

Ratansingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-30-1994

Reported in : 1995CriLJ1840

Judge : J.G. Chitre, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304, 320, 322, 323, 325 and 337; [Probation of Offenders Act, 1958](#) - Sections 4 and 6

Appeal No. : Criminal Appeal No. 74 of 1987

Appellant : Ratansingh

Respondent : State of M.P.

Advocate for Def. : P.L. Phadke, Adv.

Advocate for Pet/Ap. : R.S. Garg, Adv.

Judgement :

J.G. Chitre, J.

1. The appellant has filed this appeal for putting a challenge to the order of conviction and sentence passed by the Addl. Sessions Judge Dhar Camp Manawar in the matter of Sessions Case No. 38/86 by which he convicted the appellants for offence punishable under Sections 325 and 323, IPC and sentenced

him to RI of different terms.

2. The prosecution case in brief can be stated as under. On 25-5-85, at about 9.00 or 9.30 p.m. there was a feast in context with marriage of Gula Bhilala at village Bagpura and deceased Naharsingh had attended the said dinner along with other friends. The prosecution alleged that at the time of the said feast there was quarrel between Naharsingh and his associates on one side and appellant and his associates on other side. In the said quarrel, accused-appellant Ralansingh Bhilala pelted a stone which hit the abdominal portion of the body of deceased Naharsingh which resulted in injury to his intestine and his death.

3. After necessary investigation, the accused-appellant was put to trial along with one Jama son of Kishan Bhilala. The case was committed to the Sessions Court Dhar. The Addl. Sessions Judge Dhar Camp-Manawar after recording the evidence of the witnesses and appreciating it in the light of the arguments advanced on behalf of the parties, concluded that it was proved that the appellant had caused death of deceased Naharsingh by pelting stone and causing injury to his abdominal portion of the body which caused injury to his intestines. In view of the said finding, convicted the accused-appellant for offence under Sections 325 and 323 IPC. He acquitted the appellant from the charge of committing offence punishable under Section 302 read with Section 34 IPC. Advocate representing the state did not submit that the State has challenged the said order of acquittal. He justified the order of conviction and sentence.

4. Learned counsel for the appellant challenged the conviction on merit on the ground that the evidence of prosecution witnesses is discrepant and avoid of credence. After examining the evidence on record, this Courts finds no substance in the said submission because discrepancies in the evidence pointed out on behalf of the appellant are not sufficient enough to make the prosecution evidence disbelievable so far as occurrence of the incident in question is concerned.

5. Learned defence counsel submitted that the learned trial Judge committed error in sentencing the appellant and sending him to jail and not giving him the benefit of Section 6 of the Probation of offenders Act. He urged that the incident took place when the appellant co-accused and their relatives were insisting the guest from

the side of the groom to eat more. In the said feast, the guests were not prepared to do so. He submitted that it is a common thing in Indian Society that at the time of marriage feast, the relatives of the groom, the guests coming with groom for attending marriage are often served with choicest food and it is earnestly desired that they should eat more and more. He pointed out that such custom and tradition is still continuing in Madhya Pradesh of which Dhar District is a part. He pointed out that the appellant is from Adivasi Tribe and, therefore, intention will have to be appreciated with different angle. The learned Advocate representing the State submitted that the appellant had assaulted Naharsingh with stone which resulted in an injury to his abdomen causing injury to his intestines and his death. In view of this aspect of the matter, the appellant is not entitled to get benefit of Section 6 of the Probation of Offenders Act.

6. Learned defence counsel argued that conviction should be only for offence under Section 323 IPC because the evidence on record shows that only one stone was pelted by the appellant which had hit the deceased on his abdominal part. He pointed out that when stone pelting was going on as a result of quarrel amongst those friendly persons at time of feast, there could not be the intention to cause serious injury to the persons who were invited for the feast. He pointed out that the said quarrel took place because the appellant and his relatives and friends were insisting the deceased, his relatives and of groom's friends who were attending the marriage feast to eat more. Learned Panel Lawyer for the State justified the order of conviction by making reference to the evidence on record.

7. This Court finds substance in the submission on behalf of the appellant for the reasons stated hereunder. The record clearly shows that the said incident took place when the deceased, relatives and friends of groom were eating food in the said marriage feast. The record also shows that co-accused Jama and Ratansingh were serving the food to the deceased and his friends, in the said feast. They were insisting that those persons should eat more, but they were not prepared to eat more. An attempt was made by the prosecution to show that foot of Ratansingh touched the plates made by leaves (Pattal) and, therefore, quarrel started but the defence brought it on record that it was a development made later on and it was not the case of the prosecution, when the statements of the prosecution witnesses

were recorded during the course of investigation.

8. It is pertinent to note that the evidence on record depicts that because of this affectionate request of eating more food by guests accompanying groom in the said feast and their refusal to eat more, suddenly the said quarrel started. Such affectionate insistence and denial is very common in marriage feasts. The insistence and denial depends on customs, provinces, communities and casts. In the present matter, as the record shows, the appellant and the deceased and other guests are Adiwasis residing in Dhar District which is still backward and lagging behind. Those persons are in illitracy, in old traditional conservative habits and ideas. The said quarrel started suddenly and suddenly stone pelting started, as evidence shows. Therefore, by any stretch of imagination, it cannot be concluded that the stone was pelted by aiming a particular person, by aiming a particular portion of the body of the persons who were present there and with intention of causing grievous injury. It is to be noted that size of the stone has not been brought on record by the prosecution.

9. Learned defence counsel urged that pelting of stone in such feast in which many persons have gathered is nothing but rash and negligent act, because the persons throwing stone was presumed to have knowledge that by pelting such stone he was likely to cause hurt or grievous hurt but hoping that it would not result in the hurt. As the prosecution did not bring on record the size of the said stone, it will have to be inferred in favour of the appellant that the said stone was not a big stone which was in all probabilities likely to cause grievous hurt. The medical evidence on record shows that the injury which the deceased sustained in his intestine was noticed by the medical officers only after post mortem examination was done. It means that from external appearance of the said injury, even doctors were not in a position to know whether that injury was serious one. When that was so, it can be said reasonably and legally that the appellant was presumably not having the knowledge that by pelting the said stone he was likely to cause an injury to the intestine of deceased Naharsingh. Therefore, the said injury cannot be called as the injury which was an endangering human life.

10. In view of Clause Eighty of Section 320 1PC r/w. Section 322 IPC, the appellant did not cause grievous hurt. Therefore, it would not be an act of causing grievous hurt and, therefore, order of conviction of the appellant for offence under Section 325 IPC is erroneous. The appellant should have been and needs to be convicted for offence under Section 337 IPC.

11. In the matter of Asadkhan v. State of M.P. a judgment reported in 1988 MP WN 134 our High Court gave benefit of provisions of the Probation of Offenders Act to a convict who was convicted for offence punishable under Section 304 Part-II IPC. Section 4 of the Probation of Offenders Act provides that when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then notwithstanding any thing contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour. Sub-section (2) of the Act provides that before making any order under Sub-section (1) the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case. Sub-section (3) provides that when an order under Sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public, it is expedient to do, in addition, pass supervision order directing that the offender shall remain under the supervision of a Probation Officer named in the order during such period, not being less than one year, as may be specified therein and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

12. In the present matter the learned Addl. Sessions Judge has not considered this aspect and it seems that the said point was not urged before him Because of that on report from the Probation Officer has been called. The incident pertains to 21 -5-85 and the appeal is pertaining to the year 1987. The appellant is residing in

a village in Dhar District and is an Adiwasi. Therefore, when he has committed an offence punishable under Section 337 IPC in the circumstances mentioned above, I do not find any propriety in calling report from the Probation Officer and delay the matter further. It would not serve purpose as well as the interest of justice. He being an Adiwasi and has faced protracted prosecution, keeping in view the situation in which the offence has been committed by him, this Court comes to the conclusion that the appellant is directed to be released on probation for keeping peace and be of good behaviour for a period of two years, with one surety resident of village Dkobadiya P. W. Gandhwani Dist. Dhar to the extent of Rs. One thousand.

13. Thus, the appeal is partly allowed. Order of conviction passed against the appellant is hereby modified to one under Section 337 IPC. The sentence is also hereby modified and it is directed that instead of sending the appellant to jail at once, he is released on probation on his entering into a bond of Rs. 1 ,000/- with one surety of resident of village Dhobadiya P. W. Gandhwani Dist. Dhar for a period of two years and in the meantime to keep the peace and be of good behaviour. He is kept under supervision of Dist. Probation Officer Dhar for a period of one year who would guide him to be a disciplined man. Bonds to be furnished before trial Court. No interference in the order of disposal of muddemal property.