

Babloo Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jul-30-2012

Appellant : Babloo

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Madan Singh

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.1328/2009 Babloo
and another VERSUS State of Madhya Pradesh
----- Shri Madan Singh,
counsel for the appellant. Shri Ajay Tamrakar, Panel Lawyer for the
State/respondent. -----

JUDGMENT

(Delivered on the 30th day of July, 2012) The appellants have preferred this appeal against the judgment dated 18.4.2009 passed by learned Third Additional Sessions Judge, Sagar in S.T.No.344/2008, whereby the appellants were convicted for offence punishable under sections 394 of IPC and each sentenced for 10 years' rigorous imprisonment with fine of Rs.5,000/-. In default of payment of fine, each of them has to undergo for 6 months' additional rigorous imprisonment.

2. Prosecution's case, in short, is that, on 11.1.2008 at about 1.30 a.m. in the night, the complainant Keshavram who was Panchayat Secretary at Village Panchayat Sevari was visiting to his house along with his uncle Shyamsunder. ::

2. :: Criminal Appeal No.1328 of 2009 Near the village Kull, two unknown persons who were standing with sticks having their faces covered, assaulted by a stick on the motor-cycle and therefore, the complainant and the motorcycle fell on the Earth. In the meantime, one more unknown person came to the spot, who assaulted the complainant and victim Shyamsunder by a stick. Thereafter, they took a sum of Rs.1,500/- from the complainant and Rs.53/- from his uncle. The unknown persons had also taken the motor-cycle of the complainant. The complainant went to the Police Station Behrol, District Sagar and lodged an FIR, Ex.P/2. The complainant and his uncle were sent to the hospital for their medico legal examination and treatment. Thereafter, the appellants were arrested by the police and a test identification parade was arranged on 14.2.2008, in which the complainant and his uncle identified the appellants. Nothing could be seized from the appellant Chetu, whereas one torch was seized from the appellant Babloo. After due investigation, a challan was filed before the JMFC, Banda who committed the case to Sessions Judge, Sagar and ultimately, it was transferred to Third Additional Sessions Judge, Sagar.

3. The appellants abjured their guilt. They did not take any specific plea in the case but they have stated that they were falsely implicated in the matter. However, no ::

3. :: Criminal Appeal No.1328 of 2009 defence evidence was adduced from the side of the appellants.

4. After considering the evidence adduced by the prosecution, learned Third Additional Sessions Judge convicted the appellants for offence punishable under section 394 of IPC and sentenced as mentioned above.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the appellant has submitted that the appellants are in custody since their arrest and therefore, they remained in custody for more than 4 years and 5 months. If their overt-act is assessed then, the sentence directed by the trial Court appears to be a harsh sentence. Looking to the custody period of the appellants, their sentence may be reduced to the period, which they have already undergone in the custody.

7. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, it appears that learned counsel for the appellants does not challenge the conviction directed against the appellants and therefore, there is no need to discuss on the point of conviction. So far as the sentence is concerned, there is no minimum sentence prescribed for the offence. No criminal past has been shown of the appellants. It is alleged that the appellants robbed a motorcycle and ::

4. :: Criminal Appeal No.1328 of 2009 some cash from the victims. Motorcycle was kept by the accused Sushil and therefore, it cannot be said that the appellants robbed the motorcycle. Under such circumstances, looking to the entire overt-act of their robbery, sentence for 4 years rigorous imprisonment appears to be sufficient and therefore, when the appellants have remained in the custody for more than 4 years, it is a fit case, in which sentence may be reduced to the period which they have already undergone in the custody. As far as the fine amount is concerned, the appellants have already undergone the default sentence of 6 months' in addition. Under such circumstances, it would be proper to declare that the appellants have already undergone the default sentence in lieu of fine.

8. On the basis of the aforesaid discussion, appeal filed by the appellants is hereby partly allowed. Conviction and sentence directed for offence punishable under section 394 of IPC is hereby maintained but, jail sentence is reduced to the period, which they have already undergone in the custody. It is also declared that the appellants have already undergone the default sentence and therefore, there is no need to punish them further for recovery of fine.

9. Office is directed to issue supersession warrants accordingly. ::

5. :: Criminal Appeal No.1328 o

10. Copy of the judgment be sent to the trial Court for information.

11. Record of the trial Court be annexed with Criminal Appeal No.949/2009.
(N.K.GUPTA) JUDGE 30 7/2012 Pushpendra

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