

indersingh and ors. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-27-2004

Reported in : 2005(1)MPHT198; 2004(3)MPLJ97

Judge : S.L. Kochar and ;Ashok Kumar Tiwari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302, 304, 307 and 326

Appeal No. : Criminal Appeal Nos. 207, 255 and 271 of 1996

Appellant : indersingh and ors.

Respondent : State of M.P.

Advocate for Def. : G. Desai, Dy. Adv. General

Advocate for Pet/Ap. : Sanjay Sharma and ;V.S. Chhabra, Advs.

Judgement :

S.L. Kochar, J.

1. All these three appeals are filed against the same judgment, hence taken up together and disposed of by this common judgment. Appellant Indersingh has filed two appeals against his conviction being Criminal Appeal Nos. 207/1996 and 255/1996.

2. Being dissatisfied with the judgment dated 29th February, 1996 rendered in Sessions Trial No. 175/1995 by the learned III Additional Sessions Judge, Ratlam, whereby he convicted the appellants for the offence under Sections 302/149, 307/149, sentenced to suffer imprisonment for life with fine of Rs. 2000/-, in default whereof to undergo R.I. for two years, seven years, R.I. with fine of Rs. 1000/-, in default whereof to undergo one year R.I. respectively and also convicted appellants Kalabai, Ramchandra, Bagdiram and Gopal under Section 148, IPC and sentenced them to undergo one year R.I. and appellants Bherulal, Indersingh and Badrilal under Section 147, IPC and each of them are sentenced to undergo six months R.I., the appellants have preferred these appeals. However, the substantive sentences were directed to run concurrently.

3. The factual scenario giving rise to these appeals in short are that on 2-7-1995, in the morning at 7.30 a.m. Satyanarayan @ Sathu (P.W. 12), deceased Nandram and Ramchandra (P.W. 13) were going on foot from their Village Ranayara to Village Piplya Maru for attending thirteenth day ceremony (last rite function). When they reached in the field known as 'Hazariba Wale Kheth' which was purchased by deceased Nandram, the appellants reached over there in a bullock cart. Appellants Gopal, Bagdiram, Ramchandra, Kalabai, Indersingh, Bherulal and Badrilal were having sword and lathis. They started assaulting Nandram. Appellant Gopal, Bagdiram and Ramchandra dealt dharia blow on the head, Kalabai used sword. When Ramchandra (P.W. 13) tried to rescue deceased Nandram he too was assaulted by Kalabai with sword, Ramchandra by dharia and Indersingh by lathi. Prosecution witness Jhabbalal (P.W. 16) also reached on the spot from nearby field to intervene and pacify the quarrel. He was assaulted by Gopal with dharia and Badrilal, Bherulal by lathi upon which Jhabbalal ran away from the spot. Because of fear Satyanarayan (P.W. 12) also ran away and witnessed the incident while standing at some distance. After assault, the appellants fled away. Satyanarayan (P.W. 12) went to witness Nanda (P.W. 18) and disclosed about the incident. Nandram came with bullock cart and they took deceased Nandram to Village Piplya Maru from where he was taken in a tractor to Government hospital, Alot, where he was declared dead. Satyanarayan (P.W. 12) went to police station along with Jhabbalal (P.W. 16) and lodged the report (Ex. P-27). The police stepped into investigation and sent the dead body for post-mortem examination.

Post-mortem was performed by Dr. Anil Palol (P.W. 10). His report is Ex. P-24. After required investigation, charge-sheet was filed against the appellants for the above mentioned offences. They have denied the charges.

4. Appellants Kalabai, Bherulal, Ramchandra, Indersingh and Badrilal pleaded alibi. Further defence of appellant Kalabai was that land of 'Hazariba' was owned by her father. After his death, she inherited the same. Deceased Nandram was disputing her title and possession, because of this dispute, she has been falsely implicated. The contention of appellant Bagdiram was that 'Hazariba' was his maternal grand-father and after his death his mother Kalabai inherited the land. They sown soyabeen crop in the land and on the date and time of incident, deceased Nandram was damaging the crop which was objected by him. He was assaulted by lathi on his head by deceased. Thereafter, he acted in his defence and assaulted deceased Nandram. According to him, he alone was present on the scene of occurrence. He was got medically examined by the police by Dr. Pramod Buddisagar (D.W. 1). His MLC report is Ex. D-4C.

5. Prosecution has examined in total twenty two witnesses in its favour where as appellant has examined one witness in defence. The trial was concluded into conviction and sentence as mentioned above.

6. We have heard the learned Advocates for the appellants Shri Sanjay Sharma and Shri V.S. Chhabra, learned Dy. A.G. for respondent State Shri G. Desai and also perused the entire record carefully.

7. We are not required to peep into the details of the evidence on record because the learned Counsel for appellants have canvassed only point for consideration, i.e., according to them offence against all the appellants would fall under Section 304 Part II of Indian Penal Code looking to the medical evidence and the way in which the incident had taken place.

8. The learned Counsel for appellants has pointed out the statement of Satyanarayan (P.W. 12) the son of the deceased Nandram, Paragraph 14, in which he has stated that when they were going through field of 'Hazariba', all of a sudden Bagdiram came in front of them. Thereafter other appellants also

appeared who were sitting by the side of road and they all were saying that they will not allow them to go through the said field and they all started beating them. In Paragraph 16, this witness has expressed his ignorance about causing of injury by deceased to Bagdiram on his head by lathi. But at the same time he has given a very flimsy explanation about presence of blood on the person of Bagdiram, i.e., that Bagdiram took the turban of his father, deceased Nandram, which was having blood and wrung the same on his person. Ramchandra (P.W. 13) has contradicted Satyanarayan (P.W. 12) regarding saying of the appellants that they will not allow the deceased party to go through the said field. In this view of the contradictory version between two witnesses, we are of the opinion that the benefit will go to the appellants.

9. Jhabbalal (P.W. 16) is another independent injured eye-witness. He has been declared hostile by the prosecution because he has not supported the prosecution case in its entirety. According to this witness, he was working in his field. At that juncture, he saw that appellant Bagdiram, Badrilal and deceased Nandram were quarrelling and abusing to each other. Out of them somebody was saying 'Chhudavo Chhudavo'. He reached over there and saw Bagdiram having lathi in his hand and somebody has assaulted Jhabbalal on his waist and right hand by lathi which led him to run away from the scene of occurrence. On the way, he met with Satyanarayan (P.W. 12) who was also raising cry for help. Thereafter he along with other persons brought deceased Nandram in bullock cart.

10. There is another witness Nanda (P.W. 18) who has deposed in paragraph three that there was a way to Ranayra Piplya Maru village between the fields of Nandram and Nanuram. This shows that the deceased's party were going through the said field and at that time they were attacked by the appellants. The intention of the appellants could not be attributed to commit murder of Nandram because they have not caused any fatal injury to any vital part or organ of the body, though, deceased died because of shock and haemorrhage. In Paragraph 11, the doctor has admitted that except injury on the head, none of the injuries were on vital part of the body and deceased died because of bleeding from all the wounds resulted into shock. Injury on the head was not dangerous to life and there was no fracture to skull bone.

11. We have perused the entire statements of Dr. Anil Palol (P.W. 10) and found that deceased has not suffered any fatal injury to any vital part or organ of the body, externally or internally. Individually none of the injury was sufficient to cause death and doctor has also not given opinion that all the injuries were cumulatively sufficient in ordinary course of nature to cause death. All the internal organs were healthy (sec P.W. 10, Paragraph five). None of the injury was even grievous in nature. Therefore, it would be very difficult to discern that appellants who were seven in number, assaulted the deceased by sharp edged and blunt object, could not cause even a single grievous injury. This shows that their intention was not to commit murder, though they all had formed unlawful assembly but the common object of unlawful assembly was not to commit murder of deceased Nandram but to prevent him and his associates to go through the disputed field and in prosecution of the said common object, they had given beating to the deceased by their respective weapons. But at the same time, looking to the nature of weapon and number of injuries, assembly could be attributed the knowledge that the injuries caused by them were likely to cause death of the deceased. They all came together, assaulted the deceased jointly and thereafter also left the place of incident jointly. In these circumstances, the appellants have committed the offence of culpable homicide not amounting to murder punishable under Section 304 Part II read with Section 149 of Indian Penal Code. See: *Molu and Ors. v. State of Haryana*, AIR 1976 SC 2499 and *Ramkishan and Ors. v. State of Rajasthan*, AIR 1997 SC 3997. There is evidence against appellant Kalabai for causing grievous injury by sword to Ramchandra (P.W. 13). His injury has been proved by Dr. Anil Palol (P.W. 10) and his MLC report is Ex. P-22. She was also the part of unlawful assembly and she acted in prosecution of common object of the assembly. Therefore, in view of the above mentioned discussion, we are of the view that assembly did not intend to commit murder of Ramchandra (P.W. 13). Thus, the conviction of the appellant is also not sustainable under Section 307/149 of Indian Penal Code and same is altered to Section 326/149 of Indian Penal Code. Their conviction under Section 148, Indian Penal Code is also affirmed.

12. As regards the sentence, keeping in view the aforesaid judgments passed in *Molu and others* (supra) and *Ramkishan and others* (supra) by the Apex Court and the surrounding circumstances, i.e., period of 10 years during which appellants are

facing this prosecution, we impose the sentence of five years under Section 304-II/149, IPC, Section 326/149, IPC to all appellants in both counts. Both the sentences shall run concurrently. The conviction and sentence passed under Sections 147, 148, IPC are maintained. Part of the fine and compensation as awarded by the Trial Court is maintained.

13. It is informed that Bagdiram and Gopal are in jail for the last eight years. Therefore, they have completed the awarded jail sentence. Thus, they are directed to be released forthwith. Rest of the appellants are on bail. They are directed to surrender themselves before the Trial Court for serving out the remaining part of the jail sentence.

14. In the result, the appeal is partly allowed in the terms as indicated hereinabove. A copy of judgment along with the record be sent to the Trial Court immediately.

15. Original judgment be retained in Criminal Appeal No. 207/1996 and a copy thereof be placed in connected Criminal Appeal Nos. 255/1996 and 271/1996.