

Devisingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-02-1992

Reported in : 1993CriLJ1301

Judge : V.D. Gyani, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307, 326, 332 and 353

Appeal No. : Cr. A. No. 516 of 1984

Appellant : Devisingh

Respondent : State of M.P.

Advocate for Def. : Chauhan Dy. Govt. Adv.

Advocate for Pet/Ap. : M.A. Bohara, Adv.

Disposition : Appeal dismissed

Judgement :

V.D. Gyani, J.

1. The appellant was tried along with other accused Amarsingh, Prema and Madanlal for offences punishable under Sections 307,307/34, IPC and 332 read with 34, IPC co-accused have been acquitted by the trial court while the appellant has been convicted under Section 326, IPC and 353, IPC and sentenced to

undergo rigorous imprisonment for five years and one year respectively. The sentences were to run concurrently. The judgment delivered by Sessions Judge, Shajapur, in sessions trial No. 48/84, on 31-10-1984.

2. Prosecution case, in brief, was that Lilabai wife of the appellant had gone to her parental home in village Kayari. While she was still on her way along with her brother and sisters, the accused forcibly dragged her and dealt fists and blows. She was brought to the house of Devisingh. This incident was reported to Sudhdhuial P.W. 3 father of Lilabai, who lodged the report at police station and obtained a search warrant which was entrusted for execution to Kesharsingh P.W. 6, who accompanied Sub-Inspector Devara P.W. 10 to village Mehari and recovered Lilabai from the house of Devisingh.

3. On the date of the incident i.e. 5-1-84 when Lilabai being brought to the police station by Kesharsingh P.W. 6 and the village chowkidar Onkar, the accused armed with Farsi and lathis attacked the Police party. Kesharsingh was asked to stop which he declined. Accused threatened by saying 'Pehale Sipahi Ko Niptado'. The appellant dealt a Farsi blow on Kesharsingh which he could ward off with the help of his cane. Thereafter it was the turn of Lilabai who was attacked by the accused resulting in as many as four incised wounds; her nose was cut, left fore arm was cut so also her right shoulder. A report was lodged at police station Chhapiheda by Kesharsing P.W. 6, who it appears was a Home-guard. During the course of investigation the accused was arrested and Farsi allegedly used by him was recovered at his instance.

4. The articles seized were sent for chemical examination to the Forensic Science laboratory Sagar. Its report Ex. P. 8. Presence of blood was confirmed on the brassiere, blouse, petticoat and Dhoti which Lilabai the victim of assault wearing at the time of attack. On completion of investigation the accused was charge sheeted and tried for offence punishable under Section 307,332/34, IPC. The appellant pleaded not guilty to the charge. His defence was that he had been falsely implicated at the behest of one Nadram Sunar whom he suspected to have criminal intimacy with his wife.

5. The trial court rejecting the plea of the appellant found him guilty and convicted and sentenced him as already noted above. Hence this appeal.

6. Shri Bohara learned counsel for the appellant taking up the charge under Section 353, IPC submitted that there was no interruption or deterrence caused by the appellant to Kesharsingh P.W. 6 in the discharge of his duty. According to him the duty was accomplished the moment Lilabai was recovered from the house. This submission cannot be accepted. The written report of Sub-Inspector Devara clearly states that Kesharsingh was directed to reach the police station along with the chowkidar and Lilabai. He was further directed to deposit the revolver and five rounds and it was while returning to the police station that he was attacked. It was also urged by the learned counsel for the appellant that no injury as such was found on the person of Kesharsingh. A mere reading of Section 353, IPC would go to show that actual causing of injury is not necessary for commission of offence punishable under Section 353, IPC. The fact that he was directed to return to the police station along with Lilabai was a part of his duty.

7. The submission made by the learned counsel for the appellant, therefore, cannot be accepted.

8. So far as the charge under Section 326, IPC, is concerned, Lilabai P.W. 2 in her evidence, has categorically stated that it was the appellant who had inflicted the injuries resulting in amputation of her left forearm and right shoulder. The whole of her nose was also cut. Her evidence is also amply corroborated by Dr. Kalyansingh Parihar P.W. 1 who had examined Lilabai just next day on 6-1-84.

9. Cutting the nose by itself is sufficient to attract permanent disfiguration. The conviction under Section 326, IPC as recorded by the trial court does not call for any interference.

10. On the point on sentence learned counsel for the appellant submitted that considering his tender age the sentence as imposed by the trial court appears to be rather harsh and excessive.

11. Seriousness of the offence lies in the fact that while Lilabai after being recovered in execution of search warrant was being taken to a police station accompanied by a police constable, the appellant undeterred not only attacked his wife but also the police party.

12. The acts done call for no interference in the leniency of sentence, which is essentially a matter of discretion of the trial court and it cannot be said that the trial court has exceeded in it in imposing the sentence.

13. The appeal therefore fails and is accordingly dismissed. The conviction and sentence as passed by the trial court are maintained. The appellant shall surrender to his bail bonds.

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