

Chouthmal Vs. State of Mp.

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Court : Madhya Pradesh

Decided On : Aug-30-2012

Appellant : Chouthmal

Respondent : State of Mp.

Judgement :

1 Cr. Appeal No.2111/1996 IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH : HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.2111/1996 Chouthmal VERSUS State of Madhya Pradesh
----- Shri S.K. Dixit, Advocate for the appellant. Shri G.S. Thakur, Panel Lawyer for the State/respondent

JUDGMENT

(Delivered on the 30th day of August, 2012) The appellant has preferred this appeal against the judgment dated 14.11.1996 passed by the learned First Additional Sessions Judge, Raisen in S.T. No.173/1992 whereby the appellant was convicted for the offence punishable u/s. 324 of Indian Penal Code and sentenced for two years rigorous imprisonment with fine of Rs.2000/-, in default of payment of fine six months rigorous imprisonment in addition.

2. Prosecution's case in short is that on 27.3.1992 at about 8 a.m. in the morning the victim Belan Singh (PW-5), brother of the complainant Bhawar Singh was

standing on 2 Cr. Appeal No.2111/1996 the street, out of his house, whereas the complainant Bhawar Singh was working in his field, suddenly the appellant appeared at the spot having farsa in his hand. He assaulted the victim Belan Singh by farsa for so many times causing him various injuries on his head, right hand and other places of the body. The victim was taken to the police station Salamatpur where complainant Bhawar Singh (PW-1) lodged an FIR Ex.P/1. The victim was sent to Primary Health Centre, Salamatpur for medical examination and treatment. Dr. S.K. Rai (PW-8) examined him and gave his report Ex.P/2. Initially he found an incised wound on the head of the victim by which blood was oozing. He found that some pieces of bone were cut and they went inside the wound. He referred the patient to the District Hospital, Raisen. After due investigation a charge-sheet was filed before the Chief Judicial Magistrate, Raisen who committed the case to the Sessions Court, Raisen. Ultimately, it was transferred to the First Additional Sessions Judge, Raisen.

3. The appellant abjured his guilt. He took a specific plea that the victim Belan Singh has assaulted him and thereafter the appellant was falsely implicated in the present case. However, no defence evidence has been adduced by the appellant. 3 Cr. Appeal No.2111/1996 4. The learned First Additional Sessions Judge acquitted the appellant from the charge punishable u/s. 307 of the Indian Penal Code but convicted for the offence punishable u/s. 324 of IPC 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 appellant is a poor person who was assaulted by the victim himself but police didn't write his report. Injuries caused to the appellant were proved in the statement of Dr. Rai (PW-8) but no injuries were explained by the prosecution. The appellant is erroneously convicted for the offence punishable u/s. 324 of the IPC. In alternate, it is submitted that the appellant was the first offender who remained in the custody for a period of more than forty days. He has faced the trial and appeal for last twenty years and therefore, he may not be sent to the jail again.

7. On the other hand, the learned Panel Lawyer has submitted that the conviction and sentence passed by the trial Court appears to be correct and no interference is necessary in this appeal.

8. After considering the submissions made by the learned counsel for the parties, it is to be considered as to :

4. Cr. Appeal No.2111/1996 (i) whether the appellant can be convicted for the offence punishable u/s. 324 of the Indian Penal Code ?. and ; (iii) whether the sentence imposed to the appellant can be reduced?.

9. In the present case Lilabai (PW-2), Belan Singh (PW-5), Deviram (PW-6) and Krishnabai (PW-7) were examined as witnesses who confirmed that the appellant gave a blow of farsa to the victim Belan Singh on his head and therefore, the victim Belan Singh fell down. There is no material contradictions in the evidence of these witnesses. Bhawarlal (PW-1), Ramcharan (PW-3) and Bhaiyalal (PW-4) have stated that they found the victim Belan Singh to be injured and he was taken to the Police Station Salamatpur. Ramcharan and Bhaiyalal have further stated that the victim Belan Singh did not inform them about the incident but Bhawar Singh had stated that the victim Belan Singh was assaulted by the appellant Chouthmal. Bhawar Singh had lodged an FIR Ex. P/1 within two-three hours whereas police station was 8 kms away. The victim Belan Singh sustained one injury on his head and there was a profuse bleeding from that injury and therefore, it was for the complainant Bhawar Singh to arrange for a temporary bandage so that oozing of blood could be stopped and to arrange a bullock-cart to take 5 Cr. Appeal No.2111/1996 the victim to the hospital and police station. Therefore, the time taken in lodging an FIR appears to be proper. It cannot be said that the FIR was delayed. Under such circumstances, the testimony of various witnesses is also corroborated by the FIR Ex.P/1.

10. Dr. Rai (PW-8) has proved the MLC report Ex. P/2 and the injury of the victim on his head. Injury was caused by a sharp edged weapon and therefore, the medical evidence corroborates the testimony of the eye-witnesses. Under such circumstances, it is established that the appellant assaulted the victim by farsa on his head causing him an injury.

11. The learned counsel for the appellant has submitted that no explanation to the injuries caused to the appellant is given. However, if entire evidence is perused then it would be clear that no FIR has been lodged by the appellant against the victim. He did not report to the police station that he was assaulted by the victim. Under such circumstances, though Dr. Rai has proved the injuries of the appellant but it is nowhere established that the appellant sustained these injuries in the incident itself. Under such circumstances, there was no burden on the prosecution to explain the injuries found to the appellant. The appellant could not establish that the injuries caused to him were 6 Cr. Appeal No.2111/1996 caused in the same incident and therefore, no explanation was required from the side of the prosecution. It is apparent from the evidence that a quarrel took place between the children on the previous day and therefore, the appellant assaulted the victim on the next day. Under such circumstances, it is not a case where the victim gave any sudden and grave provocation to the appellant or right of defence was accrued to the appellant. He brought a farsa with him and assaulted the victim therefore, he must have knowledge that what would be the effect of assault caused by a farsa. Under such circumstances, it is established that the appellant assaulted the victim voluntarily causing him an injury by the sharp cutting weapon. Under such circumstances, the learned Additional Sessions Judge has rightly convicted the appellant for the offence punishable u/s. 324 of the IPC.

12. So far as the sentence is concerned, it is true that the appellant was a first offender, he gave a single blow to the victim and he has faced the trial and the appeal for last twenty years and he suffered harassment of appearing before the various courts. He remained in the custody for forty days during the trial. Under such circumstances, it is a fit case in 7 Cr. Appeal No.2111/1996 which the appellant may not be sent to jail again but a heavy fine is to be imposed upon him.

13. On the basis of the aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. The conviction directed by the trial Court for the offence punishable u/s. 324 of IPC is hereby maintained but the sentence is reduced to the period which he has already undergone in the custody. However, the fine amount is enhanced from the sum of Rs.2000/- to the sum of Rs.5,000/- for the offence punishable u/s. 324 of IPC against the appellant. The appellant is directed to

deposit the remaining fine amount within two months from today, failing which he shall undergo six months R.I. On deposit of the fine amount, a sum of Rs.4,000/- be provided to the victim Belan Singh s/o. Sukhlal, resident of Tijalpur, Police Station Salamatpur, District-Raisen by way of a compensation.

14. Presence of the appellant is no more required therefore, his bail bonds shall stand discharged.

15. Copy of the judgment be sent to the trial Court with its record for information and compliance. (N.K.GUPTA) JUDGE 30 08/2012 Rashmi

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