

Govind Vs. State of M.P.

Govind Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/507546

Court : Madhya Pradesh

Decided On : May-15-2003

Reported in : 2003(4)MPHT362

Judge : S.K. Seth, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 325; Code of Criminal Procedure (CrPC) , 1974 - Sections 357 and 401

Appeal No. : Criminal Appeal No. 545/92

Appellant : Govind

Respondent : State of M.P.

Advocate for Def. : M. Upadhayay, Dy. Govt. Adv.

Advocate for Pet/Ap. : Sunil Jain, Adv.

Judgement :

S.K. Seth, J.

1. This order shall also govern the disposal of Criminal Revision No. 3/1993, which has been filed by Nathuram son of the deceased against the acquittal of the appellant from the charge of an offence punishable under Section 302 of the IPC in Sessions Trial No. 353/1990.

2. Being aggrieved by the judgment passed in Sessions Trial No. 353/1990, appellant has preferred this appeal. Learned Trial Court has handed down the conviction and sentence of 4 years R.I. with fine of Rs. 1,000/- for having committed an offence punishable under Section 325 of the IPC.

3. According to the prosecution, on 19-10-1990 at about 5.30 in the evening, when the resident of Village Sagwal were observing rituals of 'Goyari', a local festival celebrated after Dipawali, an altercation took place between appellant and Gangaram. During the altercation when appellant tried to hit Gangaram with lathi, Poona, intervened in the matter, as a result the appellant dealt a lathi blow to deceased Poona and ran away from the spot. Same day, Poona went and lodged FIR at the Police Station, Aamjera. According to the prosecution story the deceased remained in Hospital from 19-10-1990 till he was discharged on 28-10-1990. Deceased died on 29-10-1990, as a result investigating machinery swung into action and after completion of investigation filed charge-sheet against the appellant and co-accused Shankar for their prosecution.

4. The appellant and co-accused Shankar abjured their guilty and submitted that they have, been falsely implicated. The Trial Court on the basis of the prosecution evidence came to the conclusion that prosecution has failed to make out any case against co-accused Shankar, therefore, acquitted him. So far as the appellant Govind is concerned, the Trial Court found that no offence punishable under Section 302 of the IPC was made out but a case for an offence punishable under Section 325 of the IPC is proved. Hence, appellant was convicted and sentenced as mentioned above.

5. Against acquittal of co-accused Shankar State has not preferred any appeal. Hence, his acquittal has attained finality. So far as appellant Govind is concerned, State has not preferred any appeal against his acquittal for offence punishable under Section 302 of the IPC. So that has also become final.

6. I have heard learned Counsels for parties and perused the record.

7. The Criminal appeal filed by Govind, sole contention which has been advanced at the Bar, is that lenient view might be taken for the reason that incident took

place in the year 1991 and the appellant was on bail not only during the trial but also during the pendency of the above appeal. He has not misused the liberty. It is also submitted that a further order for custodial sentence at this distance of time may cause rupture to social harmony in the village life and may only help to rekindle the flames of anger and looking to the age of the appellant, interest of justice would be served by treating the period of sentence already undergone as sufficient custodial punishment and the fine amount may be increased.

8. Learned Counsel appearing for the State has no serious objection to the aforesaid submission of learned Counsel for the appellant. However, learned Counsel appearing for Nathuram has seriously objected to aforesaid submission. As according to him on the basis of the evidence led by prosecution, the appellant is guilty of an offence punishable under Section 302 or 304, Part II of the IPC. It is also contended that appellant should be ordered to pay a fine of Rs. 10,000/- instead of Rs. 1,000/- as imposed by learned Trial Court.

9. The learned Trial Court committed no manifest illegality leading to miscarriage of justice when it acquitted the appellant from the charge of having committed an offence punishable under Section 302 of the IPC. In absence of any manifest illegality or perversity, it would not be open for this Court to convert the finding of acquittal into conviction at the instance of Nathuram specially when the State has not preferred any appeal against such finding of acquittal. The scope of criminal revision under Section 401 is very limited and law in this regard is now well settled by catena of decisions of the Supreme Court. The latest decision on the subject by Their Lordships of Supreme Court is in the matter of Bindeshwari Prasad Singh alias B.P. Singh and Ors. v. State of Bihar, reported in AIR 2002 SC 2907. In view of the settled position of law, the revision has been filed by Nathuram fails and is hereby dismissed.

10. After considering the submissions of learned Counsel for the parties, it is clear that appellant was arrested on 3-11-1990 and remained in custody till 30-1-1991 during trial. After his conviction, the appellant again remained in custody from 1-12-1992 till 16-12-1992 when he was released pursuant to the order of suspension of execution of sentence passed by the Court. Thus, in all the appellant remained

in custody for 105 days approximately.

11. In the considered opinion of this Court, the conviction passed against the appellant under Section 325 of the IPC is maintained but the custodial sentence already undergone by him is sufficient to meet the ends of justice. However, the fine amount imposed by the Trial Court is increased and it is ordered that the appellant shall pay a fine of Rs. 5,000/- (Rupees Five thousand only) and in default, he shall undergo simple imprisonment of six months. The appellant shall pay the fine within one month from the date of this order. Out of the fine amount Nathuram, son of the deceased would be entitled to receive Rs. 3,000/- (Rupees Three thousand only) under Section 357 of the Cr.PC as compensation.

12. In view of the foregoing discussions, the appeal is partly allowed and the judgment of the Trial Court is hereby modified to the extent as indicated above. The accused appellant is on bail, his bail bonds stand discharged. A copy of this order be kept in the file of Criminal Revision No. 3/1993.

Order accordingly.