

**HIGH COURT OF MADHYA PRADESH****BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Criminal Revision No.544 of 2008****Shyamlal & Ors.****-Vs-****State of M.P.**

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Shri Anand Gupta, counsel for the applicants.

Ms. Sudha Shrivastava, Panel Lawyer for the respondent/State.

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**ORDER**  
**(01/12/2016)**

The present revision has been filed under Section 397/401 of CrPC against the judgment dated 07.08.2008 passed by Additional Sessions Judge, Chachoda, District Guna in Criminal Appeal No.129/2008 by which the judgment dated 17.3.2008 passed by JMFC Chachoda in Criminal Case No.110/2001 thereby convicting the appellant under Section 325 of IPC, has been affirmed.

**2.** The facts necessary for the disposal of this case in short are that on 01.07.1999, the complainant Babulal alongwith other persons lodged a FIR in Police Station Khumbraj alleging that he was working in his *Badi*. At about 5.30, the applicants came there and they were having *lathis* and axe with them. They said to him that he should not cultivate the field and when he replied to them that the field belongs to his father-in-law and he will cultivate the same, the applicants started abusing and when the complainant asked them not to do so, Shivilal assaulted him by means of

*lathi*, Shyamlal assaulted him by an axe and other persons assaulted him by *lathis* on his back and neck. When he raised alarm, Ramdayal, Pappu and Mangilal came there. On the report of complainant Babulal, the police registered the offences and started investigation. The spot map was prepared. The injured was sent for medical examination and the applicants were arrested. The police after completing the investigation filed the charge-sheet against the applicants.

**3.** The Trial Court framed the charges under Sections 294, 341, 325 of IPC.

**4.** The applicants abjured their guilt and pleaded not guilty.

**5.** The Trial Court by judgment dated 17.3.2008 convicted all the applicants as well as co-accused Pappu @ Harnarayan for offences under Section 325 of IPC and sentenced each of them to undergo RI of three years with fine of Rs.800/- with default imprisonment of RI of three months.

**6.** The applicants and co-accused Pappu @ Harnarayan filed a criminal appeal before the Sessions Court and during the pendency of the criminal appeal, the complainant Babulal compromised the case with the co-accused Pappu @ Harnarayan and the application filed under Section 320 of CrPC by the complainant Babulal was allowed by the Appellate Court by order dated 25.7.2008 qua the co-accused Pappu @ Harnarayan and he was acquitted. As the complainant did not compromise with the applicants, therefore, the appeal was heard on merits. By judgment dated 07.08.2008, the Appellate Court dismissed the appeal and affirmed the judgment passed by the Trial Court.

**7.** The prosecution in support of the prosecution case had

examined Ramswaroop (P.W.1), Babulal (P.W.2), Dr. R.K. Jain (P.W.3), Bhogilal (P.W.4), Dr. Sudip Arora (P.W.4) (By mistake the Trial Court has wrongly mentioned this witness as P.W.4 instead of P.W.5, therefore, this witness will be referred as P.W.4-A in the judgment.), Ramdayal (P.W.5), Kamal Singh (P.W.6), Kalluram (P.W.7), Shashikant Sharma (P.W.8) and Bharmal (P.W.10).

**8.** The applicants did not examine any witness in their evidence.

**9.** Dr. Sudip Arora (P.W.4-A) has stated that he was working as Medical Officer in Khumbraj and he had examined the injured Babulal on 01.07.89 at 8.50 in the night. In the MLC which is Exhibit P-4, the following injuries were found:-

- “(1) A lacerated wound 1 x ½ x ¼ cm present over left side of nose bleeding present swelling present.
- (2) Contusion lower lip 1 x 1 cm complain of pain in lower left incisor.
- (3) A contusion 10 cm x 6 cm over left shoulder painful movement.
- (4) A contusion 8 cm x 6 cm over left back of neck swelling present.
- (5) A contusion 4 cm x 2 cm over right shoulder swelling present.
- (6) A contusion 15 cm x 3 cm over upper back.
- (7) A contusion 20 cm x 3 cm over lower back below both scapula transverse in position.
- (8) A contusion 8 cm x 4 cm present left costal margin on back.
- (9) A contusion 9 cm x 4 cm present left costal margin below No.8 injury.
- (10) A abrasion 3 cm x 1 cm present over injury No.9 contusion.
- (11) Multiple abrasion present over whole back.
- (12) A contusion 8 cm x 4 cm present over right calf swelling present.
- (13) A swelling present over left thigh 6 cm x 4 cm tenderness present.”

**10.** In order to ascertain the nature of injuries No.1, 2, 3,

4, 7, 8, 9 & 12, X-ray was advised. According to this witness, these injuries were caused by hard and blunt object.

**11.** Dr. R.K. Jain (P.W.3) has stated that on 02.07.1999, he was working on the post of Radiologist in District Hospital Guna and on that day he had taken the x-ray of neck, chest, left shoulder and right leg. On examining the X-ray plate, this witness has found dislocation of left shoulder and no other bony injury was found. The X-ray report is Exhibit P-3 and X-ray plate is Exhibit P-4. In cross-examination this witness was given suggestion that in case if any person falls on a hard object then whether there is a possibility of dislocation, which was accepted by this witness. Except this suggestion, no other question was put to this witness in cross-examination. Merely this witness has accepted the suggestion that in case of a fall on a hard surface then dislocation is possible, it cannot be said that such dislocation was not caused because of the injury caused to the complainant by the assailants.

**12.** In cross-examination Dr. Sudip Arora (P.W.4-A) had stated that except injuries No.1, 2, 3, 4, 7, 8, 9 & 12, all other injuries were simple in nature. However, this witness has not stated either in his examination-in-chief or in his cross-examination about the nature of the injuries No. 1, 2, 3, 4, 7, 8, 9 & 12. If the MLC report Exhibit P-4 is seen then it is clear that Dr. Sudip Arora (P.W.4-A) was of the view that the nature of the injuries No.1, 2, 3, 4, 7, 8, 9 & 12 can be ascertained only after the opinion of Surgeon and Radiologist. In absence of any positive evidence on record to show the nature of injuries No. 1, 2, 3, 4, 7, 8, 9 & 12, this Court is left with no other option but to consider the report of Radiologist, which is Exhibit P-3. From Exhibit P-3, which

is a x-ray report, it is clear that no bony injury was seen except dislocation of left shoulder of the complainant. Dislocation of left shoulder was the direct consequence of injury No.3 which was a contusion of 10 cm x 6 cm over left shoulder and the movement was painful. No other injury on the left shoulder was found and, therefore, for ascertaining the fact that who had caused this injury No.3, reference to the evidence of the complainant and other prosecution evidence would be necessary. Thus, in the light of the MLC report Exhibit P-4 and the report of the Radiologist Exhibit P-3, it is held that except injury No.3, all other injuries were simple in nature which were caused by hard and blunt object.

**13.** Ramswaroop (P.W.1), who was one of the signatory to the spot map (Exhibit P-1), did not support the prosecution case and was declared hostile. Even in the cross-examination, he denied the suggestion that the police had prepared the spot map and he had signed on the same. Mangilal (P.W.4) has also not supported the prosecution case and he was declared hostile.

**14.** Ramdayal (P.W.5) has merely stated that about 5-7 years back it was the time of sunset when Shyamlal etc. had assaulted Babu. Shyamlal etc. had gone to the field and Shyamlal and one or two persons were having *lathis* and he had seen the incident from the distance.

**15.** From the bare reading of this evidence, it would be clear that except naming Shyamlal, this witness has not named any of the other appellants. It is also important to point out that this witness was not declared hostile.

**16.** Kamal Singh (P.W.6) has also stated that about 5-6 years back, he had seen Shyamlal assaulting Babulal and those persons were assaulting by *lathis*. As this witness did

not name the other appellants, therefore, he was declared hostile and he was cross-examined. This witness has specifically denied the suggestion that Shivlal and Pappu had also assaulted Babulal.

**17.** Kalluram (P.W.7) has stated that when he reached on the spot, Shyamlal had already beaten the complainant. He had not seen any injury on the complainant. He had not seen anybody on the spot. This witness was declared hostile and was cross-examined.

**18.** Babulal (P.W.2) has stated that the incident is of 7 years back. When he was covering the *Badi* of his father-in-law, then the accused Shyamlal, Pappu, Shivlal and Bapulal came there. Shyamlal was having an axe and other accused persons were having *lathis*. All the four accused persons started abusing him and they said that why he is cultivating the field. When this witness replied that the field belongs to his father-in-law and, therefore, he is cultivating the same, all the four persons started assaulting him by means of *lathis*. Shivlal has given blow on his back and Shyamlal gave a blow by means of a *lathi* which landed near his eye and subsequently said that he has sustained the injury by an axe. Bapulal had caused injury by means of *lathi* and Pappulal also assaulted him by means of *lathi*. He had received several injuries. The FIR was lodged by this witness which is Exhibit P-2. This witness was subjected to cross-examination but the learned counsel for the applicants could not point out any material discrepancies in his evidence which may make his evidence untrustworthy.

**19.** Bharmal (P.W.10) has stated that about 8 years back, when his son-in-law (Babulal) was cultivating the field, he was assaulted by Bapu, Shyama, Pappu and Shyam Lal. However, in the cross-examination, this witness has

admitted that he had not seen the incident and he was informed by Babulal (P.W.2) and his daughter. As this witness is merely a hearsay evidence but as he was informed by the complainant himself about the incident, therefore, his evidence could be said to be relevant in the light of the evidence of Babulal (P.W.2).

**20.** If the evidence of Babulal (P.W.2) is considered in proper perspective, then it would be clear that all the four accused persons (three applicants and one acquitted Pappu @ Harnarayan) have assaulted the complainant Babulal (P.W.2). This witness has also stated the injuries which were caused by the accused persons. However, except giving four instances of injuries caused by the accused persons, this witness has made omnibus statement that thereafter all the four persons assaulted him jointly. It has already been held in the previous paragraphs of this judgment that except injury No.3 no other injury was grievous in nature and all other injuries were simple in nature. The injury No.3 was found on the left shoulder of Babulal (P.W.2) which had resulted in dislocation of left shoulder. However, nothing could be discern from the evidence of Babulal (P.W.2) that who caused the injury No.3.

**21.** It is important to mention here that the Trial Court did not frame charge under Section 34 of IPC. There is no charge of common intention. The charges under Section 294, 341 and 325 of IPC were framed. The Trial Court had convicted the applicants for offence under Section 325 of IPC and had acquitted them from the charge under Sections 294 & 341 of IPC. Thus, in absence of charge under Section 34 of IPC, it was obligatory on the part of the prosecution to prove that who caused the grievous injury. On the basis of the evidence which has come on record, except injury No.3

all the injuries were simple in nature and there is nothing on record to show that who caused the injury No.3 and in absence of specific charge under Section 34 of IPC, it is held that the Trial Court committed error in convicting the applicants for offence under Section 325 of IPC.

**22.** Accordingly, it is held that all the applicants are guilty of causing simple injury to the complainant Babulal (P.W.2). According to the complainant Babulal (P.W.2), Shyam Lal had caused injury near his eye by means of an axe and since no incised wound was found above the eye of the complainant, it is held that as the applicants had caused simple injuries to the complainant by means of *lathis* which is not a deadly weapon, therefore, the applicants are held guilty under Section 323 of IPC of causing simple injury to the complainant Babulal (P.W.2).

**23.** Now the question for consideration is that what should be the proper sentence under the facts and circumstances of the case. The incident is said to have taken place in the year 1999. As the offences registered against the applicants were bailable in nature, therefore, they were granted bail by the police itself. After the charge-sheet was filed, they were granted bail. After the judgment of conviction was recorded, the jail sentence was suspended under Section 389 of CrPC and the applicants were granted time to obtain stay from the appellate court. The appellate court suspended their sentence and granted bail. After their appeal was dismissed, they were sent to jail on 07.08.2008. This Court by order dated 19.9.2008 suspended the sentence and the applicants were released on bail. Thus, it is clear that the applicants remained in jail for a period of 43 days. As the applicant No.1 Shyamlal and applicant No.2 Shivilal did not appear before the office of this Court, therefore, non-bailable

warrants were issued against them to secure their presence. The applicant No.1 Shyamlal was produced before the Court as it is evident from the order dated 28.10.2015 and he was sent to jail and subsequently by order dated 19.11.2015, he was released on bail. The applicant No.2 Shivilal was arrested and was produced before this Court by police Khumbraj as it is evident from the order dated 04.04.2016. His application for suspension of sentence was rejected by order dated 20.7.2016. It is submitted by the counsel for the applicants that the applicant No.2 is in jail since 4.4.2016. Thus, it is clear from the record that the applicant No.1 has remained in jail for a period of 65 days, applicant No.2 has remained in jail for a period of 283 days and applicant No.3 has remained in jail for a period of 43 days.

**24.** Counsel for the applicants has relied upon a judgment of Division Bench of this Court passed in the case of **Sabir Ali & Ors. v. State of M.P.**, reported in **2013 (1) MPHT 173**.

**25.** Considering the fact that the incident took place in the year 1994 and the appellants therein were on bail during the trial and the appellant No.1 had already undergone the jail sentence for 22 days and the appellant No.3 had already undergone the jail sentence for one month and four days and the appellant No.2 was on bail from the initial stage of trial, the Division Bench of this Court held that in such circumstances, it would not be in the interest of justice to send the appellants again in prison. The relevant part of the judgment is as under:-

“17. Next question is that what sentence can be awarded to the appellants. The appellants have been facing criminal proceedings since 1994 and they are on bail. The appellant No. 2 Swaroop Khan is aged 70 years and rest of the appellants

No. 1 and 3 are sons of the appellant No. 2. The appellant No. 1, Sabir Ali has undergone jail sentence of 22 days, appellant No. 3, Pappu @ Afsar Khan has undergone jail sentence of one month and 4 days. The appellant No. 2, Swaroop Khan is reported to be on bail from initial stage of trial, in such circumstances, in our opinion, it would not be in the interest of justice to send the appellants again in prison.

18. In our opinion, both the husband (Sardar Khan) and wife (Haliman Bee) suffered grievous injuries, there was fracture in the skull of Haliman Bee and there was also fracture in ribs of her husband, Sardar Khan. In our opinion, it would be in the interest of justice to award compensation to the injured persons in accordance with section 357 of the CrPC.

19. The Hon'ble Supreme Court in Hari Kishan and State of Haryana Vs. Sukhbir Singh and others, AIR 1988 SC 2127, has held as under in regard to awarding of compensation to the victim of the offence :

"10. Sub-section (1) of section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the

offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default.

20. Looking to the nature of injuries suffered by both the persons and the fact that they were also admitted in the hospital, it would be just and proper to award a compensation of Rs. 50,000/- (Rupees Fifty thousand only) to the injured persons and the sentence awarded to the appellants by the Trial Court is reduced to the period as already undergone by them."

**26.** In this case also, the incident took place in the year 1999 and the applicants have been convicted under Section 323 of IPC and the fact that the complainant had compounded the offence qua the co-accused Pappu @ Harnarayan against whom the similar allegation were made, no useful purpose would be served by sending the applicants No.1 & 3 again in prison. However, under the facts and circumstances of the case, in the opinion of this

Court, the grant of compensation to the complainant would serve the interest of justice.

**27.** Looking to the nature of the injuries suffered by the complainant, it would be just and proper to award a compensation of Rs.30,000/- (Rupees Thirty Thousand only) and the jail sentence awarded to the applicants by the Trial Court is reduced to the period of 40 days.

**28.** Out of the total compensation amount of Rs.30,000/-, the applicant No.1 would deposit Rs.10,000/-, the applicant No.2 would deposit Rs.10,000/- and the applicant No.3 would deposit Rs.10,000/- and the total amount shall be paid to the complainant.

**29.** Consequently, the revision filed by the applicants is allowed to the extent that the applicants are hereby held guilty for offence under Section 323 of IPC and the sentence awarded by the Trial Court is reduced to the period of 40 days. The applicant No.1 is directed to pay a compensation of Rs.10,000/-, the applicant No.2 is directed to pay Rs.10,000/- and applicant No.3 is directed to pay Rs.10,000/- to the complainant. The compensation shall be deposited by the applicants in the Trial Court within a period of two months from today and if the applicants fails to deposit the compensation as directed, then they are directed to surrender before the Trial Court to serve out the remaining jail sentence as awarded by the Trial Court and, in case, if they fails to surrender before the Trial Court, then the Trial Court shall issue arrest warrant against them and also notice to their sureties be issued and may pass necessary orders against them.

**30.** The applicant No.2 be released from jail immediately after the amount of Rs.10,000/- i.e., part of the compensation amount is deposited by him before the Trial

Court, if not required for any other offence.

**31.** As the applicants No.1 & 3 are on bail, their bail bonds and surety bonds stand discharged on deposit of the compensation amount.

**32.** It is further made clear that the compensation amount shall be in addition to the fine which has been imposed by the Trial Court.

**33.** The record of the Courts below be sent back immediately for necessary information and compliance.

**34.** The Principal Registrar of this Court is also directed to serve a copy of this judgment on the applicant No.2 who is in jail.

**35.** Accordingly, this revision is partly allowed to the extent mentioned above.

**(G.S. AHLUWALIA)**  
**Judge**  
**(01.12.2016)**

(ra)