

ishwar Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-06-2012

Appellant : ishwar

Respondent : The State of Madhya Pradesh

Judgement :

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT, JABALPUR SINGLE
BENCH PRESENT: HON'BLE JUSTICE SHRI N. K. GUPTA CRIMINAL APPEAL
NO.1510/2012 Ishwar Vs. State of Madhya Pradesh

..... For the
appellant : Ms. Alka Pandya , Advocate. For the respondent: Shri S. K. Kashyap,
Public Prosecutor

JUDGMENT

(Delivered on the 6th day of November, 2012) The appellant has preferred this appeal against the judgment dated 8.7.2011 passed by the Sessions Judge, Burhanpur in ST No.68 of 2010 whereby the appellant is convicted for offence punishable under Section 326 of I.P.C and sentenced for three years rigorous imprisonment with fine of Rs.500/- and in default of payment of fine three months rigorous imprisonment was also directed.

2. The prosecutions case in short is that on 27.8.2010 at about 12.30 p.m in the noon the victim Sanjay went to the house of the appellant to see him because the

appellant was sick. A dispute took place for change of a currency note of Rs.5/- and 2 Criminal Appeal No.1510/2012 thereafter, the appellant assaulted the victim Sanjay by an Usthara causing him an injury on his neck. Sanjay was taken to the Nimad Hospital and intimation was given to the Police Station Shikarpura. Dr. Gautamchand (PW7) examined the victim Sanjay. He was admitted in the hospital. One incised wound of size 2. x 1. was found which was muscles deep. His wound was repaired and thereafter he was discharged. A case was registered at Police Station Shikarpura. After due investigation a charge sheet was filed before the JMFC Burhanpur who committed the case to the Sessions Court.

3. The appellant abjured his guilt. He did not take any specific plea and therefore, no defence evidence was taken.

4. The learned Sessions Judge Burhanpur after considering the evidence adduced by the parties convicted the appellant for offence punishable under Section 326 of I.P.C and sentenced him as mentioned above.

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

6. The learned counsel for the appellant has submitted that the injury caused to the victim was not grave and therefore, the learned Sessions Judge erred in convicting the appellant for offence punishable under Section 326 of I.P.C. The appellant remained in the custody for more than 5-6 months and therefore, sentence may be reduced for which he has already undergone in the custody.

7. On the other hand the learned Public Prosecutor has 3 Criminal Appeal No.1510/2012 submitted that the conviction as well as the sentence directed by the trial Court appears to be correct and no interference is necessary in the appeal.

8. On considering the submissions made by the learned counsel for the parties it is to be considered as to whether the appeal filed by the appellant can be accepted?. And whether the sentence directed against the appellant can be reduced ?.

9. Sanjay (PW1) was the sole eye witness in the case who, has stated that the appellant assaulted him by an Usthara on his neck. Gulab (PW2), Santosh (PW3)

and Magan (PW4) were the witnesses to whom the victim told about the incident, soon after the incident and thereafter, an FIR was lodged. The victim was sent for the medico legal examination. Dr. Gautamchand (PW7) has confirmed the injury caused to the victim. There was no enmity between the appellant and the victim and there was no reason so that the victim could implicate the appellant falsely. Hence the testimony of the complainant is believable and it is established that the appellant assaulted the victim by an Usthara causing him an incised wound on his neck.

10. Initially the trial Court has framed the charge of offence punishable under Section 326 of I.P.C and therefore, it was to be proved that the injury caused to the victim was grave. Dr. Gautamchand has explained that the incised wound was on the neck and it was only muscles deep. In the query letter, he found that injury was grave but, he did not give any opinion that 4 Criminal Appeal No.1510/2012 the injury was fatal. Since Dr. Gautamchand was of the opinion that injury was not fatal therefore, it was not grievous according to the provisions of Section 320(8) of I.P.C whereas the opinion given by Dr. Gautamchand that injury was grave is not confirmed by the provisions of Section 320(1) to Section 320(7) of the I.P.C. It is apparent that the appellant did not assault in a forceful manner and no vital organ was found cut. Since the injury was not fatal therefore, the injury as mentioned by Dr. Gautamchand does not fall within the purview of Section 320 of I.P.C and therefore, his opinion cannot be accepted that the injury caused to the victim was grave. Hence it was a simple injury.

11. It is true that no right of private defence was accrued to the appellant. No sudden or grave provocation was given to the victim and therefore, it is established that the appellant assaulted the victim Sanjay by a sharp cutting weapon voluntarily causing him a simple injury and therefore, the appellant cannot be convicted for offence punishable under Section 324 of I.P.C. The learned Sessions Judge has committed an error in convicting the appellant for offence punishable under Section 326 of I.P.C. So far as the sentence is concerned, it is apparent that the appellant was the first offender who, remained in the custody for 5-6 months during the trial and the appeal and therefore, looking to his first offence and overt act his custody period appears to be sufficient sentence for that offence.

However, fine imposed upon the appellant was no so huge and therefore, a fine of Rs.500/- may 5 Criminal Appeal No.1510/2012 also be imposed upon the appellant.

12. On the basis of the aforesaid discussion the appeal filed by the appellant is hereby partly allowed. The conviction and sentence directed for offence punishable under Section 326 of I.P.C is hereby set aside. The appellant is acquitted from the charge of section 326 of I.P.C but convicted for offence punishable under Section 324 of I.P.C which is an inferior offence of similar nature. He is sentenced with the rigorous imprisonment for the period which he has already undergone in the custody. Also a fine of Rs.500/- is imposed upon him. In default of payment of fine he shall undergo for two months rigorous imprisonment. The appellant is directed to deposit the fine amount within two months from today. If fine is deposited then the entire fine amount be given to the victim Sanjay s/o Magan resident of Village Sarola, Police Station Shikarpura, District Burhanpur by way of a compensation.

13. The appellant is on bail. His presence is no more required and therefore, it is directed that his bail bonds shall stand discharged.

14. Copy of the judgment be sent to the trial Court along with its record for information and compliance. (N.K.GUPTA) JUDGE 6 11.2012 bina 6 Criminal Appeal No.1510/2012

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