

Akil and ors. Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-10-2005

Reported in : 2005CriLJ2069

Judge : A.K. Awasthy, J.

Acts : Evidence Act - Sections 27; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 14, 148, 149, 307 and 324; ;Code of Criminal Procedure (CrPC) - Sections 374

Appeal No. : Criminal Appeal No. 1227 of 2002

Appellant : Akil and ors.

Respondent : State of Madhya Pradesh

Advocate for Def. : Manoj Soni, Adv.

Advocate for Pet/Ap. : Sonali Gupta, Adv. for Appellant Nos. 1, 2, 3 and 5 and ;Vikas Yadav, Adv. for Appellant Nos. 4 and 6

Disposition : Appeal dismissed

Judgement :

A.K. Awasthy, J.

1. Appellants-accused have filed the appeal under Section 374 of the Code of Criminal Procedure against the judgment and order dated 9-10-2002 in Sessions

trial No. 113/1998 decided by learned First Additional Sessions Judge, Khargone, Camp at Sendhwa of their conviction and sentence under Section 307/149 of the IPC for the RI of 5 years and fine of Rs. 500/-; for offence under Section 324/149 for the RI of 3 years and fine of Rs. 500/-; and under Section 14 of the IPC for the RI of 2 years and fine of Rs. 500/-. In default of payment of fine, further RI for 1 year, 6 months and 6 months respectively. All the sentences to run concurrently.

2. The prosecution case is that on 8-4-1997 at about 4.00 p.m. when complainant Bharat Kumar (PW-1) with his mother Leelabai (PW-2), brother Naresh Kumar and father were sitting in their house at village Tagore Bedi, all the accused persons shouting - 'that the Hindus should be killed' entered into the house of complainant Bharat Kumar (PW-1) and accused caused the injury by Sword to Bharat Kumar and also to his mother Leelabai (PW-2) and brother Naresh Kumar and ran away. Bharat Kumar (PW-1) Lodged the First Information Report (Ex. P/1) in the Police Station Sendhwa and the injured Bharat Kumar (PW-1), Leelabai (PW-2) and Naresh Kumar were sent for the medical examination to Primary Health Centre, Sendhwa where they were examined by Dr. Pramod Bhargava (PW-6) who has reported the presence of 2 incised wounds on the body of Bharat Kumar (PW-1); one incised wound on the body of Leelabai (PW-2); and 4 incised wounds to Naresh Kumar vide his reports respectively Exs. P/11, P/ 12 and P/13 and it was opined by him that the injuries were caused within one hour by sharp object. Dr. Pramod Bhargava (PW-6) referred Bharat Kumar (PW-1) and Leelabai (PW-2) for the X-ray and after taking the X-ray, Dr. Yeshwant Mahale (PW-5) found the fracture of the tibia bone of the left leg of Bharat Kumar (PW-1) and compound fracture on the left leg of Naresh Kumar. Station House Officer S.R. Grewal (PW-10) recorded the statements of the accused persons under Section 27 of the Evidence Act and the Swords were recovered from their possession which were sent for the chemical examination and it was reported by the Chemical Analyst that the Swords were stained with blood. After the usual investigation, S.R. Grewal (PW-10) has filed the charge-sheet against the accused persons.

3. The learned Trial Court after recording the statements of 10 prosecution witnesses and 4 defence witnesses has held that the accused have committed the offences punishable under Sections 307/149; 324/149 and 148 of the IPC and

they were sentenced as stated above.

4. The accused have abjured the guilt and denied the statements of the prosecution witnesses and their defence plea of false implication was rejected by the learned Trial Court.

5. Appellants accused have assailed the conviction on the ground that the learned Trial Court has erred in believing the statements of alleged eye-witnesses and the offence of attempt to commit murder is not proved beyond reasonable doubt and as such the appellants accused should be acquitted.

6. Bharat Kumar (PW-1) has stated that on 8-4-1997 at about 4.00 p.m. when he was sitting in his house with his mother, brother and father, the appellants armed with swords entered into his house and they were saying 'the Hindus will be killed'. Bharat Kumar (PW-1) has further stated that accused Akil, Jabbar and Ajam caused the injury by their swords on his head and leg and when his mother Leelabai (PW-2) came to save him, she was also beaten by the sword on her hand. Bharat Kumar (PW-1) has further stated that when Naresh Kumar made attempt to intervene, he was also injured by the accused persons. Leelabai (PW-2) has corroborated the statement of Bharat Kumar (PW-1) and she has stated that the accused persons have caused the Sword blow to her when she fell down on her son Bharat Kumar (PW-1) to save his life. Leelabai (PW-2) testified that the accused persons caused the injury to her son Naresh Kumar on his head and the legs.

7. Bharat Kumar (PW-1) and Leelabai (PW-2) have no reason to falsely implicate the accused persons. Bharat Kumar (PW-1) and Leelabai (PW-2) both were examined on the date of incident i.e. 8-4-1997 by Dr. Pramod Bhargava (PW-6) who has found the incised wound on the body which was caused within one hour of their examination by the sharp edged weapon. From the cross-examination of Bharat Kumar (PW-1) and Leelabai (PW-2) it is clear that they have not contradicted themselves nor there is any material contradiction or omission in their statements with their statements made to the police. Consequently the learned Trial Court has rightly believed the statements of the eye-witnesses Bharat Kumar (PW-1) and Leelabai (PW-2).

8. From the statement of the Investigating Officer S.R. Grewal (PW-10) it is clear that the Swords were recovered from the possession of the appellants and in the chemical examination of Swords, it was found that the Swords were carrying the blood. The FIR (Ex. P/1) was lodged on the next date and the story narrated by the eyewitnesses is fully in consonance with the details of the incident given in the FIR (Ex. P/1). Dr. Yeshwant Mahale (PW-5) has stated that the X-ray of left leg of the Naresh was taken by him and he has also taken the X-ray of Bharat Kumar (PW-1) of his tibia bone of the left leg and there was fracture. Dr. Yeshwant Mahale (PW-5) has further stated that Exs. P/9 and P/10 are the reports and after treatment Bharat Kumar (PW-1) and Naresh Kumar were discharged. From the discharge reports, Exs. P/9 and P/10, it is clear that the complainant Bharat Kumar (PW-1) and his brother Naresh Kumar both were having the fracture in their left leg. The brother of complainant Bharat Kumar (PW-1) i.e. Naresh Kumar has died after the incident. There is no independent witness to corroborate the statements of Bharat Kumar (PW-1) and Leelabai (PW-2). This is of no consequence because the incident has taken place inside the house of Bharat Kumar (PW-1).

9. It is submitted by the learned counsel for the appellants that the offence of attempt to commit murder punishable under Section 307 of the IPC is not made out and as such the appellants deserve the reduction in the quantum of sentence.

10. The accused persons have caused the injuries on the head of Bharat Kumar (PW-1) and also on the head of Leelabai (PW-2) and Naresh Kumar. No doubt in every case the head injury does not constitute offence under Section 307 of the IPC and the knowledge or intention of the act governs the offence. The mens rea is to be assessed for totality of the circumstances.

11. Looking to the injuries on the head of the victims by sword and also the fractures on the body of the victims, the mens rea is evident and it should be born in mind that under Section 307 of the IPC what is required is that the act must be done with such an intention or knowledge that if death be caused by that act, offence of murder will emerge. In the facts and circumstances of the case, the learned Trial Court has rightly held that the case punishable under Section 307 read with Section 149 of the IPC is made out against all the appellants accused.

12. The appellants-accused are first offenders. The injuries caused by the appellants accused were not sufficient in ordinary course to cause death. It appears that on account of communal excitement the offence was committed by the appellants accused. In these circumstances the sentence of 4 (four) years RI under Section 307/149 will meet the ends of justice. Consequently, the sentence of 5 years RI under Section 307 read with Section 149 of the IPC is reduced to only 4 (four) years RI.

13. The conviction of the appellants accused under Sections 307/149, 324/149 and 148 of the IPC is hereby maintained. The sentence passed under Sections 324/ 149 and 148 of the IPC is also maintained. However, the sentence under Sections 307/ 149 of the IPC 5 years RI is reduced to only 4 (four) years RI.

14. With the aforesaid modification in, the sentence, the appeal is hereby dismissed.