

**The State of Madhya Pradesh Vs. Virendra @ Viren Judgement Given By:
Hon'ble Shri Justice N.K. Gupta**

**The State of Madhya Pradesh Vs. Virendra @ Viren Judgement Given By:
Hon'ble Shri Justice N.K. Gupta**

SooperKanoon Citation : sooperkanoon.com/1125321

Court : Madhya Pradesh

Decided On : Feb-07-2014

Appellant : The State of Madhya Pradesh

Respondent : Virendra @ Viren Judgement Given By: Hon'ble Shri Justice N.K. Gupta

Judgement :

M.Cr.C.No.5930/2012 M.Cr.C.No.5930/2012 7.2.2014 Shri S.D.Khan, G.A.for the State/applicant.

Heard on admission.

The State has preferred the present application for grant of leave to appeal against the judgment dated 14.3.2012 passed by the learned Additional Sessions Judge, Pawai, District Panna in S.T.No.49/2010, whereby the respondents were acquitted from the charges of offence punishable under sections 332, 333 and 353 of IPC.

The prosecution's case, in short, is that, on 31.5.2009, a police force went to the house of the respondents Arjun etc.to arrest Arjun Singh etc.Force was comprised with SDOP, Shri Avanish Bansal (P.W.4).Constable Id-ul-Baksh (P.W.2).Constable Kishori Lal (P.W.3).Constable Sunil Mishra (P.W.5) and other officeRs.The respondents Arjun Singh, Virendra Singh and Gulab Singh were

arrested and thereafter, the respondents came with the sticks etc.and started assaulting them and therefore, the victims Id-ul-Baksh, Kishori Lal and Sunil Mishra sustained injuries.

Out of them, injury caused to the victim Kishori Lal was found to be grave.

He sustained a fracture in his left wrist.

An FIR was lodged by SDOP Shri Avanish Bansal and a prosecution was initiated.

M.Cr.C.No.5930/2012 The respondents abjured their guilt.

They took a plea that they were falsely implicated in the matter.

In defence, Gyan Singh (D.W.1) and Guman Singh (D.W.2) were examined.

After considering the prosecution's evidence, the learned Additional Sessions Judge acquitted the respondents.

After considering the submissions made by the learned G.A.for the State and considering the evidence adduced by the parties before the trial Court, it appears that the police constables and SDOP could not say any positive version before the trial Court.

The constable Id-ul-Baksh (P.W.2) has turned partly hostile.

He said that it was the respondent Arjun Singh, who used criminal force against SDOP Shri Avanish Bansal, whereas Avanish Bansal did not accept that any scuffling was done by anyone with him.

According to the evidence of Avanish Bansal, no criminal force was used against him and no offence punishable under Section 353 of IPC is made out for the public servant Avanish Bansal.

The injured witnesses Id-ul-Baksh, Kishori Lal and Sunil Mishra were examined.

Sunil Mishra (P.W.5) has stated that SDOP held the respondent Arjun Singh and other respondents were trying to M.Cr.C.No.5930/2012 rescue Arjun Singh.

He could not say as to who assaulted him and how he sustained the injuries.

Constable Id-ul-Baksh (P.W.2) has turned partly hostile.

He has stated that some scuffling was done with him but, he could not say that amongst the respondents who did such scuffling with him.

Similarly, Constable Kishori Lal (P.W.3).who sustained a fracture on his left wrist could not say the name of the person, who assaulted him on his left wrist.

In para 5 of his cross-examination, he has stated that he could not identify the person amongst the respondents, who assaulted him on his left wrist.

Under such circumstances, no witness could ascertain the actual culprit out of the respondents, who assaulted either Id-ul-Baksh or Kishori Lal or Sunil.

Under such circumstances, none of the respondents could be convicted for offence punishable under Sections 332, 333, 353 of IPC with help of such evidence.

The witnesses could not identify the respondents.

They could not say about the overt-acts of the respondents to consider that the respondents had common intention with the culprits, who assaulted the victims Id-ul-Baksh, Kishori Lal and Sunil and therefore, the respondents could not be convicted for the offence punishable under Sections 353, 333 M.Cr.C.No.5930/2012 or 332 of IPC with help of Section 34 or 149 of IPC.

It appears that the incident took place at the spot when the police was trying to arrest Arjun Singh, Virendra Singh etc.but, it was not established that the respondents were the persons who assaulted various officers of police force, causing them simple or grave injury.

According to the evidence of various witnesses, it would be apparent that Arjun Singh, Gulab Singh and Virendra Singh, the persons arrested by the police did not make any violence but, violence was done by the crowd.

For proof of such offence, the overt-acts of each accused should be duly established by the prosecution.

Unfortunately, the prosecution failed to prove the overt-acts of the respondents and therefore, the trial Court has rightly acquitted the respondents from the aforesaid charges.

On the basis of the aforesaid discussion, there is no reason by which the appeal filed by the State may be accepted.

There is no illegality or perversity visible in the judgment passed by the learned Additional Sessions Judge, Pawai, District Panna.

Under such circumstances, there is no ground to grant leave to appeal.

Consequently, application for grant of leave to appeal filed by the State is hereby dismissed at motion stage.

M.Cr.C.No.5930/2012 A copy of the order be sent to the trial Court alongwith its record for information.

(N.K.GUPTA) JUDGE Pushpendra

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