

HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)
SINGH BENCH

Criminal Appeal No. 1304/1995

Prahlad Singh and others
 Vs.
 State of Madhya Pradesh

PRESENT: HON'BLE SHRI JUSTICE G.S. SOLANKI

Shri A. Usmani, learned counsel for the appellants.

Shri Sameer Chille, learned GA for the State.

Date of hearing: 7/7/2011
Date of Judgment: 15/7/2011

J U D G M E N T

Appellants have preferred this appeal under Section 374 of the Code of Criminal Procedure, being aggrieved by the impugned judgment dated 14/9/1995 passed in S.T. No.82/94 by Sessions Judge, Sehore whereby the appellants have been convicted under Sections 307/34, 307/34 and 323/34 of Indian Penal Code and sentenced to each of them to undergo RI for 5 years and fine of Rs. 1,000/-, RI for 5 years and fine of Rs. 1,000/- and RI for 5 months and fine of Rs. 500/-, with default stipulations.

2. It is undisputed on record that there was a counter case registered against the complainant party, Bhaiyalal, Nannulal, Kripal Singh, Awadh Narayan and Anokhilal under Sections 147, 323/149, 325/149, 294 and 506-B of the IPC. Same was tried alongwith this Sessions Trial and trial Court acquitted them on the plea of private defence taken by them.

3. Prosecution case in short is that on 27.11.93 at about 22.00 p.m. Lakhanlal S/o Prahlad Singh (A/1) came to Bhaiyalal, brother of complainant Om Prakash and alleged that when he is restraining his hens, his hens are shut in the coop (*Darba*) alongwith the other hens of complainant, therefore, he requested him to release the same. It is further alleged that Bhaiyalal told him that he will release the aforesaid hens on the next day morning. It is further alleged that after sometime appellant Prahlad (A/1) and his brother Santosh Kumar (A/3) came there, abused and assaulted the complainant party. It is further alleged that at the same time Laxmi Narayan (A/2) came with a *sang* (heavy iron rod) and assaulted Awadh Narayan on his abdomen. Baghirath, Ramkishan and Kalabai tried to save them. Complainant Om Prakash (PW1) lodged the report Ex.P/1 at police station Doraha. Same was registered as Dehati Nalisi. Injured persons were sent for medical examination. Dr. U.K. Shrivastava (PW7) examined and treated them. Dr. R.S.Gupta (PW12) operated injured Awadh Narayan (PW2). He also treated Anokhilal (PW3) and opined that injuries caused to Awadh Narayan and Anokhilal are dangerous to life.

4. After usual investigation, appellants were charge sheeted before the Judicial Magistrate Raisen Sehore, who committed the case to the Court of Sessions. Learned Sessions Judge framed the charges for offence punishable under Sections 323/34, 324/34 and 307/34 of IPC against the appellants. Appellants abjured the guilt and pleaded false implication. Laxmi Narayan (AW1) was examined in their defence.

5. On appraisal of evidence on record, appellants were convicted and sentenced as mentioned hereinabove. Hence this appeal

6. Learned counsel for the appellants submitted that the trial Court committed illegality in not appreciating the evidence on record in its proper perspective. He further submitted that the appellants were not the aggressor during the incident. He further submitted that case against the appellants is not proved under Section 307 of IPC, therefore he prays for setting aside the impugned judgment and conviction recorded by the trial Court. Alternative he submitted that only the offence under Section 325 of the IPC has been proved against the appellants and in the event of conviction they may be convicted for the period of jail sentence already undergone which is about ten months and fine.

7. On the other hand, learned counsel for the State justified and supported the impugned judgment and the conviction recorded by the trial Court against the appellants.

8. I have heard learned counsel for the parties and perused the impugned judgment, evidence and other materials on record.

9. I have to consider the contention raised by the learned counsel appearing on behalf of the appellants one by one. First of all, after perusal of the impugned judgment and material of the counter case tried alongwith this Sessions Trial against the

complainant party. Since the incident took place at the house of complainant party, therefore, the trial Court has not committed any illegality in recording the finding that appellants were the aggressor in the incident and complainant party rightly took the plea of private defence.

10. Now I have to consider other arguments of the learned counsel for the appellants.

11. Complainant Om Prakash (PW1) deposed that appellants, Prahlad Singh having *Lohangi*, Laxmi Narayan having a *Sang* and Santosh having a *Farsi*, came at the spot and abused Awadh Narayan and other persons. He lodged the report Ex.P/1. Injured Anokhilal (PW3), Awadh Narayan (PW2) and Kripal Singh (PW4) stated in same line.

12. On careful scrutiny of statements of these witnesses and FIR Ex.P/1, it reveals that first of all appellants Prahlad Singh and Santosh came at the spot with lathi and danda. Appellant Laxmi Narayan reached there afterwards. Therefore, it shows that all appellants were not having their common intention.

13. Complainant Om Prakash (PW1) as well as Awadh Narayan (PW2) deposed that when Awadh Narayan came out of his house, Laxmi Narayan gave a blow on his abdomen by *Sang* (heavy iron rod), as a result of which he bled. Awadh Narayan (PW2) further stated that Laxmi Narayan also assaulted on his head by *Sang*. He further deposed that when Anokhilal

(PW3) and Kripal Singh (PW4) came to rescue him then Prahlad Singh (A/1) assaulted Kripal Singh and Santosh Kumar assaulted to his father Anokhilal (PW3). This fact is corroborated by the Anokhilal (PW3) and Kripal Singh (PW4).

14. Dr. U.K. Shrivastava (PW7) deposed that he examined Anokhilal and found lacerated wound on right side of scalp, size 7 cm x 0.5 cm, skin & muscle deep and other lacerated wound on right foot near great toe, size 5 cm x 0.25 cm, skin & muscle deep and prepared report Ex.P/9. Dr. R.S. Gupta (PW12) deposed that he treated Anokhilal and took his CT Scan and on the basis of report of CT Scan he found that there is a fracture on occipital region as well as on right petriyas region. His MLC report is Ex.P/23. On careful scrutiny of aforesaid evidence on record, it is proved that Anokhilal (PW3) got grievous injury on his head and same was caused by Santosh Kumar (A/3) by using a sharp weapon like *Farsi*.

15. Dr. U.K. Shrivastava (PW7) further deposed that he also examined Awadh Narayan and found lacerated wound on the right side of his scalp, size 6 cm x 0.5 cm, skin & muscle deep and a stab wound on left lumbar region, size 3 cm x 0.25 cm, small intestines coming out. He referred him to Hamidiya Hospital, Bhopal for necessary investigation and treatment. Report of the same is Ex.P/10. Dr.R.S.Gupta (PW12) treated Awadh Narayan and deposed that he found a cut wound on the parietal region and prepared MLC report Ex.P/21 and opined that this injury was dangerous to

life.

16. On perusal of Ex.P/21, I found that primarily lacerated injury was written as grievous in nature and thereafter written dangerous in nature. Considering the period of treatment of Awadh Narayan and part of body where injury was caused alongwith aforesaid manipulation on record, I am of the view that this injury is also appears to be grievous bodily injury only.

17. On consideration of evidence of Om Prakash (PW1), Awadh Narayan (PW2), Anokhilal (PW3) and Kripal Singh (PW4) and statements of doctors, I found that Kripal Singh was assaulted by Prahlad Singh (A/1) and he received simple injury. Same is corroborated by Dr. U.K. Shrivastava (PW7). It is proved on record that Kripal Singh received simple injury. It is also proved on record that the incident took place on the spur of moment and broke up the pity matter of hen. It was not a pre-planned or premeditation. It is also come on record that all persons were not came together at the spot. In these circumstances, I am of the view that prosecution succeeded in proving the offence punishable under Section 323 of the IPC against the appellants Prahlad Singh (A/1) and offence under Section 326 of IPC, against Santosh Kumar (A/3) for causing grievous injury to Anokhilal (PW3) and against Laxmi Narayan (A/2) for causing grievous injuries to Awadh Narayan (PW2).

18. In these circumstances, appeal is partly allowed. Conviction recorded under Section 307/34 of

IPC against the appellants is hereby set aside, instead appellant No.1 Prahlad Singh is convicted under Section 323 of IPC. Now he is 72 years of old. He remained in custody for ten months. In these circumstances, ends of justice would be met out if he be convicted for the period of jail sentence already undergone. Appellant No.2 Laxmi Narayan and appellant No. 3 Santosh Kumar have been convicted under Section 326 of IPC. They are also convicted for the period of jail sentence already undergone for ten months and fine of Rs. 5,000/- each.

19. Appellants are on bail. Their bail bonds and surety bonds stand cancelled. Appellants No. 2 & 3 are directed to deposit the enhanced fine amount before the trial Court within a period of four months from today.

(G.S. SOLANKI)
JUDGE

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