

Ajay Kumar and ors. Vs. the State of M.P.

Ajay Kumar and ors. Vs. the State of M.P.

SooperKanoon Citation : sooperkanoon.com/1052621

Court : Madhya Pradesh

Decided On : Aug-30-2012

Appellant : Ajay Kumar and ors.

Respondent : The State of M.P.

Judgement :

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT, JABALPUR SINGLE BENCH PRESENT: HON'BLE JUSTICE SHRI N. K. GUPTA CRIMINAL APPEAL NO.160/1997 Ajay Kumar and 3 others. Vs. State of Madhya Pradesh

..... For the
appellant : Shri Manish Datt, Senior Advocate with Shri P. Dubey, Advocate. For
the respondent: Shri S.K. Kashyap, Government Advocate.
.....

JUDGMENT

(Delivered on the 30th day of August, 2012) The appellant has preferred this appeal against the judgment dated 13.1.1997 passed by the IXth Additional Sessions Judge, Bhopal in ST. No.123/1992 whereby the appellants were convicted for offence punishable under Sections 323 of I.P.C (for the victims Manot Saini, Shiv Kumar and Tulsiram) and sentenced for rigorous imprisonment for one year and Section 452 of I.P.C and sentenced for two years rigorous imprisonment with fine of Rs.1000/-. In default of payment of fine, each of the appellants was to undergo additional simple imprisonment for six months.

2. Prosecution's case in short is that on 7.10.1991 at about 2 Criminal Appeal No.160 o

5. 30 p.m the victim Manot Saini was standing in front of his house situated at Tilajamalpura, Bhopal. The appellants and other persons came to the house of the victim Manot Kumar to obtain some donation to arrange some religious festival. Manot Kumar replied that his father had already given some donation to some persons organizing the same festival and therefore, he was unable to give donation for the second time. Thereafter, the appellants came to the spot with sword, gupti, katar and hockey and assaulted the victim Manot Kumar. Manot Kumar ran towards his house and entered inside his room. then the appellants also entered in the room with all those weapon and Sharad assaulted the victim Manot Kumar on his head by a sword but, since Manot tried to save himself, the injuries were caused in his hands. Similarly Ravi assaulted the victim Shiv Kumar on his right chest whereas, the appellant Ajay assaulted the victim Shiv Kumar by a hockey on his chest. When the victim Tulsiram came to save the remaining victims the appellant Anand assaulted him by a knife (Katar) causing him an injury in his left palm. After this incident Manot Kumar went to the Police Station, Nishatpura at about 6.10 p.m and lodged FIR Ex.P/1. The victims were sent to the Government Hospital for their medico legal examination and treatment. The concerned doctor found various injuries to the victims. After due investigation a charge sheet was filed before the JMFC, Bhopal who, committed the case to the Sessions Court, Bhopal and ultimately it was transferred to the IXth Additional Sessions Judge, Bhopal 3 Criminal Appeal No.160 o

3. The appellants abjured their guilt. They took the plea that they were falsely implicated in the matter. They were not present at the spot. They took a plea of alibi. One Kailash Sharma (DW1) was examined to prove that the appellant Anand Chaturvedi was visiting to his typing institute between 5-6 p.m every day and therefore, he was present in his typing institute at the time of the incident.

4. The learned Additional Sessions Judge after considering the evidence adduced by the parties acquitted the appellants from the charges of offences punishable under Section 307 and 324 of I.P.C read with Section 34 of I.P.C but, convicted

the appellants for offences punishable under Sections 452 and 323 read with Section 34 of I.P.C and sentenced them as mentioned above.

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

6. The learned Senior Advocate for the appellants has submitted that no medical report of the various victims were proved. The appellants were implicated falsely in the matter. In the alternate it is submitted that the appellant no.1 is a Government servant. Appellant no.2 is an Accountant. Appellant no.3 is an Advocate whereas the appellant no.4 is a teacher and if they are sentenced with jail sentence or fine there will be a negative effect on their jobs and profession. Under such circumstances, reliance was placed on the judgment passed by Hon'ble the Apex Court in the case of Rajbir Vs. State of Haryana. (AIR 198.SC 1278.and State of Maharashtra Vs. Jagmohan Singh and others. (2004 CR.L.J 4254). 4 Criminal Appeal No.160 o

7. On the other hand the learned Public Prosecutor has submitted that the appellants had assaulted the victim by deadly weapons though medical reports could not be proved. Under such circumstances, the conviction and sentence directed by the trial Court appears to be correct.

8. After considering the submissions made by the learned counsel for the parties it is to be considered that whether the appeal filed by the appellants can be accepted on merits ?. and Whether the sentence passed against the appellants can be reduced ?.

9. Looking to the evidence given by Manot Saini (PW1), Shiv Kumar (PW4), Tulsiram (PW5) and Ram Ratan (PW6) it appears that since the complainant Manot denied to give donation to the appellants they came after some time and assaulted not only the complainant Manot Saini but, also Shiv Kumar and Tulsiram. Statements of these witnesses are duly corroborated with the timely lodged FIR Ex.P/1. Though due to consideration of an application under Section 311 of the Cr.P.C matter was stayed for a lengthy period by this Court and thereafter, case file was returned with the direction for its early disposal, it appears that it could not be noticed either by the prosecution or the Presiding Officer that

the concerned doctor was not examined. However, no enmity is shown by the appellants with the complainant and other witnesses. Therefore, in absence of the injury report the learned Additional Sessions Judge did not convict the appellants either for offence punishable under section 307 or 324 of the I.P.C 5 Criminal Appeal No.160 of 1997 because neither the nature of the injury was proved nor it was proved that the injury was caused by any sharp cutting weapon but, the evidence given by the injured witnesses is corroborated by the FIR and the evidence of the witnesses Ram Ratan (PW6). Their testimony appears to be acceptable. Under such circumstances, it is apparent that the appellants assaulted the victims Manot Saini, Shiv Kumar and Tulsiram causing them injuries.

10. It is very much clear from the facts of the case that the appellants were the assailants. They assaulted the victims. They chased and entered in their house and assaulted inside the house. Under such circumstances, it cannot be said that any right of private defence accrued to the appellants. If the victim Manot had denied to give any donation then by such denial no sudden or grave provocation was caused to the appellants. They used some weapons in the assault and therefore, they knew the impact of those weapons. Under such circumstances, it is established that they voluntarily caused hurt to the various victims.

11. Each of the appellants had participated in the crime and a person who, came to save the main victim, they assaulted him also. Under such circumstances, their common intention is visible by their overt acts that they intended to cause hurt to the victims Manot Kumar, Shiv Kumar and Tulsiram. Under such circumstances, the trial Court has rightly convicted the appellants for three count charges of the offence punishable under Section 323 read with Section 34 of I.P.C though the Additional Sessions 6 Criminal Appeal No.160 of 1997 Judge has not specifically mentioned in his judgment about the three count charges but, according to the memo of charge, one charge was framed for offence punishable under section 307 of the I.P.C for the victim Tulsiram and one charge was framed for offence punishable under Section 324 of I.P.C for the victims Shiv Kumar and Manot Kumar. The learned Additional Sessions Judge found that the appellants were guilty to assault these three victims and therefore, he convicted them for offence punishable under Section 323 read with section 34 of I.P.C and therefore,

conviction is directed for three count offences. One from reduction of the offence punishable under Section 307 of I.P.C and second and third due to reduction of the offence from 324 to 323 of I.P.C. Since he has awarded jail sentences to the appellants which were to run concurrently therefore, he did not mention for all the three counts.

12. So far as the sentence is concerned the learned Senior Advocate for the appellants has placed his reliance upon the judgments passed by Hon'ble the Apex Court in the case of Rajbir (supra) and Jagmohan Singh (supra) and prayed that the appellants may be enlarged on probation. Those judgments of Hon'ble the Apex Court are applicable in the cases where the offence is committed by a Government servant and therefore, such a Government servant is required to be given the benefit of probation, so that he may not lose his job. In the present case it is mentioned that the appellants are working as a Teacher, Accountant, Advocate and a Government servant but, it is no 7 Criminal Appeal No.160 of 1997 where informed by the appellants that whether they were the Government servants at the time of the incident. Certainly it appears that at the time of incident they were unemployed. The defence witness has proved that at that time the appellant Anand was doing a typing course and therefore, the appellants cannot get the shelter of these judgments passed by Hon'ble the Apex Court because the position of the appellants is to be counted from the date of the incident and not from present status of the appellants. Also if someone gets a Government job then he has to inform about the conviction and pendency of any criminal case against him and therefore, it is expected that all of the appellants must have informed their employers about such cases and since the offence under Section 323, 452 of I.P.C are not the offences of moral turpitude therefore, there was no hurdle of pendency of this case before the appellants to get the employment. Admittedly none of the appellants were below 21 years of age at the time of the incident and therefore, they are not entitled to get the benefit of the probation on the basis of the age. Looking to the overt act of the appellants, it is apparent that lawlessness of such nature is increasing day by day. If someone is arranging for some festival then he cannot bind anyone to give the donation. Donation is to be given voluntarily. No one can force anyone to give the donation. Under such circumstances, it is not a good case in which the appellants may be enlarged on

probation by granting the advantage of the Probation of Offenders Act. However, the appellants have faced the trial and appeal for last 20 years and 8 Criminal Appeal No.160 of 1997 not they are settled in their jobs. Since offences are not of moral turpitude and therefore, imposition of fine may not give any adverse effect to their jobs or profession but, jail sentence may give an adverse effect therefore, it would be proper not to send the appellants to the jail. Under such circumstances, the jail sentence directed against the appellants may be removed and heavy fine may be imposed upon the appellants for the offences proved against them 13. On the basis of the aforesaid discussion the appeal filed by the appellants is hereby partly allowed. The conviction directed for the offence punishable under Section 452 and 323 read with Section 34 (3 counts) of the I.P.C is hereby maintained but, jail sentence imposed upon them is removed but, fine amount for offence under Section 452 of I.P.C is enhanced from sum of Rs.1000/- to a sum of Rs.2000/- whereas, the fine of Rs.1000/- is imposed upon each of the appellants for each of the counts of offence punishable under Section 323 read with Section 34 of I.P.C against the appellants. Each of them is liable to deposit a sum of Rs.3000/- for the offences under Section 323 read with Section 34 of I.P.C. The appellants are directed to deposit the remaining fine amount before the trial Court within two months from today failing which they shall undergo the rigorous imprisonment of six months for the fine amount of Section 452 of I.P.C and rigorous imprisonment of three months for each default relating to the offences under Section 323 read with Section 34 of I.P.C. If fine is deposited then each of the victims Manot Saini, 9 Criminal Appeal No.160 of 1997 Shiv Kumar and Tulsiram shall get a sum of Rs.2000/- as a compensation out of that fine.

14. The presence of the appellants is no more required before this Court and therefore, it is directed that the bail bonds of the appellants shall stand discharged.

15. Copy of the judgment be sent to the trial Court for information an compliance.
(N.K.GUPTA) JUDGE 30 8.2012 bina

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com