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Court : Madhya Pradesh

Decided On : Dec-12-2014

Judge : S.K. Palo

Appeal No. : Cr. Revision No. 365 of 2014

Appellant : Jitendra Singh and Others

Respondent : State of Madhya Pradesh

Judgement :

1. This revision under Section 397 read with 401 of Cr.P.C. is directed against the order dated 9.5.2014 passed by the Special Judge, ST / ST (Prevention of Atrocities) Act, 1989 in S.T. No. 65/2013.

2. The facts just necessary for disposal of this case are- Crime No. 267/2013 was registered on 26.7.2013 at Police Station, Dehat District Bhind for the offence punishable under Sections 324, 323, 294, 506-B/34 of IPC against the petitioners on the report of complainant Badshah Singh.

3. It is alleged that at about 6 PM when the complainant Badshah Singh was at the gauda, the accused persons Deepak Singh, Jitendra Singh and Shivbeer Singh tried to fix wooden pole in the gauda of the complainant, which the complainant Badshah Singh objected. The accused Shivbeer Singh called the other accused persons to hit the complainant. Accused Jitendra Singh gave blow by Khurpi on his back and caused injury. Accused Deepak Singh gave blow by Lathi on the

chest and right thigh of the complainant. Co- accused Shivbeer Singh injured him by biting on his back. When Badshah Singh shouted, Shriraj Singh and Rambeer came to the scene and rescued the complainant. All the accused persons threatened him of his life and abused obscene words.

4. On this report, Badshah Singh was sent for medical examination and found one incised wound at the right side of back. A contusion was found on the back, another contusion was found on the rib and a contusion was also found on the right thigh. Injury No.1 said to have caused by sharp and cutting object whereas the other injuries were caused by hard and blunt objects. All the injuries were said to be simple in nature, except injury No.3. Dr. R.K. Singh, Radiologist District Hospital Bhind after examining the Xray submitted report and opined that there is fracture in 3rd Rib of right side (posterior). On the basis of which charge sheet has been filed on 5.9.2013 under Sections 324, 323, 294, 506-B/34 of IPC and enhanced Section 326 of IPC.

5. An application was filed on 25.9.2013, on behalf of co-accused / Petitioner Jitendra Singh, which was entertained by the learned JMFC.

6. In this application the counsel for the accused / petitioners submitted that letter No. 7343 dated 24.8.2013 (wrongly mentioned the date as 24.8.2003) was issued to the Chief Medical and Health Officer, Bhind by the Additional District Magistrate, Bhind and directed the Medical Board to examine the complainant. On the basis of this letter. The Medical Board vide letter No. 2773 dated 31.8.2013 directed the Police Dehat, Bhind to make present the complainant Badshah Singh son of Badam Singh before the Medical Board for examination. But the Police did not make the complainant appear before the Medical Board. Therefore, the learned Magistrate was requested to issue directions to the Police Station Dehat. The learned Magistrate directed the Police Dehat District Bhind to file a report on the matter on 30.9.2013.

7. On behalf of the petitioners, it is submitted that, the petitioners submitted an application to the Collector, District Bhind on 12.8.2013 for his examination by Medical Board with regard to Crime No. 267/2013 for actual assessment of the matter.

8. The complainant Badshah Singh was examined pursuant to the letter No. 6447 dated 13.8.2013 issued by the Additional Collector, Bhind, to the Medial Board on 17.12.2013. The Board observed that scar mark at the middle of forehead was found and one scar mark on the back was observed. There was no injury clinically. On his X-ray of his chest no bony injury was seen. The Medical Board is not in agreement with the earlier X-ray report No. 1077 dated 27.7.2013

9. After filing of charge sheet, the case was committed to the Sessions Court. By the impugned order dated 9.5.2014 and charges had been framed against the accused persons under Sections 294, 324, 323/34, 506- B, charges have been framed. Against accused Jitendra Singh for offense punishable under Section 326 of IPC and against Deepak Singh and Shivveer for offence punishable under Section 326/34 of IPC. The learned trial Court has not considered the report of the Medical Board in the impugned order.

10. In this background, the petitioners submit that when the Medical Board is not in agreement with the X- ray report date 27.7.2013 with regard to complainant Badshah Singh and fracture of 3rd Rib on right side (posterior) is not found, the offence under Section 326 of IPC is not made out.

11. The learned PL opposed the same and submitted that earlier X-ray was performed on 27.7.2013 whereas Medical Board has examined the complainant on 17.12.2013. Therefore, the bony injury is not found on the 3rd rib of posterior chest region. It might have recovered. Therefore, the Medical Board has given different view.

12. No doubt, X-ray report dated 27.7.2013 given by the Radiologist Dr. R.K. Singh has not been approved by the Medical Board and the Medical Board has given its finding clearly and unambiguously on its report dated 17.12.2013 that there is no bony injury found on the chest of the complainant Badshah Singh.

13. Needless to say that if two views are possible, the view favourable to the accused is to be adopted, as has been ruled in Sanjay Rai Vs. State of M.P. 1997 (2) JLJ 141 following the decisions rendered by the Apex Court in AIR 1973 SC 2773 and AIR 1984 SC 1622.

14. Looking to the facts and circumstances, the impugned order dated 9.5.2014 with regard to framing of charge is hereby set aside. The learned trial Court is directed to take into consideration the report of Medical Board dated 17.12.2013 and after affording an opportunity to the petitioners and also to the prosecution, on the point of charge, decide the same in accordance with law.

15. Accordingly, petition stands allowed and disposed of.

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