

**IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.**

**SINGLE BENCH: HON'BLE SHRI JUSTICE ALOK VERMA**

**CRIMINAL APPEAL NO.132/1999**

**Mohansingh**

**Vs.**

**State of Madhya Pradesh**

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Shri Ashish Gupta, learned counsel for the appellant.  
Shri C.S.Ujjainia, learned counsel for respondent/State.

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**J U D G M E N T**

**(Passed on this 3<sup>rd</sup> day of April, 2017)**

This criminal appeal is directed against the judgment of conviction passed by the learned Sessions Judge, Jhabua in S.T.No.203/1998 dated 23.01.1999, whereby the learned Sessions Judge found the present appellant guilty for offence under Section 307 of IPC and sentenced him to 3 years R.I.

2. It is admitted in this case that the injured Jokhalibai is the wife of the present appellant and it is also admitted that Ramesh PW-2 and Poonam PW-3 are children of the present appellant and injured Jokhalibai.

3. The prosecution story in brief is that on 19.03.1998 at about 9 P.M., the injured Jokhalibai was cooking food. The present appellant was also at

home. He was working as Home Guard. He started using abusive language against the injured Jokhalibai and said that he will not leave her alive and thereafter, it is alleged that he inflicted three injuries by a sphere. The first injury was in the abdomen due to which the small intestine came out. The second injury was on her chest which was deep cavity and third injury was on left wrist which was V-shaped. The learned Sessions Judge found the present appellant guilty for offence under Section 307 of IPC and sentenced him to R.I. as aforesaid.

4. Aggrieved by the judgment of conviction and sentence as aforesaid, this appeal is filed on the ground that all the witnesses except the injured turned hostile and, therefore, the conviction should be set aside. None of the injuries found on the body of the injured was dangerous to life. According to the defence taken by the present appellant (i) he was not present at home and this fact was not taken into consideration by the trial Court (ii) according to the FIR the incident took place on 19.03.1998, however, the doctor examined the injured on 18.03.1998 and this discrepancy was not taken into consideration by trial Court (iii) there was no eye witness of the incident (iv) the injured Jokhalibai said that after the incident she went unconscious, however, according to the doctor when she was brought to the hospita, she was conscious and the said discrepancy

was also not taken into consideration (v) the blood found on the sphere was not matching with the blood group of the injured and, therefore, this fact was also to be taken into consideration (vi) both the sons of the injured turned hostile and did not support the prosecution case and this fact was also not taken into consideration. Based on the above mentioned grounds the present appellant prays that judgment of conviction and sentence be set aside.

5. Learned counsel for the State supports the judgment and submits that this appeal should be dismissed.

6. The question is whether the trial Court erred in holding the present appellant guilty under Section 307 of IPC. Ramesh PW-2 is son of the present appellant and the injured Jokhalibai. According to him, his father did not cause any injury to his mother, neither he used any abusive language against her. Similarly Poonam PW-3 turned hostile and did not support the prosecution case. Remu (PW-4) is stated to be the person who reached on the spot on hearing the cry of Jokhalibai. He also did not support the prosecution case and turned hostile. Similarly, the seizure witnesses also turned hostile.

7. In such a situation, the only evidence available is Jokhalibai, who is the injured and examined as PW-10. In her statement she stated that on

the date of incident, at about 8 P.M., she was cooking food, when her husband, the present appellant called her "dayan" and thereafter he inflicted three injuries on abdomen and chest and left wrist by sphere. Hearing her cry, her sons Ramesh PW-2, Poonam PW-3 and also Remu PW-4 came there. Seeing them the appellant fled away. The injured was taken by her sons to the Police Station, where she lodged the report herself which is marked as Ex.P-10. Her dying declaration was also recorded immediately i.e. Ex.P-7. The statement was recorded by the doctor. In her cross examination there is nothing to suggest that her statement is not reliable. This apart she suffered serious injuries. Both injuries no.1 and 2 were caused on vital part of the body, abdomen and chest. Both the injuries were penetrating upto the abdominal and thoracic cavity. They cannot be self inflicted. The third injury is on her left wrist and, therefore, her statement is supported by the medical evidence. This apart, she herself recorded the FIR and there is no discrepancy between her statement and facts narrated in the FIR. In her dying declaration which can be used as her previous statement, she stated that the injuries were inflicted by the present appellant by sphere.

8. Learned counsel for the appellant submits that in her statement she admitted that after the incident she was unconscious, but fact remains that

she also stated that when she was taken to the hospital and was given treatment by the doctor, she regained consciousness. The doctor recorded her statement Ex.P-7 at 4.40 P.M. and he certified that at the time of commencing of statement and also at the time of finishing the statement, she remained conscious throughout.

9. Taking all these piece of evidence together, it is apparent that the sole testimony of the injured Jokhalibai, PW-10 is fully reliable and conviction of the present appellant can be based on her statement alone. In this view of the matter, I find that inferences drawn by the learned trial Court are based on cogent reasons and evidence available on record. No interference is called for.

Accordingly, this appeal is devoid of merit and liable to be dismissed and dismissed accordingly. The conviction and sentence recorded by the learned trial Court is hereby confirmed. The order of the trial Court in respect of disposal of the property is also confirmed. Bail and bond are cancelled. The trial Court is directed to take him under custody and send him to jail for suffering remaining portion of his sentence.

Appeal stands dismissed.  
C.C. as per rules.

**(ALOK VERMA)**  
**JUDGE**

**RJ/**