

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

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Court : Madhya Pradesh

Decided On : Aug-30-2012

Appellant : Ramesh Kumar and ors.

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. S.K.Dixit

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.2467/1997 Ramesh
Kumar and another VERSUS State of Madhya Pradesh
----- Shri S.K.Dixit, counsel for
the appellants. Shri S.K.Kashyap, Public Prosecutor for the State/ respondent.

JUDGMENT

(Delivered on the 30th day of August, 2012) The appellants have preferred this appeal against the judgment dated 8.11.1997 passed by the learned Sessions Judge, Raisen in S.T.No.15/1994, whereby the appellants were convicted and sentenced as under:- CONVICTION SENTENCE FINE DEFAULT SENTENCE 45 and 148 of 2 years' R.I. for Rs.1,000 for 1 month's IPC each count. each count R.I. for each count 324 read with 3 years' R.I. Rs.1,000/- 1 month's section 149 of S.I. IPC.

2. Prosecution's case, in short, is that, on 2.8.1993, the deceased Jeevanlal was working on his shop, situated at :- 2 :- Criminal Appeal No.2467 of 1997 village Maheshwar (Police Station Bareli, District Raisen). At about 2 p.m. in the noon, daughter of the accused Jasraj came to his shop to purchase a Rakhi. Thereafter, she came to get it changed. Again at about 3 p.m., she came with her father Jasraj for change of that Rakhi. Jasraj insisted for refund of the payment. Jeevanlal refused to take the Rakhi back but, he gave the payment to the accused Jasraj. Soon after this incident, the appellants came to the spot and they assaulted the victim Jeevanlal by Farsa and Ballam etc. causing him so many injuries. Prem Bai (P.W.2) took her husband to the Government Hospital, Bareli and she gave an intimation (Dehati Nalshi) to the concerned Sub Inspector about the incident, which was written as Ex.P/3. Thereafter, the deceased Jeevanlal expired. His dead body was sent for post-mortem. Initially, Dr.Khare (P.W.5) examined the deceased Jeevanlal when he was alive and gave a report Ex.P/5. He found that there were 4 injuries caused to the deceased Jeevanlal. All the injuries were incised wounds caused on head, left arm, left elbow and right elbow. Some abrasions were also found on his chest and back of the deceased Jeevanlal. Dr.H.P.Singh (P.W.9) performed the post-mortem on the body of the deceased Jeevanlal and gave his report, Ex.P/6. He confirmed the injuries which were shown by Dr.Khare and he found that the deceased :- 3 :- Criminal Appeal No.2467 of 1997 Jeevanlal succumbed to the injuries. After due investigation, a charge-sheet was filed before JMFC, Bareli, who committed the case to the Sessions Judge, Raisen.

3. The appellants abjured their guilt. They took a specific defence that Jasraj, father of the accused Mohan and Banke, was in a habit to have a Farsa in his hand and when a quarrel took place, he assaulted the victim Jeevanlal by that Farsa and at the same time, Jeevanlal inserted a Ballam on the chest of Jasraj, who died at the spot and thereafter, since Jeevanlal was killed, his wife lodged an FIR against the appellants, who were nears and dears of the deceased Jasraj. In defence Maan Singh (D.W.1) was examined and post-mortem report of the deceased Jasraj was duly proved in cross-examination by Dr.H.P.Singh (P.W.9).

4. After considering the evidence adduced by the parties, the learned Sessions Judge acquitted the appellants from the charges of offence punishable under section 302 read with section 149 of IPC but, convicted the appellants for offence punishable under sections 452, 148 and 324 read with section 149 of IPC and sentenced them as mentioned above.

5. I have heard the learned counsel for the parties. :- 4 :- Criminal Appeal No.2467 o

6. The learned counsel for the appellants has submitted that Jeevanlal died due to injuries caused on his head and injuries were caused to him by the deceased Jasraj, who expired in the incident itself. No common object of the appellants may be presumed with the deceased Jasraj and therefore, the appellants could not be convicted for offence punishable under section 324 of IPC. No any unlawful assembly was constituted. In the alternate, it is submitted that the offences committed by the appellants are not so grave. The appellants remained in the custody for more than 17 months during the trial. They have faced the trial and appeal for the last 16 years and therefore, they may not be sent to the jail again.

7. On the other hand, learned Public Prosecutor has submitted that the conviction and sentence directed by the trial Court appears to be correct and no interference is required in the present appeal.

8. 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 that as to whether the appellants can be convicted for offence punishable under section 324 read with section 149 of IPC?. Whether the conviction directed against the appellants for the offence punishable under section 148 and 452 of IPC is :- 5 :- Criminal Appeal No.2467 of 1997 sustainable?. And whether the sentenced directed against the appellants can be reduced to the period, which they have already undergone in the custody?.

9. Prem Bai (P.W.2) was examined as the eye witness who supported the FIR, Ex.P/3 lodged by her, whereas Madan Singh (P.W.3) and Radhelal (P.W.10) were also examined as eye witnesses and they have turned hostile. According to the

FIR, it is alleged that when Jasraj and his daughter went from the spot, the appellants came to the spot and assaulted the deceased but, the evidence given by the complainant is not accepted by the trial Court as it is, because it had inherent lapses. Dr.H.P.Singh (P.W.9) has proved the post-mortem report of the deceased Jasraj, who died due to a single injury caused on his chest by some penetrating object. If no quarrel took place between Jeevanlal and Jasraj then, there is no explanation as to how the deceased Jasraj died due to the injury caused by Ballam. Since it was alleged against the complainant Prem Bai that she provided the Ballam to the deceased Jasraj, therefore, to save herself from the trial, the complainant Prem Bai lodged an FIR in such a manner, so that her guilt should be hidden.

10. Under such circumstances, the trial Court has rightly held that initially Jasraj assaulted the deceased Jeevanlal by a Farsa on his head, by which a fatal injury was :- 6 :- Criminal Appeal No.2467 of 1997 caused on the head of the deceased Jeevanlal but, in the meantime, Jeevanlal assaulted the deceased Jasraj by a Ballam. Though incident took place at the time when a quarrel started between the deceased Jeevanlal and Jasraj for return of a Rakhi and therefore, at that time, the appellants were not present. Therefore, it cannot be said that they had any common intention or object with the deceased Jasraj to kill the deceased Jeevanlal. Under such circumstances, learned Sessions Judge has rightly acquitted the appellants from the charges of offence punishable under section 302 of IPC. However, 3 more incised wounds and 2 abrasions were found on the body of the deceased Jeevanlal and therefore, the testimony of the victim Prem Bai may be accepted up to that extent that the appellants had also assaulted the deceased Jeevanlal by sharp cutting weapons and each of them had participated in the crime and therefore, they constituted an unlawful assembly and due to the overt-acts of each of them, they were responsible for the offence punishable under section 324 of IPC with the help of section 149 of IPC. Under such circumstances, the trial Court has rightly convicted for the appellants for offence punishable under section 324 read with section 149 of IPC as well as for offence under section 148 of IPC. :- 7 :- Criminal Appeal No.2467 o

11. It is also apparent that the entire incident took place in the shop of the deceased Jeevanlal and therefore, it is established that the appellants entered in the shop of the deceased Jeevanlal with the intention to cause him injuries and therefore, offence punishable under section 452 of IPC is also made out against the appellants. The trial Court has rightly convicted the appellants for the offence punishable under section 452 of IPC.

12. So far as the sentence is concerned, it is true that the appellants were young youths of 20 to 22 years of age at the time of the incident and they apprehended that the deceased Jeevanlal assaulted the deceased Jasraj by a Ballam and therefore, they could have lost their temper and assaulted the deceased Jeevanlal, who was already injured due to assault caused by the deceased Jasraj. Under such circumstances, offence committed by the appellants cannot be said to be grave. Each of the appellants were in the custody for 17 months, whereas they faced the trial and appeal for last 18 years. Looking to their harassment alongwith the aforesaid circumstances, it is a fit case, in which the appellants may not be sent to the jail again but, some fine amount may be enhanced.

13. On the basis of the aforesaid discussion, the appeal filed by the appellants is hereby partly allowed. :- 8 :- Criminal Appeal No.2467 of 1997 Conviction directed against the appellants for the offence punishable under sections 452, 148 and 324 read with section 149 of IPC is hereby maintained but, their sentence is reduced to the period, which they have already undergone in the custody. There is no change in the fine amount for offence punishable under sections 452 and 148 of IPC but, fine for the offence punishable under section 324 read with section 149 of IPC is hereby enhanced from a sum of Rs.1,000/- to a sum of Rs.5,000/-. The appellants are directed to deposit the entire fine amount before the trial Court within two months from today, failing which each of them shall undergo for 9 months' rigorous imprisonment. If fine is deposited then, the complainant Prem Bai being legal representative of the deceased Jeevanlal, shall get a sum of Rs.7,000/- by way of a compensation.

14. Presence of the appellants is no more required before this Court and therefore, it is directed that their 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 8/2012 Pushpendra -:- 9 -:- Criminal Appeal No.2467 of 1997

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