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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL APPEAL No. 1458 of 1999

BETWEEN:-

**PEERU SINGH, AGED ABOUT 30 YEARS,
VILLAGE DHANORA,
TEHSIL SARANGPUR, DISTRICT RAJGARH (MADHYA
PRADESH)**

.....APPELLANT

(BY SHRI VIVEK SINGH, ADVOCATE)

AND

**THE STATE OF M.P. (MADHYA PRADESH)
THROUGH POLICE STATION SARANGPUR,
DISTRICT RAJGARH (M.P.)**

.....RESPONDENTS

(BY SHRI SURENDRA GUPTA, GA FOR STATE)

HEARD ON : 18.01.2024

RESERVED ON : 26.02.2024

*This appeal was heard and reserved and the Court pronounced the
following:*

JUDGEMENT

The present appeal is filed against the judgment of conviction and sentence dated 31.07.1999 passed by the learned First Additional Session Judge, District Shajapur (M.P.) in ST No.37/1999, whereby, the appellant has been convicted under Section 307 and 450 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to undergo 07 years and 05 years R.I. with fine of Rs.25000/- & Rs.2000/- with default stipulation.

2 . As per the prosecution case, in the night of 24.11.1998, the complainant namely Ramesh came to his house at about 3:AM after irrigating

the agriculture field. He was sleeping in the veranda after closing the door. At about 4:00 AM, one Peru Singh entered into the house and assaulted him on his chin and neck by means of sword with intention to kill him. After the assault, blood was oozing out and on his screaming, his mother son and other witnesses came on the spot. They have taken the injured to the hospital and lodged the complaint. Therefore, the police recorded the statements of the witnesses and registered the FIR under Sections 450 and 307 of IPC. After completion of investigation, charge-sheet was filed and the case was committed to the Session Judge. Thereafter, the learned trial Court has framed charges against the appellant under Section 307 and 450 of IPC.

3. In support of the case, the prosecution has examined as many as 07 witnesses namely Ramesh (PW-1), Shailendra Singh (PW-2), Dr. A.R. Hardiya (PW-3), Arjun Singh (PW-4), Gopal Singh (PW-5), Hanumant Singh Panwar (PW-6), Dr. Virendra Kumar Rathore (PW-7). No witness has been adduced by the appellant in his defence.

4. The learned Trial Court on appreciation of the evidence and arguments adduced by the parties, finally concluded the case and convicted the appellant for the commission of the offence punishable under Section 307 & 450 of IPC, vide the impugned judgment.

5. Learned counsel for the appellant, being crestfallen by the aforesaid finding of the Trial Court, submitted that the learned trial Court has committed grave error of law and facts in the convicting and sentencing the appellant without considering the evidence available on record. It is further submitted that there are material contradictions and omissions in the statements of the witnesses. Counsel for the appellant submits that after the incident, the

complainant himself has lodged the FIR which means he was not in a serious condition and if that be so, the complainant/injured has to reach hospital first, but the learned trial Court has committed error in not considering this factum and wrongly convicted under Section 307 of IPC. In the medical report, he has received the injury on his jaw only. There is no eye-witness in the present case.

6. Further, learned counsel for the appellant submits that since there is a single blow in the matter, hence, the offence under Section 307 of IPC cannot be made out against the appellant and if the case of the prosecution is taken as it is, the case of the prosecution would not travel more the offences under Section 325 or 326 of IPC. The appellant has already suffered approximately 20 months of his incarceration out of the seven years.

7. Alternatively, counsel for the appellant has further argued on the point of sentence also and prays that since the appellant has already undergone almost approximately 20 months in jail incarceration, his jail sentence be reduced to the period already undergone. It is also submitted that the appellant has already deposited the fine amount so awarded by the learned trial Court. It is further submitted that the appellant deserves some leniency as the appellant already suffered the ordeal of the trial since 1998 i.e. for a period of 26 years. It is further submitted that this appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone.

8. Learned counsel for the respondent has opposed the prayer and prays for dismissal of the appeal by supporting the impugned judgement.

9. In backdrop of the rival submissions and evidence available on record, the point for determination in this appeal is as to whether the findings of the learned trial Court regarding conviction and sentencing the appellant under Section 307 of IPC is incorrect in the eyes of law and facts.

10. In order to evaluate the prosecution evidence, at the outset, the statement of complainant/injured Ramesh (PW-1) is required to be ruminated. In his statements, he deposed that when he was sleeping in the morning at about 4-5AM, the appellant entered by opening the door into his house and assaulted him with sword. He further stated that when he cried, his mother Kamlabai, Mohan and Shailendra came thereon and the accused fled away from the spot. In this sequence, he received injury on his chin and blood started to ooze. Further, he has narrated that earlier, the accused squabbed with his uncle Santosh Singh and the injured has supported his uncle. It is further stated that he has lodged the FIR Ex.P/1 and thereafter, get treatment from District Hospital Rajgarh and then from Hamidiya Hospital, Bhopal. In his cross-examination, he has admitted that there was earlier dispute with Yadav Samaj and he also stated that they have accompanied the appellant in his favour earlier regarding some transaction of land and in the said case, the injured and others were remained in the jail also. As per his statement, there was some dispute between his Kaka and appellant. In sequel thereof a complaint was lodged against the appellant. The statement of complaint finds support from the statement of Shailendra Singh (PW-2).

11. In so far as, the injuries of Ramesh is concerned, it is also well fortified by Dr. A.R. Hardiya (PW-3) & Dr. Virendra Kumar Rathore (PW-7). He has found that the jaw of the injured was fractured and the injuries received by the injured was dangerous to life as per Ex.P/10 (medical report). The statement of these witnesses have not been shaken in their cross-examination. Hence, the charge of offence for causing hurt voluntarily to the injured is well proved.

12. Shri Vivek Singh, learned counsel for the appellant has expostulated that all witnesses are related and interested witnesses, thus on the basis of their testimonies, the appellant can not be convicted. Certainly, the witnesses are related to each other. On this aspect in the case of “*Dilip Singh vs. State of Punjab*” reported as *AIR 1953 SC 364*, the full Bench of Hon’ble Supreme Court observed in para 26 as under:

“26. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”

13. Further in the case of *Masalti vs. State of Uttar Pradesh* reported in *[AIR 1965 SC 202]* wherein it has been held in para 14 as under:

“14. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan

type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.”

14. As such, the argument regarding interested witnesses is also appears to be feeble arguments. So far as the relatedness and interestedness is concerned, in a recent decision laid down by Hon'ble Apex Court in the case of **Laltu Ghosh vs. State of West Bengal AIR 2019 SC 1058** is relevant to be referred here:

"This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused".

15. As per the human tendency, a close relative would put forth the actual story of incident rather than hide the actual culprit and foist an innocent person. Virtually, in many of the criminal cases, it is often seen that the offence is witnessed by close relatives of the victim, whose presence on the spot of incident would be natural and the evidence of such witness cannot automatically be discarded by leveling them as interested witness.

16. However, in this appeal on the basis of evidence available on record, this Court is satisfied that the finding of the learned trial Court regarding causing voluntary grievous hurt by sharp weapon is in accordance with law and facts. It is also well settled principle that the maxim "*falsus in uno falsus in omnibus*" has no application in India. Hon'ble Supreme Court in the case of **Shaktilal**

749 has held as under :-

“.....it is the duty of Court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'”.

17. So far as the arguments regarding non-availability of independent witnesses is concerned, it is well settled that no criminal case can be overboarded due to non-availability of independent prosecution witnesses. In this regard, the following verdict of landmark judgment of the Hon'ble Apex Court rendered in the case of *Appa Bhai vs. State of Gujarat AIR 1988 SC 696* is worth referring here as under:

"10.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or

cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused....."

18. In the case of *Mohd. Naushad Vs. State (Govt. of NCT of Delhi)*, reported in *2023 LawSuit (SC) 659*, the Full Bench of Hon'ble the Apex Court, considering the kind of apathy adopted by the general public in not coming forward to depose to associate with the prosecution, endorsed the aforesaid verdict. As such, only on the basis of non-examination of any independent witness, the prosecution case cannot be thrown out, specially when the testimony of witnesses inspires confidence. This incident was happened in a close room and it cannot be desired that it would be supported by an independent person because it is out of reach from any independent person.

19. Since there is no convincing evidence to discard the testimony of injured Ramesh (PW-1), his sole testimony which is backed by instant FIR and medical reports is sufficient to evince the prosecution case.

20. In view of the aforesaid proposition, no case can be thrown out only on the basis that it was not supported by independent witnesses. Hence, the stand of learned defence counsel regarding non-availability of independent witnesses is also found without leg. Having said that, this case is well fortified by injured Ramesh PW-1. As far as the importance of testimony of injured witness Soma is concerned, the view of Hon'ble Apex court rendered in the case of **Bhajan Singh @ Harbhajan Singh and others Vs. State of Haryana AIR 2011 SC 2552** is condign to quote here as under:-

"The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

21. In course of arguments, Shri Vivek Singh, learned counsel fro the appellant has also pointed out that there are many contradictions and omissions between the statements of injured witness and other witnesses. The blood stains on the sword were also not graphically examined by the prosecution. Certainly, there are some minor variations in the statements of the prosecution witnesses, but there are not touching the root of the case.

22. On this aspect, the observations of Full Bench of Hon'ble Apex Court in the case of **Ashok Kumar Singh Chandel vs. State of U.P. [2022 Law Suit (SC) 1311]** has been held as under:-

164. As the prosecution has established the occurrence of the incident through the evidence of PW-1 and PW-2, and we are in agreement with the judgment of the High Court that these are credible ocular witnesses whose statements are corroborated by other contemporaneous evidence, certain minor variations, such as non-recovery of blood-stained clothes, certain other weapons etc. will not be fatal to the case of the prosecution. This principle is well established in cases where there are credible injured eye-witness testimonies. In *Lakshman Singh v. State of Bihar*, this Court held:

“9. In **Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390]**, it is observed and held by this Court that “the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly”. It is further observed in the said decision that “minor discrepancies do not corrode the credibility of an otherwise acceptable evidence”. It is further observed that “mere non-mention of the name of an eyewitness does not render the prosecution version fragile”.

9.1. A similar view has been expressed by this Court in the subsequent decision in **Abdul Sayeed [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262]**. It was the case of identification by witnesses in a crowd of assailants. It is held that “in cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him”. It is further observed that “when incident stood concluded within few minutes, it is natural that exact version of incident revealing every minute detail i.e. meticulous exactitude of individual acts, cannot be given by eyewitnesses”. It is further observed that “where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone”. It is further observed that “thus, deposition of injured witness should be relied

upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein”.

9.2. The aforesaid principle of law has been reiterated again by this Court in Ramvilas [Ramvilas v. State of M.P., 43 (2021) 9 SCC 191. (2016) 16 SCC 316 : (2016) 4 SCC (Cri) 850] and it is held that “evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence”. It is further observed that “being injured witnesses, their presence at the time and place of occurrence cannot be doubted.”

23. In view of the aforesaid prepositions, the testimony of the witnesses cannot be discredited or wiped out only on the basis that they are having some contradictions or trivial matter. As such the aforesaid contention is not liable to be accepted.

24. In upshot of the aforesaid analysis of evidence as well as proposition of law, this Court is of the considered opinion that the prosecution succeeded in proving its case beyond reasonable doubt that appellant has caused injury to the injured/complainant. Now, turning to the nature of injuries, as per the statement of Dr. A.R. Hardiya (PW-3), due to injury, the injured has received a fracture on his jaw. Nevertheless, the testimony of witness regarding causing injury by sword has not been controverted in their cross-examination. However, it is envisaged that the appellant has caused only one injury and this statement has not been rebutted regarding single blow.

25. In the MLC report, the nature of injury has been examined. In this regard, the provisions of Section 320 of IPC is required to be referred to, which reads as under:-

26. 320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

(First) — Emasculation.

(Secondly) —Permanent privation of the sight of either eye.

(Thirdly) — Permanent privation of the hearing of either ear.

(Fourthly) —Privation of any member or joint.

(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.

(Sixthly) — Permanent disfiguration of the head or face.

(Seventhly) —Fracture or dislocation of a bone or tooth.

(Eighthly) —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."

27. The 6th & 7th points of the aforesaid provision defines that any hurt which contains permanent disfigurement of face and fracture. That apart, since, Dr. Virendra Kumar Rathore (PW-7) has explicitly elucidated that the injury was dangerous to life, hence, the findings of learned trial Court regarding grievous injury, is found infallible and intact.

28. Now, the question is as to whether the injury was caused with intention or knowledge to kill the injured. In this case, it is fact that the prosecution has not set up the case that the said injuries were sufficient to cause death in the ordinary course of nature.

29. In order to justify the conviction under Section 307 of IPC, the Court has to examine the nature of the weapon used and the manner in which it is used. In addition to that severity as well as number of the blows and the part of body where the injury was caused, are also taken into account to determine the

nature of the offence. The role of motive is also ought to be taken into consideration.

30. Further, in view of the reports and the nature of the injuries, it cannot be ascertained that the accused has intention to murder, or knowledge as to the fact that the injured would be killed by this injury. Undisputedly, this is a case of single blow and the prosecution has also not setup that the said injury was sufficient to cause death in the ordinary course of nature. In this regard, The Hon'ble Apex Court in the case of **Jai Narayan Singh vs. State of Bihar** [AIR 1972 SC 1764] mandated as under:-...

"11. Taking the case of appellant Suraj Mishra, we find that he has been convicted under Section 307 IPC and sentenced to 5 years rigorous imprisonment. According to the evidence Suraj was responsible for the chest injury which is described by Dr. Mishra P.W. 6 as a penetrating wound 1 1/2" x 1/2 x chest wall deep (wound not probed) on the side of the right side of the chest. Margins were clean out. Suraj, according to the evidence, had thrust a bhala into the chest when Shyamdutt had fallen as a result of the blow given by Mandeo with the Farsa on his head. According to the Doctor the wound in the chest was of a grievous nature as the patient developed surgical emphysema on the right side of the chest. There was profuse bleeding and, according to the Medical Officer the condition of the patient at the time of the admission was low and serious and the injury was dangerous to life. Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death In the present case however, three injuries

are of simple nature though deadly weapons were used and the fourth injury caused by Suraj, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. The benefit of doubt must, therefore, be given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is not one under Section 307 IPC but Section 326 IPC is set aside and we convict him under Section 326-IPC. His sentence of 5 years rigorous imprisonment will have to be reduced accordingly to 3 years rigorous imprisonment."

31. In a recent case of **Mukesh S/o Jam Singh Damor vs. State of M.P. & Others** 2022 Law Suit (MP) 165; High Court of M.P. Bench has observed as under:-

"9. It is well settled that an act which is sufficient in the ordinary course to cause death of the person, but the intention on the part of the accused is lacking, the act would not constitute an offence under Section 307 of IPC. The medical evidence has to be taken for determining the intention of the accused. The intention and knowledge of the act being one of the major factor i.e. used to decide conviction under Section 307 of IPC. Before it is held that the act committed by the accused amounts to attempt to murder, it should be satisfied that the act was committed with such intention or knowledge under such circumstances that if it had caused death, it would have amounted to murder."

32. In a recent case of **Panchram vs. State of Chattisgarh & Another** reported in AIR 2023 SC 1801, the Hon'ble Apex has considered as under:-

"In his statement, the injured appearing as PW-1

submitted that when Munna (PW 6) shouted for help, Kantilal (PW 8) and Radheyshyam (PW 9) came there and seeing them the accused ran away. However, Kantilal (PW 8) was declared hostile. The prosecution had produced another witness Radhey Shyam (PW 7). He was also declared hostile and did not support the prosecution version. Even the scissors which was seized by the police is small scissors which is used by tailors. With the aforesaid evidence on record and the kind of weapon used, in our view the offence will not fall within Section 307 I.P.C. From the reasons for fight as are emerging on record, it doesn't seem to be pre-planned act. It, at the most, can fall within the four corners of Section 326 IPC as a sharp-edged weapon was used. The injuries were not caused with an intention to cause death and were not sufficient to cause death. Hence, in our view the conviction of the appellant with respect Section 307 IPC cannot be sustained however the offence under Section 326 IPC is made out."

33. On conspectus of the aforesaid settled proposition of law and factual matrix of the case, there is nothing available on record which advert such intention or knowledge by which the offence of attempt to murder can be drawn.

34. Having gone through the record and medical reports including the statements of witnesses, this is crystal clear that the injured has received only

one injury on jaw which was found grievous but it was not sufficient to cause death in ordinary course in nature. The prosecution has succeeded to prove that the said injury was caused by a sharp or dangerous object. Under these circumstances, the ingredients of Section 307 of IPC are missing in the present case, nevertheless, in purview of the aforesaid deliberations, it is established by the prosecution beyond the reasonable doubt that the appellant has caused grievous injury by assaulting him.

35. In upshot of the aforesaid deliberations in entirety, the judgment of learned trial Court *qua* conviction of the appellant under Section 307 of IPC is found unsustainable and instead of Section 307 of IPC and in the light of the judgment passed by Apex court in the case of **Jainarayan (supra)** and **Panchram (supra)**, the appellant is liable to be convicted under Section 326 of IPC. In view of the aforesaid discussion, since by the testimony of witnesses it is established that the appellant entered into the room of complainant with sword and thereafter, caused injury of grievous hurt to the injured, hence, the finding of learned trial Court regarding conviction under Section 450 of IPC is also found infallible in the eyes of law.

36. Now, turning to the point of sentence, looking to the fact that the said incident of offence has happened in the year 1998 i.e. 26 years ago. No criminal antecedent for consideration has been suggested by the prosecution against the appellant. Thus, nothing can be gained by sending the appellant in jail for further sentence but rather it would be condoned that by enhancing the fine amount, the injured can be compassionate to some extent. The appellant is liable to be sentenced under Section 326 of IPC for the period already undergone with fine of Rs.50,000/-. **In this sequence, the appellant is also liable to be sentenced under Section 450 of IPC to the period already**

undergone with fine of Rs.10000/- and in default of payment of fine amount under Section 450 of IPC, he shall further to undergo for 30 days S.I.

37. In the result, the conviction and sentence imposed upon the appellant for the offence under Section 307 of IPC is set aside and instead thereof, **he is convicted under Section 326 of IPC and sentenced to undergo for to the period already undergone with fine of Rs.50,000/-** and in default of payment of fine further undergo for three months S.I. Similarly, for the offence under Section 450 of IPC, the appellant is sentenced to undergo for the period already undergone with fine of Rs.10000/- and in default of payment of fine amount, he shall further to undergo for one month S.I. Accordingly, the appeal is partly allowed.

38. The appellant is on bail. His bail bonds stands discharged after depositing the fine amount.

39. The fine amount, if already deposited shall be adjusted. The enhanced fine amount be deposited within one month from today.

40. If the fine amount is recovered completely, Rs.50000/- shall be paid to the complainant/injured Ramesh.

41 The judgment regarding disposal of the seized property stands confirmed.

42. A copy of this order alongwith the record of the trial Court, be sent to the learned trial Court for information and necessary compliance.

Certified copy, as per rules.

(PREM NARAYAN SINGH)

AMIT

