

CASE NO.:
Appeal (crl.) 487 of 2001

PETITIONER:
Niranjan Singh

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 14/06/2007

BENCH:
Dr. ARIJIT PASAYAT & B.P. SINGH

JUDGMENT:
J U D G M E N T
With

CRIMINAL APPEAL No. 868 of 2002

Dr. ARIJIT PASAYAT, J.

1. Both these appeals are directed against the common judgment of a learned Single Judge of the Madhya Pradesh High Court, Jabalpur Bench, dismissing the appeal filed by the appellants, challenging their conviction for offences punishable under Sections 392 and 397 of the Indian Penal Code, 1860 (in short the \021IPC\022) in terms of the order passed by the learned Third Additional Sessions Judge, Sagar. On each count the appellants were directed to undergo 7 years rigorous imprisonment with fine of Rs.500/-.

2. Background facts in a nutshell are as follows:

On 2nd June 1986 the accused persons had entered the shop of Babulal (PW-1) while he was in the process of closing. One shutter was already put and one shutter was still to be put. They entered the shop at about 9.15 p.m. and asked for a sum of Rs.1001/- from the injured Babulal and asked him the reason why he had offered only two \021Ilachis\022 when the three persons had come to the shop the previous day. At the relevant time injured Babulal and his brother Munnalal (PW 4) were present and they were settling the account. Babulal was having Rs.400/- in his hands. Ramsahay and Niranjan asked to hand over Rs.1000/-. On refusal of the complainant Babulal, Ramsahay inflicted one injury on his right arm with a knife. Another injury was caused on left side of chest by knife. Rs.400/- which the complainant had in his hands were snatched by Niranjan Singh. It is alleged that one more boy was accompanying the accused persons whose name was not known. The incident was witnessed by Santosh Kumar (PW3) and Jinendra Kumar.

Injured Babulal was referred for medical examination to Dr. Anand Singhai (PW 7) who found two injuries. One injury 1\024 x =\022\024 was found on the left side of chest below the nipple and the other injury =\024 x <\024 was on the left arm. Both the injuries were caused by hard and sharp weapon. The clothes of Babulal were seized which carried corresponding sign of insertion of knife.

From the possession of accused Niranjana as per information given by him, a knife was recovered. Accused Sitaram was put up for identification parade by Mulle Singh (PW2) who was Sarpanch of the village. The identification parade was allegedly held near the paper mill. The money which was allegedly looted could not be recovered from the accused.

The accused abjured the guilt. Accused Sitaram contended that he was falsely implicated in the case. Accused Niranjana took the defence that he was standing in front of the shop of Munnalal and accused Ramsahay was demanding money from Babulal which was due from him. On that altercation took place between Munnalal and Ramsahay and there was a scuffle. The accused intervened and separated the two. As the accused (Niranjana) sided with Ramsahay, his name was also mentioned in the array of accused. Ramsahay took the plea that Rs.1050/- were due from Babulal on account of purchase of Char which was payable to his uncle and when money was demanded an altercation took place. No incident of robbery took place. Knife was not recovered from him.

3. Placing reliance on the evidence of eye witnesses i.e. PWs 1, 4, 5 & 6 more particularly that of the injured witnesses Babu Lal (PW-1) and Munna Lal (PW-4), the trial Court found the accused persons guilty. He also placed reliance on the evidence of PW 3 - Santosh who had seen the incident from a distance and reaching the spot had seen the accused persons running away.

4. In appeal though several points were urged, the primary stand was that ingredients under Section 397 IPC were not made out as no grievous hurt was found. The prosecution took the stand that for attracting Section 397 IPC it is not necessary that grievous hurt should be found. Ingredients of the provision are satisfied if the evidence on record establishes that grievous hurt was intended. The High Court did not accept the aforesaid plea of accused and dismissed the appeal.

5. Stand taken before the High Court was reiterated in these appeals. It was submitted that for attracting Section 397 IPC grievous hurt must have resulted from the assault.

6. Learned counsel for the State on the other hand supported the judgments of the trial court and the High Court.

7. The ingredients of the offence are as under:

(1) The commission of robbery or dacoity as described in Section 392 and 395 respectively;

(2) the accused-

(a) used a deadly weapon, or

(b) caused grievous hurt, or

(c) attempted to cause death or grievous hurt;

(3) he did so at the time of committing the robbery or dacoity.

8. Grievous hurt is defined in Section 320 IPC. This Section reads as follows:

Grievous hurt : The following kinds of hurt only are designated as grievous:-

First \026 Emasculation
Secondly \026 Permanent privation of the sight of either eye.
Thirdly \026 Permanent privation of the hearing of either ear.
Fourthly \026 Privation of any member of joint.
Fifthly \026 Destruction or permanent impairing of the powers of any member or joint.
Sixthly \026 Permanent disfiguration of the head or face.
Seventhly \026 Fracture or dislocation of a bone or tooth.
Eighthly \026 Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

9. The facts of the instant case show that Section 397 IPC was rightly applied. Any hurt which endangers life is a grievous hurt. It would be seen that one of the injuries was caused just below the nipple. The term \023endangers life\024 is much stronger than the expression \023dangerous to life\024. Apart from that in the provision \023attempt\024 to cause grievous hurt attracts its application. The question whether the accused attempted to cause death or grievous hurt would depend upon the factual scenario. In the instant case knife blow was given on the chest just below the nipple. Considering the place where injury was inflicted i.e. on the chest the High Court was right in its view about the applicability of Section 397 IPC.

10. Appeals are dismissed.