was further submitted that in the case of Pashora Singh (supra) the Hon'ble Apex Court had reduced the jail sentence of the accused to the period which the accused had already undergone in the custody and that period was only 52 days. In that case, it was brought in the knowledge of the Court that the accused had to look after his family and his brother's family and he had the burden to maintain two families, and therefore a lenient view was taken. Similarly, in the case of Habbalappa Dundappa Katt (supra) the conduct of the accused was considered for reduction of jail 10 Cr.A.No.417/1997 sentence. In the present case, it is apparent that the appellant was young youth of 23 years old at the time of incident, who was not the mature person. He assaulted the victim only once and he did not assault for the second time. He has faced the trial with appeal for 18 years approximately but his custody period is too low i.e. of 46 days only. Under such circumstances, in the light of the aforesaid judgments of the Hon'ble Apex Court, jail sentence of the appellant may be reduced if fine of higher amount may be imposed upon him, otherwise jail sentence of 46 days is not appropriate for the act

done by the appellant.

15. On the basis of above discussion, the instant appeal filed by the appellant is partly allowed. The conviction directed by the trial Court for commission of offence punishable under Section 326 of IPC is hereby maintained, but the jail sentence of the appellant is reduced to the period which he has already undergone with a condition that the fine amount is enhanced from Rs.1000/- to Rs.10,000/-. The appellant is directed to deposit the remaining fine amount before the trial Court within two months from today, failing which he shall undergo rigorous imprisonment for one year. If fine amount is deposited, then a sum of Rs.7000/- be paid to the victim Purshottam S/o Shri Sabulal, resident of Village Purpyaoo Tori Distrist Sagar, by way of compensation out of that fine amount. 11 Cr.A.No.417/1997 16. At present the appellant is on bail and his presence is no more required. Hence, it is directed that his bail bonds shall stand discharged.

17. A copy of this judgment be sent to the trial Court with its record for information and compliance. (N.K.Gupta) Judge 16/07/2012 Ansari.

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