

Ram Singh Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Nov-06-2012

Appellant : Ram Singh

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Raman Patel, Shri. Mahesh Acharya

Judgement :

1 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH PRESENT : HON'BLE SHRI JUSTICE N. K. GUPTA CRIMINAL APPEAL NO.2339/1996 Biran @ Virendra Singh Thakur -VERSUS- State of Madhya Pradesh Shri Raman Patel counsel for the appellant. Shri S. K. Kashyap, Public Prosecutor for the State. CRIMINAL APPEAL NO.26/1997 Rajjoo alias Rajendra -VERSUS- State of Madhya Pradesh Shri Mahesh Acharya, counsel for the appellant. Shri S. K. Kashyap, Public Prosecutor for the State. CRIMINAL APPEAL NO.101/1997 Ram Singh -VERSUS- State of Madhya Pradesh Shri Raman Patel counsel for the appellant. Shri S. K. Kashyap, Public Prosecutor for the State. 2 Criminal Appeal

No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 CRIMINAL APPEAL NO.158/1997 Chhotu @ Shiv Kumar -
VERSUS- State of Madhya Pradesh

..... Shri Raman Patel
counsel for the appellant. Shri S. K. Kashyap, Public Prosecutor for the State.
.....

JUDGMENT

(Delivered on the 6th day of November, 2012) All these appeals arose from the common judgment dated 24.12.1996 passed by VIIIth Additional Sessions Judge, Ranjhi in ST No.449/1992 and therefore, they are hereby decided with a common judgment.

2. The appellants have preferred these appeals against the judgment dated 24.12.1996 whereby each of them was convicted and sentenced as mentioned in the table below :

Section	Act	Sentence	Fine	Sentence, amount in default of payment of fine.
341	I.P.C	six months	Rs.500/-	one month S.I.
148	I.P.C.	one year	Rs.1000/-	Two R.I. months S.I.
307/149	I.P.C.	Five years	Rs.5000/-	One year R.I. S.I.

All the sentences to run concurrently.

3. The prosecution's case in short is that on 13.4.1992 at about 8.00 a.m the complainant Babulal (PW6) was going to 3 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 his shop near Madhai Bus Stop, Jabalpur. In the way near the pan shop of one Bhaghat the appellants met with the complainant and they surrounded him. The appellant Rajkumar and Chhotu assaulted him by daggers causing him injuries on his right waist, abdomen, right scapular region and left scapular region. The appellants were provoking others to kill the victim. However Ram Kumar, Munnilal, Gyan Gor and father of the victim came to the spot to save him. The complainant Babulal was taken to the hospital on the scooter of one Munna Patel and he was admitted. Sub Inspector Suresh Chand Shrivastava (PW13) went to the vehicle hospital and wrote a Dehati Nalishi Ex.P/15 as told by the complainant. Ultimately a case was registered at Police Station Ranjhi. Dr. Jain (PW8) examined the complainant at Medical College, Jabalpur and gave his report

Ex.P/16. He found four stab wounds to the victim situated at upper abdomen, left lumbar region, right lumbar region and left thigh. Out of those injuries, the stab wound which was caused in the abdomen had a hole in the peritoneum and also a tear was caused in the left liver and pancreas. In surgery those tears were repaired. After due investigation a charge sheet was submitted before Judicial Magistrate First Class, Jabalpur who committed the case to the Sessions Court whereas ultimately it was transferred to the learned VIIIth Additional Sessions Judge, Jabalpur. 4 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 4. The appellants abjured their guilt. They did not take any specific plea but they have stated that they were falsely implicated due to enmity. However, Shri R. K. Dubey (DW1) who remained as Assistant Sub Inspector at Police Station Ranjhi proved that there was a dispute between the complainant Babulal and one Rajendra about the property and therefore, the appellants were falsely implicated in the matter.

5. The learned Additional Sessions Judge after considering the evidence adduced by the parties convicted the appellants for offence punishable under Sections 341, 148 and 307 read with Section 149 of I.P.C and sentenced them as mentioned above.

6. In Criminal Appeal No.158/1997 the appellant Raj Kumar could not submit bail bonds in compliance to the order dated 3.3.1997 and therefore, he was released after execution of actual sentence and therefore, his appeal turned infructuous. Hence at present the Criminal Appeal No.158/1997 is prosecuted by Chhotu @ Shiv Kumar.

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

8. The learned counsel for the appellants have submitted that the except for the complainant Babulal all other eye witnesses have turned hostile. They did not support the version of the complainant. The complainant has also denied that he had lodged any FIR. He made omnibus allegations against the various appellants and therefore, it is 5 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 no where clear that who assaulted him. No overt act of the appellants was established and therefore,

neither any unlawful assembly was constituted nor the appellants could be convicted for offence punishable under Section 307 of the I.P.C with the help of Section 149 of I.P.C. Under such circumstances, it is prayed that the appellants may be acquitted. The learned counsel for the appellant Chhotu @ Shiv Kumar has submitted that he was 20 years of age at the time of incident and he could be released on probation. However, he remained in the custody for more than five months in all and therefore, he may not be sent to the jail again.

9. On the other hand the learned counsel for the State has submitted that the offence done by the appellants appears to be grave and therefore, the conviction and sentence directed by the trial Court appears to be correct.

10. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether the appeals filed by the appellants can be accepted ?. And whether the sentence directed against the appellants can be reduced ?.

11. Babulal (PW6) has stated that all the appellants were having knives and sticks and they assaulted him. Ultimately, he was taken to the hospital. All other eye 6 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 witnesses like Sunita Bai (PW2), Ramkumar (PW3) etc. were turned hostile. They could not say anything about the incident. However, the testimony of the complainant is duly corroborated by Dr. Jain (PW8) who, saw the victim when he was admitted in the Medical College. He gave a report Ex.P/ 16. According to Dr. Jain the victim sustained four stab wounds, out of which three were simple in nature whereas the stab wound caused in the abdomen made a hole in the peritoneum wall and some tear was also caused to the liver and pancreas. In the cross examination he has admitted that operation was done and such organs were repaired. The incident took place in the day light and therefore, it cannot be said that the victim could not see the culprits. It is also submitted by the learned counsel for the appellants that the appellants were falsely implicated due to enmity. However, enmity is a double edged weapon. One can assault due to enmity or one can be falsely implicated due to enmity and therefore, a strict scrutiny is required in considering the evidence given by the

complainant.

12. Sub Inspector Shri Suresh Chand Shrivastava (PW9) has stated that he went to the hospital to record Dehati Nalish Ex.P/15. The complainant in his cross examination has replied that he did not lodge any FIR because he did not go to the Police Station but, he has accepted that in the hospital he placed his signature on the document Ex.P/15. Under such 7 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 circumstances, it cannot be said that the complainant denies to lodge the Dehati Nalishi. Dehati Nalishi Ex.P/15 is duly proved by the Sub Inspector Shri Shrivastava. In the Dehati Nalishi, the first version given by the complainant was recorded. If it is considered then it would be clear that he made the allegations against the appellants Raj Kumar and Chhotu @ Shiv Kumar that they assaulted him by daggers. not the complainant Babulal states against all of the accused but looking to his version given in the Dehati Nalishi, his present version appears to be an after thought. Hence his testimony can be believed upto the extent which is corroborated by the F.I.R (Dehati Nalishi). In that Dehati Nalishi he has stated that remaining appellants surrounded him and they were shouting to kill the victim. It was stated by the victim Babulal that all of the appellants held sticks and knives and they assaulted the victims. However, looking to the version given in the Dehati Nalishi Ex.P/15 it is apparent that except the appellant Raj Kumar and Chhotu @ Shiv Kumar none of the appellants assaulted him by any weapon. If the remaining appellants were present at the spot and they had any knives then there was no problem to them in assaulting the victim but, it is established that they did not participate in the assault and therefore, the possibility cannot be ruled out that when the complainant was taken to the hospital he had cooked a story against the remaining 8 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 appellants. Looking at such circumstances, it is possible that the remaining appellants were not present at the time when the incident took place.

13. The learned Additional Sessions Judge convicted the appellants for offence punishable under Section 307 of I.P.C with help of Section 149 of I.P.C but, if injuries of complainant are perused then it appears that the appellant Chhotu @

Shiv Kumar and Ram Kumar caused four injuries to the complainant. Out of them three injuries were not deep. An approximation can be made that the appellant Ram Kumar and Chhotu each assaulted the victim for two times whereas their assault were not with force and therefore, no deep injury was caused on the back or chest of the complainant. Only one injury caused a hole in the peritoneum wall and damaged the vital organ. Under such circumstances, where the appellants left the victim after causing him 3-4 injuries and therefore, it is apparent that they were not intended to kill the victim. Similarly, they did not use much force in the assault. Hence the overt acts of the appellants do not fall within the purview of any part of Section 300 of I.P.C and therefore, the appellants could not be convicted for offence punishable under Section 307 of I.P.C. However, one injury caused to the victim was dangerous to the life and therefore, according to the provisions of Section 320(8) of I.P.C it comes in the category of grievous injury and therefore, the appellants can 9 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 be convicted for the offence punishable under Section 326 of I.P.C.

14. It is established by the statement of the victim Babulal that Chhotu @ Shiv Kumar and Ram Kumar had assaulted him with daggers and that grievous injury was caused by them. It is no where clear that who gave that assault in the abdomen of the victim but, looking to the overt act of the two accused persons it is apparent that both of them were intended to cause such injuries and therefore, their own intention can be presumed for offence punishable under Section 326 of I.P.C. However, it is no where established that the remaining appellants participated in the crime. It is not proved beyond doubt that they were present at the spot. As discussed above if they were present then they could have also assaulted the victim because they were also armed according to the version of the victim, but no such assault was done by other appellants and therefore, neither their common object nor their common intention can be presumed. Hence, the remaining appellants cannot be convicted for offence punishable under Section 326 of I.P.C or any inferior offence of similar nature either directly or with the help of Section 34 or 149 of I.P.C.

15. Initially FIR was lodged against six persons. Out of those one had expired during the trial but, as stated by the complainant no participation of other appellants is proved 10 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 beyond doubt and therefore, it cannot be said that they formed an unlawful assembly or they did any act in furtherance of any common object. Under such circumstances, none of the appellants can be convicted for offence punishable under Section 148 of I.P.C or any inferior offence of the similar nature. The learned Additional Sessions Judge has committed an error in convicting the appellants for the offence punishable under Section 148 of I.P.C.

16. Looking to the facts of the case, it appears that the victim was going towards his shop. There was no intention of any accused to restrain him in going to the shop but, the appellants Shiv Kumar and Ram Kumar were interested to assault him and therefore, the victim was admittedly restrained. Under such circumstances, it cannot be said that the offence under Section 341 of I.P.C is separately constituted. The victim was restrained to go further, due to assault caused by the appellants Ram Kumar and Shiv Kumar but, in lack of their intention they cannot be convicted for offence of wrongful restraint. Hence, the Additional Sessions Judge had erred in convicting the appellants for offence punishable under Section 341 of I.P.C.

17. On the basis of the aforesaid discussion it is apparent that out of all the appellants only appellant Chhotu @ Shiv Kumar can be convicted for offence punishable under 11 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 Section 326 read with Section 34 of I.P.C. The appellant Chhotu @ Shiv Kumar was 20 years of age at the time of incident but offence under Section 326 of I.P.C is punishable by life imprisonment and therefore, the appellant Chhotu @ Shiv Kumar cannot be released on probation. He remained in the custody since 19.4.1992 to 29.5.1992 during the trial. Again after pronouncement of the judgment by trial Court he remained in the custody from 24.12.1996 to 24.3.1997 and therefore, he remained in the custody for 5 months and 10 days. He has faced the trial and appeal for last 20 years. Looking to his age at the time of incident and aforesaid harassment

faced by the appellant Chhotu @ Shiv Kumar, it is a proper case in which he may not be sent to the jail again but, some heavy fine may be imposed upon him.

18. On the basis of the aforesaid discussion it is apparent that the appeals filed by the appellant Biran @ Birendra Singh, Raju @ Rajendra and Ram Singh can be accepted in toto. Therefore, the appeals filed by these three appellants are accepted. Conviction as well as sentence directed against them for the offences punishable under Section 341, 148, 307 read with Section 149 of I.P.C is set aside. They are acquitted from all such charges. They would be entitled to get the fine amount back if they have deposited in the trial Court. The appeal filed by the appellants Chhotu @ Shiv Kumar is hereby partly allowed. 12 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997 His conviction and sentence for offences punishable under Section 148, 341, 307 read with Section 149 of I.P.C are hereby set aside. He is acquitted from aforesaid charges but, he is convicted for the offence punishable under section 34 of I.P.C and sentenced with rigorous imprisonment of the period which he had already undergone in the custody with a fine of Rs.7,000/-. The appellant Chhotu @ Shiv Kumar is directed to deposit the remaining fine amount before the trial Court within two months from today. In default of payment of fine, he shall undergo for one years rigorous imprisonment. In case if fine is deposited then a sum of Rs.5000/- may be given to the victim Babulal s/o Rameshwar Gupta r/o Near Ranjhi Canal Jabalpur by way of a compensation.

19. The appellant Birendra @ Biran is in custody and therefore, the Registry is directed to issue the release warrant forthwith for his release from the jail. The other appellants are on bail. Their presence is no more required. Therefore, it is directed that their bail bonds shall stand discharged.

20. 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 13 Criminal Appeal No.2339/1996 Criminal Appeal No.26/1997 Criminal Appeal No.101/1997 Criminal Appeal No.158/1997