

Narendra Singh and Others Vs. State of M.P. and Others

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Court : Madhya Pradesh

Decided On : Apr-19-2001

Reported in : 2001(4)MPHT165; 2001(2)MPLJ415

Judge : Mr. Fakhruddin, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149, 323, 324 and 326

Appeal No. : Criminal Revision No. 377/97

Appellant : Narendra Singh and Others

Respondent : State of M.P. and Others

Advocate for Def. : Shri Aijaz Gauri, ;Panel Lawyer and ;Shri Rakesh Saxena, Adv.

Advocate for Pet/Ap. : Shri J.P. Gupta, Sr. Adv. and ;Shri Sanjay Gupta, Adv.

Disposition : Criminal revision dismissed

Judgement :

ORDER

Fakhruddin, J.

1. This revision is preferred against the judgment and findings recorded by the Third Addl. Sessions Judge, Morena in Criminal Appeal No. 32/94, decided on 21-8-97, whereby the respondents/accused namely Gariba, Gangaram, Rampalsingh and Asharam have been acquitted of offence under Sections 148 and 326/149 of IPC. Other co-accused respondents Kedarsingh, Jasrathsingh and Bhagirath Singh besides their acquittal by the same judgment dated 21-8-97 for the aforesaid offence, have been convicted under Section 323 of IPC for causing injuries to Babusingh and sentenced to fine of Rs. 300/- each; in default of payment of fine, S.I. for two months.

2. The prosecution story briefly stated is that on 14-11-89, at about 6 p.m., in the evening, in village Udarapura, while Narendra Singh (P.W. 8) was watering his field, he was accompanied with P.W. 9 Nathusingh. At that moment, some hot discussions were made between accused Kedarsingh and P.W. 9 Nathusingh regarding taking of water and thereafter accused Kedarsingh came back to his house. After lapse of some time, it was alleged that accused-appellants alongwith other co-accused persons namely Ramcharan, Janaksingh and Nawabsingh again came on the spot. Ramcharan was armed with Farsa, Janaksingh with Kulhari, Gariba with Dhariya, Gangaram and Rampal with Hasiya whereas other co-accused persons were armed with lathis. The accused-persons surrounded Nathusingh (P.W. 9) and then first attack was made by accused Ramcharan by Farsa which hit on his head; Gariba was said to have inflicted Dhariya blow to him. When Babusingh (P.W. 5) came to save Nathusingh, he was also assaulted by accused Gangaram and Rampal by Hasiya on his head. Accused Janak Singh was alleged to have inflicted kulhari-blow to Babusingh while other accused-persons were said to have given lathi-blows to Babusingh. This incident was witnessed by Narendrasingh standing from some distance and it was on his raising alarm, Gendalal, Maharaj Singh and Patiram reached on the spot. The report of the incident was lodged by Narendrasingh as per Ex. P-5 on 14-11-89 at P.S. Porsa, on this basis of which crime was registered against the accused-persons. The injured-persons were sent for medical examination to the hospital where they were examined by Dr. M.P.S. Bhadoriya (P.W. 1), as per Ex. P-1 and Ex. P-2.

3. After usual investigation, the challan was filed against the accused-persons by the police.
4. The accused-appellants on being charged for the offence under Sections 148, 324, 326 and 326/34, IPC denied the offence and contended to have been falsely implicated.
5. During trial, the prosecution examined Dr. M.P.S. Bhadoriya as P.W. 1, Dr. H.S. Dandotiya as P.W. 2, Gendalal as P.W. 3, Maharajsingh as P.W. 4, Babusingh as P.W. 5, Rambabu Singh Bhadoriya as P.W. 6, Patiram as P.W. 7, Narendrasingh Tomar as P.W. 8, and Nathusingh as P.W. 9. The defence on the other hand, did not examine any witness.
6. The learned Trial Court having considered the entire material on record, found that the prosecution has failed to prove the guilt against accused Ramcharan, Janaksingh and Nawabsingh beyond reasonable doubt and as such their acquittal was recorded by the impugned judgment dated 15-3-94, by the Trial Court. So far as other accused-persons namely Jasrath, Rampal, Asharam, Gariba alias Jaswant Singh, Bhagirath, Ganga alias Bhanupratap and Kedar are concerned, they were found guilty of the offence under Sections 148 and 326/149 of IPC and sentenced to two months' R.I. with a fine of Rs. 500/- each under Section 148 and one year R.I. under Sections 326/149 with a fine of Rs. 1,000/- each. On failure to deposit fine, S.I. for two months under Section 148 and six months under Sections 326/149 of IPC. It was further directed that out of the deposited fine amount, Rs. 250/- shall be paid to each of the injured-persons namely Babusingh (P.W. 5) and Nathusingh (P.W. 9) as compensation. Being aggrieved by this judgment, the appellants had preferred an appeal before the Lower Appellate Court against their conviction and sentence, which was partly allowed by the impugned judgment challenged here in this revision-petition, by the petitioners/complainants.
7. Shri Rakesh Saxena, learned counsel appearing for the respondent Nos. 2 to 8 pointed out that in this case, the complainant-party was also aggressor. They caused injuries to the accused-persons, for which the report was lodged by co-accused Nawabsingh and it was registered separately at Crime No. 141/89 against the complainant, for the offence under Sections 147 and 323 of 1PC. It is

submitted that in that case, the charge-sheet was also filed against the complainant party, and counter case (Cr. Case No. 373/89) was instituted before the Trial Court. It is pointed out that both the cases were not heard together and the complainant's case (present case) was decided first which fact was noted by the lower appellate in its judgment in para 8.

8. So far as present case is concerned, all the accused-persons were tried for the offence under Sections 148, 324, 326 and 326/34 of IPC by the Trial Court and out of them, accused Nawab Singh, Ramcharan and Janak-singh were acquitted by the Trial Court under the impugned judgment dated 15-3-94 and the remaining co-accused who were convicted are Jasrath, Ram-pal, Asharam, Gariba alias Jaswantsingh, Bhagirath, Ganga alias Bhanupratap and Kedar Singh, for the offence under Sections 148 and 326/149 of IPC as noticed above. On appeal by them, their conviction and sentence for the offence under Sections 148 and 326/149 were set aside. However, accused Kedarsingh, Jasrath and Bhagirath have been convicted under Section 323 and sentenced for that to a fine of Rs. 300/- each.

9. Shri J.P. Gupta, learned Sr. counsel appearing for the petitioners submitted that the acquittal of the accused-respondents for the alleged offence is illegal and contrary to law and the Court-below has committed an illegality in passing the impugned judgment.

10. Learned counsel for the respondent Nos. 2 to 8, on the other hand supported the findings and contended that there is no illegality. Reliance is also placed on the decision of the Apex Court in the case of Vimal Singh v. Khuman Singh, reported in 1999 Cr.LJ 16, to submit that the scope of revisional jurisdiction is a limited one.

11. Heard the counsel for the parties and perused the record.

12. In the instant case, it is pertinent to mention here, as borne out from the record, that the Trial Court has acquitted accused Ramcharan, Janaksingh and Nawabsingh. These accused-persons were said to have armed with Farm and Kulhari. It is alleged that accused Janaksingh inflicted Kulhari-blow while Ramcharan had given farsa-blow causing injuries. The learned Trial Court did not

believe on this part of the prosecution-story, though discussed in great detail in para 15 of the judgment with the medical evidence on record. The Lower Appellate Court has also considered this in paras 15 and 16 and further in para 17 the evidence of P.W. 1 Dr. M.P.S. Bhadoriya, P.W. 2 Dr. H.S. Dandotiya, P.W. 3 Gendalal, P.W. 4 Maharajsingh, P.W. 5 Babusingh and P.W. 7 Patiram has been considered to the effect that accused Janaksingh was armed with Kulhari and accused Ramcharan was armed with farsa and both of them caused injuries, which were found to be proved by the medical evidence by the Trial Court still they were acquitted. No appeal against their acquittal was filed by the State nor by the petitioners herein, before the Lower Appellate Court or this Court. As such, so far as their acquittal is concerned, it has reached finality. Learned counsel for the respondents relying upon the decision of the Apex Court in the case of Muthu Naicker and others etc. v. State of Tamil Nadu, reported in AIR 1978 SC 1647, also stated that where there is no appeal against acquittal of some of the accused-persons, who were alleged to have participated in the incident, by necessary implication acquittal of those persons becomes final and they cannot be convicted. Para 32 of the judgment is referred.

13. It is borne out from the record, that accused Ramcharan had farsa and Janaksingh had Kulhari and both of them had caused injuries, which are proved by the medical evidence on record and they are acquitted by the Trial Court. The Lower Appellate Court has also considered the same in paras 15, 16 and 17 and after considering the entire material on record, passed the impugned judgment. This Court has also considered the same and does not find any infirmity in arriving at the conclusion by the Lower Appellate Court, which is based on proper appreciation of evidence on record. The acquittal of the accused-respondents for the alleged offence is recorded after going through the entire record and the evidence by the Lower Appellate Court, which cannot be said to be such, which calls for any interference in a revision-petition, especially so when three co-accused persons against whom there is specific allegation for causing injury have been acquitted by the Trial Court and there is no appeal against their acquittal. The situation like present case had arisen in the case of Muthu Naicker v. State of T.N. (supra), wherein the Apex Court has held that it would not only be unfair but self-contradictory to sustain the conviction of the remaining accused for the

alleged offence and that would be an unequal treatment and therefore, even though they could have been fixed with vicarious liability, in view of the situation obtaining on the finding of the Lower Appellate Court, the appellate authority should have no option, but to acquit them for the alleged offence.

14. In view of what has been stated above, no case is made out for interference in the findings of the Lower Appellate Court, The revision fails and is dismissed.

15. Criminal Revision dismissed.

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