

Moti Lal vs State Of Madhya Pradesh on 23 September, 1993

Equivalent citations: AIR1994SC1544, 1994CRILJ2184, AIR 1994 SUPREME COURT 1544, 2012 (11) SCC 427, 1994 AIR SCW 1161, 1995 () APLJ(CRI) 1, 2013 (1) SCC (CRI) 671, (1994) 2 CRICJ 636, (1994) 2 EASTCRIC 353, (1994) 3 RECCRIR 77, (1994) JAB LJ 501

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Bench: G.N. Ray

JUDGMENT

K. Jayachandra Reddy, J.

1. In both these appeals the appellant is Moti Lal. He was tried along with 14 others for offences punishable under Sections 302 read with 149, 148, 147, 325 read with 149 and 323 read with 149, I.P.C. The trial Court acquitted 12 persons and convicted the appellant and two others namely, Badri Prasad and Daryao Bai under Sections 302 read with 149, 148, 325 read with 149 and 323 read with 149, I.P.C. The three convicted accused preferred an appeal to the High Court. The High Court acquitted the other two but convicted the appellant under Section 304 Part I, I.P.C. and sentenced him to undergo seven years' rigorous imprisonment. Later an application was filed before the High Court under Section 482, Cr.P.C. with the prayer that the conviction cannot be given under Section 304 Part I, I.P.C. since the injury said to have been caused by the appellant was not serious and necessarily not fatal. The High Court exercising jurisdiction under Section 482, Cr.P.C. accepted the plea and altered the conviction to Section 324, I.P.C. and sentenced the appellant to 3 years' RI and to pay a fine of Rs. 1,000/- in default of payment of which to undergo RI for four months. Not being satisfied with that, the appellant preferred as special leave petition to this Court along with a prayer seeking permission to get the offence compounded. This Court, having noticed that the High Court erred in altering the conviction while exercising jurisdiction under Section 482, Cr.P.C. issued notice on 8th July 1985 to the State Government on the question whether the High Court has such jurisdiction. Later leave was granted and that is numbered as Crl. Appeal No. 644 of 1985. Meanwhile the appellant also filed a separate leave petition against the main judgment of the High Court convicting him under Section 324 Part I, I.P.C. The leave was granted and the other appeal is numbered as 645 of 1985.

2. Section 362, Cr.P.C. in clear terms lays down that the Court cannot alter judgment after the same has been signed except to correct clerical or arithmetical errors. That being the position the High Court had no jurisdiction under Section 482, Cr.P.C. to alter the earlier judgment. With these

observations, Crl. Appeal No. 644/85 is disposed of as it may not be necessary to go into the merits of the case in this appeal since there is a regular appeal No. 645/85 against the main judgment of the High Court convicting the appellant under Section 304 Part I, I.P.C.

3. There are eye-witnesses to the occurrence during which 3 persons were killed and some persons were injured. For the purpose of this appeal, it may not be necessary for us to go into other details. Both the Courts below have held that the appellant participated in the occurrence but unfortunately for the prosecution the identity of the other appellants was not satisfactorily established. Therefore, they were acquitted and the High Court also acquitted two other accused. Therefore, only the appellant is left in the picture. The High Court, however, held that the appellant inflicted only one injury with an axe and according to the medical evidence the same did not result in the fracture of the skull but on the other hand the contusion which was a result of a blow inflicted by some unidentified accused caused fracture. But the appellant by inflicting an injury with an axe had the knowledge that he was likely to cause death and therefore the High Court held him guilty under Section 304, Part I, I.P.C. and sentenced him to undergo seven years R.I.

4. The learned Counsel submitted that when the accused was being convicted for his individual act which was only simple injury, the conviction under Section 304 Part I, I.P.C. is not warranted, since all other accused are acquitted. We think in such a situation, the appellant could be convicted for his individual act and since it was not found to be sufficient in the ordinary course to cause death then the conviction could have been one under Section 326, I.P.C. as the injury was caused with the deadly weapon like an axe and the injury was likely to endanger life. In view of the peculiar circumstances of this case, we set aside the conviction of the appellant under Section 304 Part I, I.P.C. and the sentence for seven years' R.I. awarded thereunder and convict him under Section 326, I.P.C. and sentence him to undergo three years' R.I. Subject to above modification, the appeal is disposed of.