

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

Cr.A. No.1318/1997

Shankarlal & Another . . . Appellants

Versus

State of Madhya Pradesh . . . Respondent

CORAM

Hon'ble Shri Justice Alok Verma

Whether approved for reporting ?

Ms. Nidhi Bohra, learned counsel for the appellants.
Shri C.S. Ujjainiya, learned counsel for respondent/State.

Judgment

(Passed on this 08th day of August, 2017)

This Criminal appeal is directed against the judgment passed by 6th Additional Sessions Judge, Ujjain in Session Trial No.289/1994 dated 24.12.1997 whereby, the learned Sessions Judge found the present appellants guilty under Section 307 of IPC and sentenced them to 5 years rigorous imprisonment and fine of Rs.2,000/- and also rigorous imprisonment of six months by way of default stipulation.

2. The prosecution story in brief was that on 02.06.1994 at about 9:30 pm, some altercation took place between Radheshyan and appellant Shankarlal and they were entangled with each other. The injured Mukesh was driving the tractor belonging to Nagu (P.W-3). Kailash (P.W-2) was also sitting on the tractor. The injured Mukesh (P.W-1) stopped the tractor and was observing the altercation between those two persons. Subsequently, they were released by two other persons Jagannath and Gopal. After this incidence, he proceeded towards the field of Gopal and sounded horn, on which, the present appellants got irritated and threw a brick, which hit the starting of the tractor, and subsequently, the injured left the tractor and tried to run towards the house of Nagu (P.W-3). The appellants caught hold of him and inflicted as many as seven incised wounds on the body of the injured out of which injury No.5 was on abdomen and due to which duodenum, small intestine and large intestine of the injured were cut at various places. When he was operated by Dr. M.A. Sheikh (P.W-5) his abdominal cavity was found filled with blood.

3. As per prosecution story, the injured was first taken by Nagu (P.W-3) to the police station, where he lodged the report Exhibit-P/1, and thereafter, he was taken to hospital, Barnagar where he was examined by Dr. S.K. Jain (P.W-17) and in the morning of 03.06.1994 at 3:00 am an operation was performed by Dr. M.A.

Sheikh.

4. After due investigation, charge-sheet was filed.

5. The learned trial Court framed charges under Section 307/34 of IPC. The accused abjured the guilt and their defence was that Nagu (P.W-3) was maternal uncle of injured Mukesh. Nagu (P.W-3) owed some money to them and to save himself from payment, he falsely implicated them in the case.

6. Learned counsel for the State submitted that trial Court had drawn proper inferences. Oral evidence was supported by medical evidence. The injuries caused serious damage to his internal organs, and therefore, he submitted that appeal should be dismissed.

7. The prosecution examined as many as 17 witnesses. Mukesh (P.W-1) is the injured. He stated that it was about 8:00 to 9:00 pm, he was driving a tractor belonging to Nagu (P.W-3). He was going to the field of Nagu (P.W-3). When he reached Neemuch-Amla road, the accused Shankarlal was having some altercation with Radheshyam and they were entangled with each other. Jagannath and Gopal intervened and separated them. He stopped for sometime to observe them fighting then he was proceeding towards the field and sounded horn due to which, Shankarlal got irritated and threw a brick on him, which hit the steering wheel. On this, realizing some trouble, he got down from the tractor and started running. Accused Shankarlal and Pappu caught hold of him. They were having knife

with them. First, Shankarlal inflicted four injuries by knife on his back. Pappu inflicted three injuries by knife on his abdomen, and thereafter, accused Pappu also inflicted injury on his left elbow. He sat down on the ground due to the injuries in his abdomen. Taking him dead, the accused fled away. Nagu (P.W-3) and Gopal were standing nearby. Thereafter, Nagu (P.W-3) brought his motorcycle and he took him to Barnagar Hospital, which is about 5 km away from the spot. He reached Barnagar and lodged the report in the police station, and thereafter, he was taken to Hospital.

8. Kailash (P.W-2) is another eye-witness, who was travelling on the tractor and he stated the same story. So far as inflicting injury on the body of the injured was concerned, he only stated that both accused caused injury on back and abdomen of Mukesh (P.W-1). He did not assigned specific injury to any particular accused. Nagu is P.W-3. He said that after Mukesh and Kailash left on the tractor, he followed them on foot. About 75 feet away from his house, the incident took place. He narrated the incident as narrated by Mukesh (P.W-1) and he also did not attribute any particular injury to any particular accused that both of them caused the injury by knife on body of the injured.

9. Independent witnesses Radheshyam (P.W-4), Shankarlal, Gopal (P.W-9), Gopal (P.W-9) and Jagannath (P.W-10) turned hostile and did not support the prosecution case. Dr. M.A. Sheikh

(P.W-5) is a medical practitioner, who performed operation on the injured about 3:00 am on 03.06.1994 and he found that his large intestine, small intestine and duodenum of the injured were cut due to injury caused in his abdomen. He took corrective measures to stitch the injuries and after cleaning his abdominal cavity, which was filled with blood, he closed the abdomen. Dr. A.K. Jain (P.W-17) was posted as Assistant Surgeon in Civil Hospital, Barnagar, District-Ujjain. He examined him on 02.06.1994. When he taken to Barnagar Hospital, he found seven incised and punctured wounds on body of the injured. Injury No.5 was a incised wound, depth of which was cavity deep and due to this injury internal organs of the injured were damaged.

10. In this matter, report was lodged at about 9:50 pm on 02.06.1994, while the incident took place at about 9:30 pm. The F.I.R. is Exhibit-P/1. There is no discrepancy in the statement of Mukesh (P.W-1) and the facts narrated in the F.I.R. that he was examined at Barnagar at 10:00 pm and immediately after the incident, seven incised and punctured wounds were found on his body.

11. Learned counsel for the appellants assailed the statement of Nagu (P.W-3) on the ground that there was some monitory dispute between him and the accused persons, however, even if it is assumed that some dispute was present between them, looking to

the injuries found on body of the injured, there is hardly any possibility to falsely implicate the appellants for causing such severe injury on body of the injured.

12. The statement of Mukesh (P.W-1) is also supported by medical evidence. There may be a slight variation that in places where three injuries were found, however, in all, he mentioned seven injuries. Four were caused by appellant Pappu and remaining three were caused by Shankarlal and this matches the particular of number of injury found on the body. Thereafter, considering the statements of prosecution witnesses Mukesh (P.W-1), Kailash (P.W-2) and Nagu (P.W-3), were all reliable and conviction can be based on their statements. All the sentences shall run concurrently.

13. Learned counsel appearing for the appellants submits that so far as appellant Shankarlal is concerned, there is no evidence to show that he caused injury on his abdomen, which was dangerous to life, however, it is apparent that immediately before the incident, there was some agreement between the two accused persons, who inflicted such injuries on the injured, and therefore, with aid of Section 34 of IPC, as they took active role during the incident, criminal liability can be fastened equally on both the accused persons and in this view of the matter, in considered opinion of this Court, the learned trial Court did not err in convicting the present appellants under Section 307 of IPC. So far as the quantum of

punishment is concerned, learned counsel for the appellants submits that incident took place in the year 1994. For the last 23 years, appellants are facing the trial/appeal. She submits that they have already suffered a long, and therefore, the sentence of five years may be suitably reduced.

14. I have gone through the record of the lower Court and it is apparent that for very long duration of 23 years, present appellants have been facing trial, and therefore, taking these facts into consideration, the sentence awarded on the appellant deserves to be suitably reduced.

15. Accordingly, this appeal is partly allowed. The conviction under Section 307 of IPC against the present appellants is hereby affirmed. The sentence awarded on present appellants is reduced from five years to three years each and fine imposed on him and rigorous imprisonment awarded by way of default stipulation is hereby affirmed. All the sentences shall run concurrently.x

The bail and bond submitted by the present appellants are discharged. The trial Court is directed to take them into custody and consigned them to prison for undergoing remaining part of their sentence. The order regarding disposal of the property as passed by the trial Court, is hereby affirmed.

(Alok Verma)
Judge

Ravi