

Phool Singh @ Phool Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-20-2013

Appellant : Phool Singh @ Phool

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Ashish Tiwari

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Revision No.160/2013 Phool
Singh @ Phool and another VERSUS The State of Madhya Pradesh
----- Shri Ashish Tiwari,
counsel for the applicants. Shri Ajay Tamrakar, Panel Lawyer for the
State/respondent. -----

ORDER

(Passed on the 20th day of March, 2013) The applicants were convicted for the offence punishable under section 327 of IPC vide judgment dated 3.5.2011 passed by the learned JMFC, Tikamgarh (Shri Vipin Singh Bhadauriya) in criminal case No.842/2010 and each sentenced for 1 year's rigorous imprisonment with a fine of Rs.250/-. In criminal appeal No.260/2011, the learned Fourth Additional Sessions Judge, Tikamgarh vide judgment dated 22.1.2013 maintained the conviction but, their sentence was reduced to the period of 6 months with fine of

Rs.1,000/-. Being aggrieved with the judgments passed by both the Courts below, the applicants have preferred the present revision. - 2 - Criminal Revision No.160
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2. The prosecution's case, in short, is that, on 15.4.2010, the complainant Har Prasad (P.W.3) went alongwith the applicant Phool Singh on his motorcycle at village Chinguwan to attend a party. At bus stand Chinguwan, the applicants demanded a sum of Rs.2,000/- for purchasing the liquor and thereafter, they started shouting upon the complainant and assaulted him. The complainant went to the police station Kudila and lodged an FIR, Ex.P/3. He was sent for his medico legal examination to CHC, Baldevgarh. Dr.Anurag Jain (P.W.1) had examined the victim Har Prasad and gave his report, Ex.P/1. The victim sustained 6 simple injuries. No injury was found to be grave. After due investigation a charge-sheet was filed before the trial Court.

3. The applicants abjured their guilt. They did not take any specific plea in the case. However, they have stated that they were falsely implicated in the matter. No defence evidence was adduced.

4. The learned JMFC, Tikamgarh, after considering the prosecution's evidence, convicted and sentenced and applicants as mentioned above, whereas, sentence was modified in the appeal filed by the applicants.

5. I have heard the learned counsel for the parties. - 3 - Criminal Revision No.160
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6. It is apparent that the eye witnesses Balgovind (P.W.2) and Motilal (P.W.4) were turned hostile and therefore, the sole testimony of the complainant Har Prasad (P.W.3) was to be considered in the case. The testimony of the victim Har Prasad is duly corroborated by the FIR, Ex.P/3, lodged by him on the next day morning and also by the medical report. There was no enmity between the victim and the applicants, so that the victim would have falsely implicated the applicants in the case. On the contrary, it is apparent from the record that the applicants were taking the victim in a party and therefore, they had good relations, prior to the incident. Under such circumstances, the testimony of the victim Har Prasad is

acceptable and it is proved that the applicants voluntarily caused him injuries.

7. The learned JMFC as well as the learned Additional Sessions Judge found that it was a case of offence punishable under section 327 of IPC. If the entire cross-examination of the victim Har Prasad is perused then, it would be apparent that he was not invited in the party as a guest but, he had to contribute for that party and therefore, if the applicants demanded contribution for that party then, it cannot be said that they were extorting money from the complainant. Since the victim was invited in a party and thereafter, without serving that party, he was assaulted, - 4 - Criminal Revision No.160 of 2013 therefore, he has lodged an FIR that he was assaulted for extortion. Otherwise, there was no question of extortion. The complainant as well as the applicants were friends. If the complainant was to attend any party then, certainly he had to contribute for the party and therefore, the offence committed by the applicants does not fall within the purview of section 327 of IPC, it shall remain within the purview of section 323 of IPC. Both the Courts below have committed an error of law in convicting the applicants for the offence punishable under section 327 of IPC.

8. So far as the sentence is concerned, the applicants were the first offenders and the incident was not preplanned. The quarrel started in a spur of moment because the victim was not giving his contribution. Under such circumstances, it is not a grave case, in which a lengthy jail sentence may be directed against the applicants. They remained in the custody for 37 days during the pendency of this revision and they have deposited the fine of Rs.1,000/- before the trial Court. Under such circumstances, it appears that they suffered an appropriate sentence for the crime done by them.

8. On the basis of the aforesaid discussion, the revision filed by the applicants is hereby partly allowed. The conviction as well as the sentence directed for the offence punishable under section 327 of IPC is hereby set aside. The - 5 - Criminal Revision No.160 of 2013 applicants are acquitted from the charge of offence punishable under section 327 of IPC but, they are convicted for the offence punishable under section 323 of IPC under the same charge. Also, they are sentenced with a jail sentence for the period, which they have already undergone

in the custody with fine of Rs.1,000/-. The aforesaid sentence is already executed and therefore, nothing further is to be done by the learned JMFC, Tikamgarh.

9. The applicants are on bail. Their presence is no more required before this Court and therefore, it is directed that their bail bonds shall stand discharged.

10. A copy of the order be sent to the trial Court as well as to the appellate Court along with their records for information. (N.K.GUPTA) JUDGE 20 3/2013
Pushpendra

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