

Ram Singh and Others Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-05-2012

Judge : The Honoourable Mr. Justice U.C. Maheshwari

Appeal No. : Criminal Appeal No. 1860 of 1996

Appellant : Ram Singh and Others

Respondent : State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Jagtendra Prasad

Judgement :

U.C. MAHESHWARI J.

1. This appeal is directed by the appellants under Section 374(2) of the Cr.P.C. being aggrieved by the judgment dated 9.10.96 passed by the IInd Addl. Sessions Judge, Katni in S.T.No.45/91 convicting the appellant No.1 under section 326 and 325/34 of the IPC while appellants No.2 and 3 under section 326/34 and 325/34 of IPC for RI 5 years with fine of Rs.250 in the earlier sections and RI 2 years with fine of Rs.250/- in the later. In default of depositing the fine amount further RI one month has been awarded on each of the count.

2. The facts giving rise to this appeal in short are that on dated 16.10.90 at about 11.20 AM, complainant Vishambhar Singh lodged the FIR Crime No.215/90 at P.S Barhi contending that today in the morning at about 10 O' Clock he accompanied

with his son Tejbhan and his harwaha, Dhanu Kol and Satiya Kol went to plow his field. At about 10 O' Clock, when he was sitting in the field while the aforesaid other three persons were plowing the field, appellant No.1 Ram Singh lashed with Farsa, a sharp edged weapon, and appellants No.2 and 3 Ranjeet Singh and Jagdish Singh lashed with sticks, came and stood in front of the plower and asked to stop plowing. In continuation, they also pulled the plower of Sataiya. Thereafter appellant No.1 Ram Singh gave one blow of Farsa on the occipital region while two other blows on waist and hand of Tejbhan Singh resultantly he sustained injuries and fell down and also became unconscious. Thereafter Ram Singh gave a blow of Farsa on the head of victim Vishambhar Singh resultantly he sustained injury and fell down. Appellants No.2 and 3 Ranjeet Singh and Jagdish Singh also gave the beating to Vishambhar Singh and Tejbhan Singh by means of sticks with a threatening to kill and bury them in such field. On hearing the noise of shouting of Vishambhar Singh, the villagers, namely, Dhanu Kol, Sataiya Kol, Gopal Singh and Sewak Kol came to rescue them, on which, the appellants fled away from the place of incident. Thereafter, both the victims were brought to Police Station by the aforesaid villagers where after lodging the report of Vishambhar Singh (Ex.P/26), they were sent to the hospital Barahi where after medical examination their MLC reports were prepared. For some of the injuries sustained by the victim, they were referred for x-ray. On carrying out the x-ray (Ex.P/34), the fracture of Tibia bone of the left leg was revealed. On completion of the investigation, the appellants were charge sheeted for the offence of section 307 and 341/34 of the IPC. After committing the case to the Sessions Court, on evaluation of the charge sheet, the charge of section 307 and 307/34 of IPC respectively was framed against appellants No.1,2 and 3. They abjured the guilt, on which, the trial was held. On appreciation of the evidence, all the appellants, instead the aforesaid section, were held guilty for the offence under section 326 and 326/34 of the IPC with respect of injury sustained by Vishambhar Singh while under section 325/34 of IPC with respect of the injury sustained by Tejbhan Singh and each of them were punished with the above mentioned punishment against which, they have come forward to this court with this appeal.

3-4. Shri Jagtendra Prasad, learned counsel for the appellants after taking me through the record of the trial court, without challenging the findings holding guilty

to the appellants for the alleged incident has made his limited submission saying that in view of the available medical evidence, the MLC reports, x-ray reports and also the depositions of the concerning doctor, it is apparent that none of the victim has sustained any such injury which is made punishable under section 326 of the IPC. By referring the MLC report of victim Vishambhar Singh (Ex.P/10) prepared by Dr. D.K.Swarnakar (PW 4), he argued that such victim did not sustain any injury on any vital part of his body and whatsoever injury has been sustained by him, on proper appreciation, the case is not made out against the appellants more than section 325 of the IPC as he sustained some fracture of Tibia bone in the left leg besides the other injuries. On carrying out the x-ray, such fracture was found in injury of swelling and not the incised wound. So, in such premises also it was not the case of more than section 325 of the IPC and conviction of the appellant under section 326 or 326/34 of the IPC is not sustainable. In continuation, by referring the MLC report of victim Tejbhan (Ex.P/11), he argued that he sustained two simple incised wound in the head but no fracture was found on any of such injuries. Besides this, one swelling and one abrasion was found on his person. So, in such premises, appellants have not committed any offence of section 325 of the IPC with respect of victim Tejbhan Singh. According to his submission for these injuries, the case was not more than section 324 of the IPC and prayed to modify the conviction of the appellants from section 326 or 326/34 IPC into section 325 or 325/34 IPC and for the injuries of Tejbhan from section 325/34 into section 324/34 of the IPC. In continuation, he said that after such modification, taking into consideration the circumstance that the appellants did not had any criminal antecedent or history and the alleged incident took place because of some property dispute between the complainant party and appellants in the year 1990 and thereafter in last 21 years no further criminal activity has been reported against any of the appellants, in such premises they being first offender, be extended the benefit of Probation of the Offenders Act. He further argued that, in any case, if the court does not want to extend such benefit then instead to send them again in jail, they be punished with the jail sentence already suffered by them during pendency of the trial by enhancing some amount of fine under the discretion of the Court. In this connection by referring para-36 of the impugned judgment he said that each of appellants have suffered the judicial custody

between 18.10.90 to 11.12.90 i.e one month and 25 days, and prayed to allow this appeal accordingly.

5. Responding the aforesaid arguments, Shri Rakesh Kesharwani, learned Panel Lawyer by justifying the impugned conviction and sentence said that the same is based on proper appreciation of the evidence. It does not require any interference at this stage and prayed for dismissal of this appeal. However, he fairly conceded that the alleged fracture of Tibia bone in the left leg of victim Vishambhar Singh was not found in any incised wound and as per the statement of radiologist Dr. Manoj Pandey (P.W.18) except the aforesaid fracture of Tibia bone, no other fracture was found.

6. After hearing the counsel at length, keeping in view their arguments, I have carefully gone through the record of the trial court, the impugned judgment, the depositions of victims Vishambhar Singh and Tejbhan Singh along with the depositions of other examined prosecution witnesses, I have not found any perversity in appreciation of the evidence for giving the findings to hold guilty to the appellants for committed the alleged incident. So, in such premises, the approach of the trial court holding guilty to the appellants for committing the alleged incident do not require any interference at this stage. So, such findings of the impugned judgments are hereby affirmed.

7. Now, I proceed to consider the conviction of the appellants under section 326 or 326/34 of the IPC with respect of the injuries sustained by Vishambhar Singh and the conviction under section 325/34 of the IPC with respect of the injuries of Tejbhan Singh whether the same is sustainable or it requires some modification. Before proceeding further, as ready reference, I would like to reproduce the injuries sustained by the aforesaid victims as stated by the Dr. D.K.Swarnakar (P.W.4) in their respective MLC reports :-

A. As per MLC report Ex.P/10 following injuries were found on the person of victim Vishambhar Singh :-

1. Lacerated wound over left frontal area of scalp size 3"x "x scalp deep, clotted blood. Longitudinal cut 2" above the nasal bridge upward direction linear caused

by hard and blunt object. Duration within 24 hours.

Advised X-ray skull {AP/ Lat}. Referred to V.H. Jabalpur for x-ray and admission.

2. Contusion 6"x " linear cut over left scapular area caused by hard and blunt object. Simple injury. Duration within 24 hours. Injury healed in 7 to 10 days in absence of any complication.

3. Contusion 5"x4" over left lateral aspect of left leg upper 1/3 part, swelling present, tenderness present.

4. Contusion 4"x3" over left lower part of left leg.

Duration of all within 24 hours. No.3 and 4 caused by hard and blunt object and for both injuries advised x-ray left leg {AP/late}. Referred to V.J.Jabalpur for radiologist opinion and admission.

B. As per MLC report Ex.P/11 following injuries were found on the person of victim Tejbhan :-

1. Incised wound 4 x 2" x3/4" deep over right zygomatic area of face is present extend from 2" away from right Ear to base of the right nostril, obliquely placed, well defined, bleeding present. Incised like wound, muscle, tissue are torn. Duration within 24 hours caused by sharp object. The nature of injury grievous. Advised xray of skull {AP/Lat} suspicion of bony injury to right zygomatic area adjoining bone of the right side of face. Referred to V.H. Jabalpur for x-ray and for further needful opinion, treatment and repair.

2. Contusion 5"x3" over anterior lateral aspect of right forearm- 3" away from right wrist joint. Duration within 24 hours caused by hard and blunt object. Advised x-ray right forearm {AP/Lat}. Referred to VH Jabalpur.

3. Abrasion 1"x " over middle of right lateral aspect of forearm.

4. Contusion 3"x2" over right uppermost lateral aspect of right thigh.

No.3 and 4 are within 24 hours of duration caused by hard and blunt object. Simple injury. No.3 and 4 be healed in 10-12 days in absence of any complication.

5. Lacerated wound 2"x "x " over left frontal area of scalp. Duration 24 hours caused by hard and blunt object. Injuries be healed in 7 to 10 days in absence of any complication. The injury is simple in nature.

Patient is referred to V.H. Jabalpur for admission, radiologist expert and needful opinion and for further treatment.

The aforesaid MLC reports were proved by the aforesaid doctor on recording his deposition. Under the advise in MLC report, on carrying-out the x-ray (Ex.P/34) of the victim Vishambhar Singh, as per deposition of Dr. Manoj Pandey (P.W.18) who proved such reports, fracture of left fibula at upper end at side of neck of Fibula was found while no any other fracture was found on the person of Vishambhar Singh. As per record, no fracture was found on the person of Tejbhan Singh.

8. It is apparent from the aforesaid MLC report that the alleged fracture was not sustained by the victim Vishambhar Singh in any incised wound. The same was found in some injury of swelling in left leg and so far sustaining other injuries are concerned, in the lack of any fracture in such other injuries, the same could be treated to be simple in nature and not more than that. So the injury sustained by victim Vishambhar Singh does not fall under section 326 of the IPC. As such, the same is falling under section 324 and 325 of the IPC and, as section 325 IPC being major section of the same category of section 324 IPC in which the higher punishment has been provided thus, no separate conviction could be held against the appellants under section 324 IPC if they are held guilty under section 325 of the IPC.

9. So far the injuries sustained by Tejbhan is concerned, as per aforesaid medical evidence, he did not sustain any fracture in any part of his person. So with respect of his injuries, the appellants could not have been convicted by the trial court for the offence of section 325 or 325/34 of the IPC. On proper appreciation of the medical evidence and other available circumstances of the case, the above-mentioned injuries of this victim could not be held to be grievous in nature. It is a

matter of fact on record that any injury of this victim has not been proved to be grievous in nature as per requirement of section 320 of the IPC. Thus mere on some language of MLC report, the alleged injury could not be deemed to be grievous in nature. In such premises, in the lack of any positive and admissible evidence showing that the alleged injuries or any of them was covered under the definition of grievous hurt defined under section 320 of the IPC, the alleged incised wound, hence the appellants could not be convicted under section 324/34 of the IPC as they have caused the alleged injuries to this victim in furtherance of their common intention.

10. In view of the aforesaid discussion, the approach of the trial court holding guilty to the appellants under section 326/34 IPC with respect of the injury of Vishambhar Singh and under section 325/34 IPC with respect of the injuries caused to Tejbhan, being not sustainable, is hereby set aside and, instead such sections, in view of the aforesaid discussion and keeping in view that the alleged offence was committed by the appellants in furtherance of their common intention, they are held guilty for the offence of section 325/34 IPC for causing the alleged injury to victim Vishambhar Singh and under section 324/34 IPC with respect of causing the injuries to victim Tejbhan Singh.

11. Coming to consider the prayer for extending the benefit of Probation of the Offenders Act to the appellants is concerned, looking to the nature of the offence and the manner in which it was committed by the appellants, even after 21 years of the incident, I am not inclined to extend such benefit to the appellants, hence such prayer of the appellants counsel is hereby rejected.

12. So far the prayer of the appellants counsel for adopting lenient view in imposition of the sentence against the appellants is concerned, I have found some substance in it. It is apparent from the record that any of the appellants, except the present case, did not have any criminal antecedent or history and, in such premises, they appear to be the first offender and after happening the alleged incident near about 21 years have passed. So, in such premises, I do not find fit to send them against to jail. Instead it, I deem fit to punish them with the sentence for which they have already suffered between 18.10.90 to 11.12.1990 i.e one month

and 24 days by imposing some amount of fine, with a direction to pay the same to the victims, to sub-serve the justice with them also.

13. Therefore, by affirming the findings of the trial court holding guilty to the appellants for committing the alleged incident, this appeal is allowed in part and the conviction and sentence awarded by the trial court under section 326 or 326/34 and 325/34 of the IPC is hereby set aside. In view of the aforesaid discussion, with respect of the injury caused to victim Vishambhar Singh, the appellants are convicted under section 325/34 IPC and with respect of the injuries caused to victim Tejbhan, they are convicted under section 324/34 of the IPC.

14. So far imposition of the sentence is concerned, they are punished with the jail sentence suffered by them near about one month and 25 days between 18.10.90 to 11.12.90 in judicial custody in pendency of the trial but by imposing fine of Rs.2000/- against each of the appellants for the offence under section 325/34 and Rs.1500/- for the offence under section 324/34 IPC. The aforesaid fine amount is to be deposited by them within sixty days from today, failing which, the concerning appellant has to suffer further six months RI. The amount of fine, if deposited by the appellants in connection of the impugned judgment of the trial court then the same be adjusted in the aforesaid imposed fine amount.

15. On depositing the aforesaid sum of fine, out of it, Rs.4000/- be given to the victim Vishambhar Singh and Rs.3000/- be given to victim Tejbhan Singh by calling them in the trial court through summons. The bail bonds of the appellants are hereby discharged.

16. The appeal is allowed in part as indicated above.

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