

Sushil Raikwar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-18-2012

Appellant : Sushil Raikwar

Respondent : The State of M.P.

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR Single Bench:
Hon'ble Shri Justice N.K.Gupta,J.CRIMINAL APPEAL NO.2259 OF 199.Sushil
Raikwar. Vs. State of Madhya Pradesh.

----- Shri Sharad
Verma, Advocate for the appellant. Shri Ajay Tamrakar, Panel Lawyer for the
respondent/ State.

JUDGMENT

(Delivered on the 18th day of October, 2012) This criminal appeal is preferred by the appellant being aggrieved by the judgment dated 21/11/1996 passed by the Second Additional Sessions Judge, Jabalpur in ST No.574/1995, whereby the appellant was convicted for commission of offence punishable under Section 308 of IPC and sentenced for three years' rigorous imprisonment with fine of Rs.1000/- . In default of payment of fine, six months rigorous imprisonment was also directed.

2. The prosecutions case, in short, is that on 13.4.1995 the complainant Nathuram (PW-1) was working on his handcart shop of snacks. His son Raju @ Kamlesh (PW-2) was selling Samosas. At about 9:00 PM in the night the appellant went to the shop of the complainant and took 2 Cr.A.No.2259/1996 some Samosas. Thereafter Raju @ Kamlesh asked for money, then the quarrel started. The appellant gave a slap to Raju @ Kamlesh. The complainant tried to stop their quarrel and when he intervened in that quarrel, the appellant took hot oil from the utensil kept on the handcart and poured upon the complainant due to which the complainant sustained burn injuries on his right chest, right abdomen, right hand and right leg. The customers of the complainant saw the incident. The complainant was taken to the Police Station Madan Mahal, Jabalpur where he lodged an FIR Ex.P-1. He was sent to the Victoria Hospital, Jabalpur for his medico legal examination and treatment. Dr. Smt. Sobha Agrawal (PW-6) examined the complainant and gave her report Ex.P-7. She found 25-30% burns to the complainant on his right chest, right abdomen, right leg and right hand. He was admitted in the hospital for the treatment. Dr. S.K.Pandey (PW-5) treated the complainant. He prepared the bed head ticket Ex.P-5. He also sent a reply Ex.P-6 to the query done by the police. After due investigation, a charge sheet was filed before the Chief Judicial Magistrate, Jabalpur, who committed the case to the Sessions Judge, Jabalpur and ultimately it was transferred to the Second Additional Sessions Judge, Jabalpur. 3 Cr.A.No.2259/1996 3. The appellant-accused abjured his guilt. He did not take any specific plea, but he has stated that due to his quarrel with Raju, a push was given to the handcart of the complainant and it was disbalanced, and therefore the utensil having hot oil turned on the complainant. He did not assault the complainant in such a manner. However, no defence evidence was adduced by the appellant.

4. The learned Additional Sessions Judge, Jabalpur after considering the prosecution evidence convicted the appellant for commission of offence punishable under Section 308 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 there was no willful act of the appellant, but a push was caused suddenly to the handcart, and therefore the complainant sustained some superficial burns. The injuries caused to the victim were not fatal in nature, therefore no offence under Section 308 of IPC was made out. In the alternate, it is submitted that the appellant remained in the custody for 22 days. He was a youth of 22 years at the time of the incident, who has faced the trial and appeal for the last 16 years and not he has settled in the life, and therefore he may not be sent to the jail again. The learned counsel for the appellant has placed his reliance on the judgment of the Single Bench of this Court in the case 4 Cr.A.No.2259/1996 of Ravindra Shyamla Prasad Verma Vs. State of MP., [2000(2) MPLJ 371 ..

7. On the other hand, the learned counsel for the State has submitted that the appellant was to be convicted for the offence under Section 308 of IPC, because the victim sustained 25-30% burns and he could die. Similarly, the sentence directed by the trial Court appears to be correct.

8. After considering the submissions made by the learned counsel for the parties and looking at the facts and circumstances of the case, it is to be considered as to whether the appeal of the appellant can be accepted?. And whether the sentence directed by the trial Court against the appellant can be reduced?.

9. Nathuram (PW-1), Raju @ Kamlesh (PW-2), Rajesh Soni (PW-3) and Lallulal Kesharwani (PW-8) were examined as eye-witnesses. Out of them Nathuram and Raju @ Kamlesh along with Rajesh Soni have stated that due to the quarrel for payment of Rs.2/-, the appellant poured hot oil upon the complainant Nathuram from the utensil. Lallulal Kesharwani turned hostile. He has stated that he saw that a dispute took place between the appellant and the complainant and thereafter the complainant and his son Raju went to the Police Station. Rajesh Soni has claimed himself to be an eye-witness, but in his case diary statement he did not claim himself to be an eye-witness. On the 5 Cr.A.No.2259/1996 contrary, he had claimed that when he was going to close his shop, he found that the complainant Nathuram sustained burn injuries and he told about the incident to the witness Rajesh Soni. Under such circumstances, it appears that Rajesh Soni was not an

eye-witness.

10. Dr. Smt. Sobha Agrawal (PW-6) examined the complainant and gave her report Ex.P-7. She found that the victim Nathuram was burned with 25-30% superficial burns. Dr. Pandey (PW-5) in reply to the query has opined that the injuries caused to the victim Nathuram were not fatal, but they were simple in nature. By the medical report, it is proved that the victim Nathuram sustained burn injuries due to hot oil. But it is to be discussed as to whether the appellant poured hot oil upon the victim Nathuram or due to jerk caused to the handcart, Nathuram sustained such injuries by fall of the hot oil.

11. The appellant took a defence that in the quarrel the handcart of the complainant was pushed and it became disbalanced, and therefore the victim Nathuram sustained burn injuries. The presence of the appellant is proved. There is no doubt in his identification. If the handcart was pushed and hot oil fell upon the victim due to disbalance, then the oil should have fell on the lower part of the body of the victim Nathuram, but some drops of the oil might have reached to the upper part of his body, but the entire oil 6 Cr.A.No.2259/1996 could not reach to the upper part of the body. In such a case where it is clearly proved by the Dr. Smt. Sobha Agrawal and Dr. S.K.Pandey that the right chest of the complainant was also burnt, and therefore the defence taken by the appellant cannot be accepted. Looking at the places of injuries, the evidence given by the victim Nathuram and his son Raju appears to be acceptable that the appellant poured hot oil upon the victim Nathuram.

12. The trial Court has convicted the appellant for commission of offence under Section 308 of IPC. If the evidence of Nathuram and Raju is considered along with the medical evidence, then it would be clear that the quarrel took place in a spur of moment. It was not pre-planned incident caused by the appellant. He could not hold the hot utensil in his hands for a longer period, and therefore he could pour the hot oil upon the complainant in a very small period of time, and therefore it cannot be said that he was intended to kill the victim. Similarly, the victim Nathuram did not sustain any fatal injury. He sustained only simple injuries. The injuries sustained by the complainant do not fall within the ingredients of Section

320 of IPC, and therefore it was not grievous. Hence the case of the appellant does not fall in any ingredients of Section 300 of IPC. It is a case of causing simple hurt by hot oil, and 7 Cr.A.No.2259/1996 therefore the crime committed by the appellant falls within the purview of Section 324 of IPC only.

13. Actually the learned Additional Sessions Judge convicted the appellant for the offence under Section 308 of IPC on the basis that the complainant was admitted in the hospital for a longer period, but still it was not established that the complainant was unable to do his routine work in those days, and therefore the injuries caused to the victim do not fall within any category of Section 320 of IPC. If the incident took place in a spur of moment and the appellant threw hot oil upon the complainant causing him simple injuries, then certainly the provisions of Section 308 of IPC are not attracted.

14. So far as the voluntariness of the appellant is concerned, it is apparent that the appellant threw hot oil upon the complainant in a quarrel, which took place for payment of some money. No right of private defence was accrued in favour of the appellant. The quarrel took place for payment of Rs.2/-, and therefore it cannot be said that either the complainant or his son gave any sudden or grave provocation to the appellant when he was throwing hot oil. He ought to have been known that by such an act, the complainant may sustain such burn injuries, and therefore the act done by the appellant appears to be so voluntary, hence he has caused some injuries to the victim by 8 Cr.A.No.2259/1996 throwing hot oil upon him, and therefore he is guilty of offence under Section 324 of IPC. The offence under Section 324 of IPC is an inferior offence to the offence under Section 307 or 308 of IPC, and therefore no separate charge is needed. The appellant can be convicted as per the provisions of Section 222 of Cr.P.C. for the offence under Section 324 of IPC without framing a separate charge.

15. So far as the sentence is concerned, it is true that the offence committed by the appellant was not grave. However, he has caused burn injuries to the victim. At the time of incident, he was only 22 years old person, who was not mature, but he was above 21 years of age, and therefore he cannot be given any advantage of the Probation of Offenders Act due to his age. Looking to his overt-act, there is no

ground by which he could be enlarged on probation, but looking to his age and the period in which he has faced the trial and appeal for last 16 years and he remained in the custody for 22 days, in the light of the judgment of the Single Bench of this Court in the case of Ravindra Shyamla (supra), it is a good case in which the appellant cannot be sent to the jail again, but some heavy fine may be imposed upon him.

16. On the basis of above discussion, the instant appeal filed by the appellant is partly allowed. The conviction as well as the sentence directed by the trial 9 Cr.A.No.2259/1996 Court for the offence under Section 308 of IPC is hereby set aside. He is acquitted from the charge of offence under Section 308 of IPC, but convicted for commission of offence under Section 324 of IPC and sentenced to the period which he has already undergone in the custody by enhancing the fine amount from Rs.1,000/- to Rs.7,000/-. The fine amount deposited before the trial Court by the appellant be adjusted with the present fine amount. The appellant is directed to deposit the remaining fine amount before the trial Court within two months from today, failing which he will be liable for nine month's rigorous imprisonment. If fine amount is deposited, then a sum of Rs.5,000/- may be given to the complainant Nathuram Gupta S/o Shri Sukhdev Gupta, R/o Shiv Nagar, Railway Crossing, Garha, Jabalpur by way of a compensation.

17. The appellant is on bail, therefore his presence is no more required. It is directed that his bail bonds shall stand discharged.

18. A copy of this judgment be sent to the trial Court with its record for information and compliance. (N.K.Gupta) Judge 18/10/2012 Ansari.

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