

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

**HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE 26TH DAY OF OCTOBER, 2023**

CRIMINAL APPEAL No. 1511 of 1999

BETWEEN:-

1. **KALU S/O RAMAJI
AGED ABOUT 65 YEARS
RADHESHYAM S/O KALUJI
AGED ABOUT 25 YEARS**
2. **BOTH R/O VILLAGE BALEDI
POLICE STATION INGORIYA
DISTRICT UJJAIN (MADHYA PRADESH)**

.....APPELLANTS

(SHRI VIVEK SINGH, ADVOCATE)

AND

**THE STATE OF M.P.
STATION HOUSE OFFICER
THROUGH P.S. INGORIYA
DISTRICT UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI PRASHANT JAIN, GOVERNMENT ADVOCATE)

Reserved on : 21.09.2023

Pronounced on : 26.10.2023

This appeal having been heard and reserved for judgement,

coming on for pronouncement this day, **Hon'ble Shri Prakash Chandra Gupta** pronounced the following:

J U D G E M E N T

This appeal has been filed by the appellants/accused persons u/S 374 of the Code Of Criminal Procedure, 1973, being aggrieved by the judgement of conviction and order of sentence dated 02.11.1999 passed by 4th Additional Sessions Judge, Ujjain in S.T. No227/1997, whereby learned Trial Court has convicted the appellants u/S 307 r/w 34 of IPC and sentenced each of them to undergo RI for 5 years and fine of Rs.500/- with default stipulation of RI for 02 months.

2. Prosecution story in brief is that on 01.07.1997 at around 05:00 PM the injured Raghunath was taking his tractor towards his agricultural land bought by him from Govind, by crossing a government land which was beside the land of accused Radheshyam, on which a heated argument took place between the accused Radheshyam and the injured person. Accused Radheshyam had told him not to take his tractor from the government land. On the same day at around 10:00 PM, when the injured Raghunath was returning from market to his home situated at Moghiya Bakhal, and he reached near his house, accused persons Radheshyam and his father Kaluji carrying knife and *farsi* came there. Accused Radheshyam stabbed twice in the stomach of injured and accused Kaluji gave blow by *farsi* on his head. Meanwhile, Fate Singh

(PW/4), Dashrath Singh (PW/12) and Sarju Bai (PW/8) came there and rescued the injured Raghunath Singh (PW/3). On the same day at 10:35 PM, injured Raghunath Singh (PW/3) lodged FIR (Ex.P/8) against the accused persons at Police Station Ingoriya, District Ujjain. SHO S.K.S. Tomar (PW/13) sent the injured for medical examination. Dr. G.S. Dhawan (PW-6) examined injured Raghunath and prepared MLC report (Ex.P/14). The injured was admitted in the District Hospital, Ujjain for treatment. Dr. Prahlad Bhargav (PW/2) had operated and treated the injuries sustained by the injured in his stomach. The injured Raghunath was admitted in the hospital for treatment from 02.07.1997 – 05.08.1997. Dr. A.K. Pal (PW/5) had taken X-ray and given X-ray report (Ex.P/12 & P/13).

3. During investigation, SHO S.K.S. Tomar (PW/13) on 02.07.1997 inspected the place of incident, and prepared spot map (Ex.P/10) at the instance of Fate Singh (PW/4). He seized plain soil and blood stained soil from the spot vide seizure memo (Ex.P/11). On the same day, he arrested accused person Radheshyam and Kalu vide arrest memo (Ex.P/19 & P/20). Thereafter, he recorded memorandum statement (Ex.P/1 & P/ 2) of accused persons Kalu and Radheshyam. On the same day, he recovered a farsi and a knife at the instance of accused persons Kalu and Radheshyam vide seizure memo (Ex.P/3 & P/4). On 15.07.1997, SHO S.K.S. Tomar (PW/13) seized a blood stained shirt and baniyan from injured Raghunath at District Hospital, Ujjain vide seizure

memo (Ex.P/17). Halka Patwari Ram Chandra (PW/7) on 23.07.1997 prepared spot map (Ex.P/15). Seized articles were sent for chemical examination by letter (Ex.P/21). FSL report (Ex.P/22) was received. Statement u/S 161 of Cr.P.C. was recorded. After completion of investigation, charge-sheet has been filed.

4. Learned Trial Court has framed charge against the appellants. The appellants had abjured their guilt and sought trial. In turn, the prosecution examined 13 witnesses. After completion of prosecution evidence, the appellants/accused persons were examined u/S 313 of Cr.P.C. Accused Radheshyam has taken defence that at the time of incident, he was near his well. Accused Kalu had taken defence that at the time of incident, he was sleeping on a platform of Goddess. His daughter-in-law Shakila (DW/1) was sleeping in the house. Raghunath Singh (PW/3) had jumped and entered the house through back boundary and was harassing Shakila (DW/1). Upon hearing the cry of Shakila, Kalu went inside the house where he saw Raghunath Singh (PW/3) fleeing away. The accused persons have not committed the offence and they have falsely been implicated in the case. The accused persons have examined Shakila (DW/1) in their defence. After completion of defence witness, learned Trial Court had heard the parties and passed the impugned judgement and convicted and sentenced the appellants as mentioned above.

5. Learned counsel for the appellants submits that appellants have

not committed the offence and they have falsely been implicated in the case. Independent and eye-witnesses Fate Singh (PW/4) and Dashrath Singh (PW/12) have not supported the case of prosecution. Remaining eye-witnesses Sarju Bai (PW/8) and Bapu (PW/10) being sister and father of injured Raghunath Singh (PW/3), are close relatives. Sarju Bai (PW/8) and Bapu (PW/10) have also not fully supported the statement of injured Raghunath Singh (PW/3). There are material omissions and contradictions in the statement of injured Raghunath Singh (PW/3). Therefore, statement of injured witness is not reliable. The prosecution has not declared Sarju Bai (PW/8), hostile, therefore, statement of Sarju Bai (PW/8) has binding effect upon the prosecution. But learned Trial Court committed error by not considering the statement of aforementioned witnesses in proper manner and has wrongly relied upon their statement. Learned Trial Court has also committed error by disbelieving the statement of defence witness. Learned Trial Court has wrongly convicted and sentenced the appellant in the alleged offence, therefore, the impugned judgement is liable to be rejected and the appellants are entitled for acquittal.

6. On the other hand, learned counsel for the respondent/State has opposed the prayer and has supported the impugned judgement.

7. I have heard learned counsel for the parties and perused the records.

8. The first question for consideration is that whether the injuries sustained by injured Raghunath Singh (PW/3) were inflicted at the relevant time? If yes, then what is the nature of injuries?

9. Dr. G.S. Dhawan (PW/6) deposed that on 01.07.1997, the injured Raghunath Singh (PW/3) was brought before him for medical examination. He examined the injured and following injuries were found:-

i. Incised wound size 1.5" x 0.5" x bone deep on left side of head.

ii. Incised wound size 1" x 0.25" x deep to cavity in stomach on right side.

iii. Incised wound size 1" x 0.25" x deep abdomen on left side.

10. The witness further submitted that the condition of the witness was not well. The witness had advised to get the X-ray of injury No.(i). This witness had opined that all the injuries were caused by sharp and hard weapon. Injuries were fresh. Injured was admitted in the hospital for treatment. He prepared MLC report (Ex.P/14).

11. Dr. A.K. Pal (PW/5) stated that on 02.07.1997, he had taken X-ray of head and stomach of injured Raghunath Singh (PW/3). X-ray plates are Ex.P/12A, 12B and P/13A. He found that there was no fracture in

the head of injured Raghunath Singh (PW/3). But he found gas beneath both the domes of diaphragm. Accordingly, he had given X-ray report (Ex.P/12 and P/ 13).

12. Dr. Prahlad Bhargav (PW/2) is a surgeon and he treated and operated injured Raghunath Singh (PW/3). As per statement of this witness, the injured was admitted in the District Hospital, Ujjain from 02.07.1997 – 05.08.1997, meanwhile this witness had operated his stomach twice on 02.07.1997 and 14.07.1997, and it was found that there was severe blood clot in the abdominal cavity of injured. Omentum and transverse mesentery were cut. The witness proved the case sheets (Ex.P/5 & P/6) of the injured. The witness further stated that on 12.08.1997, on being asked by the police, he had given query report (Ex.P/7) wherein he had opined that injury No.(i) was simple and injury Nos.(ii) and (iii) were grievous in nature. There is nothing contrary in the statement of the witnesses for which the same shall be disbelieved. Therefore, their statement is reliable and it appears that at the relevant time, the injured sustained 03 injuries, 1 on his head and 2 on his stomach, which were caused by sharp and head weapon. Injury No.(i) was simple in nature and rest 02 injuries which were on the stomach of the injured were grievous in nature.

13. The next question for consideration is that whether the accused persons have inflicted injury upon injured Raghunath Singh (PW/3) with intent to kill him?

14. The law in terms of hostile witness is very clear, that if the witness does not support the case of prosecution, he has to be declared hostile by the prosecution or else the prosecution will be bound by the statement of such witness. In the case of ***Vimalbai Manohar Doballiwar & others v. State of Maharashtra [2018 SCC OnLine Bom 6956]*** the Division Bench of Bombay High Court in this reference has held in paragraph 18 as under:-

“18. If we take a careful look at the evidence of PW 16 Vasanti, we would find that this witness was examined as a prosecution witness and we do not know as to what made the prosecution examine this witness as it's own witness, at least this is what appears from the recorded deposition. After having examined its own witness and after having not declared the witness with the permission of the Court as hostile to the prosecution, it is not permissible under the law for the prosecution to disown its own witness. It is also not permissible in law for the Court to say that the witness of the prosecution having gone against the prosecution cannot be believed when the Court has not found any element of hostility in such a witness. The prosecution has also not brought on record through the evidence of this witness that the correct date of birth was either 15.5.1999 or 15.3.1999 and the date of birth shown in Municipal Council record as 1.10.1994 to be

incorrect. No suggestion in this regard appears to have been given to PW 16 by the J-aapeal740,386,359,361,391.18.odt 14/18 learned A.P.P. Rather, she has been examined as a prosecution witness in such a manner as to create an impression that the prosecution desired more strongly to prove the date of birth of the victim to be 1.10.1994 than anything else. There is absolutely nothing in the entire evidence of PW 16 to find that this witness has spoken some falsehood on oath before the Court.”

15. Injured Raghunath Singh (PW/3) stated that on 01.07.1997 at around 10:00 PM when he was going to his father's home from his home, the accused persons Radheshyam and Kalu carrying knife and farsi respectively, met him in the way and they had stopped him. Kalu gave blow to this witness on his head by means of farsi and accused Radheshyam stabbed knife in his stomach twice. At that time, Fate Singh (PW/4), Dashrath Singh (PW/12), Sarju Bai (PW/8) and Bapu (PW/10) etc. came there and saw the incident.

16. Fate Singh (PW/4) and Dashrath Singh (PW/12) have not supported the case of prosecution. The prosecution declared them hostile and both the witnesses had denied suggestion of the prosecution that they had seen the incident and the accused persons had given blows to injured Raghunath Singh (PW/3).

17. Sarju Bai (PW/8), who is sister of injured Raghunath Singh (PW/3), has deposed that at the time of incident, she was sitting in front of her house. At that time, son of accused Kalu assaulted Raghunath Singh (PW/3) by means of knife. Babu who is father of injured Raghunath Singh (PW/3) has deposed that he was at his house and the accused persons were standing at a little distance from his house near a pole. Injured Raghunath Singh (PW/3) came there and then accused Kalu assaulted on the head of injured by *lathi* and when Raghunath tried to flee, then he was stabbed twice by knife.

18. SHO S.K.S. Tomar (PW/13) stated that on 01.07.1997, he was posted as officer-in-charge at Police Station Ingoriya. On the same day, he had recorded FIR (Ex.P/8) at the instance of Raghunath Singh (PW/3). Raghunath Singh (PW/3) also stated that he had lodged FIR (Ex.P/8) at Police Station Ingoriya. It appears from the FIR (Ex.P/8) that within 2:35 hrs. from the incident, the FIR was lodged by the injured person against appellants/ accused persons.

19. SHO S.K.S. Tomar (PW/13) stated that he visited the place of incident and prepared spot map (Ex.P/10). Fate Singh (PW/4) and Kailash (PW/11) also stated that the police had prepared spot map (Ex.P/10) in his presence at the spot. Therefore, statement of the witness appears to be reliable and it is clear that SHO S.K.S. Tomar (PW/13) had prepared spot map (Ex.P/10) in the presence of Fate Singh (PW/4) and Kailash (PW/11).

20. SHO S.K.S. Tomar (PW/13) stated that he seized plain soil and blood stained soil from the spot and prepared seizure memo (Ex.P/11). Kailash (PW/11) denied the seizure of soil from the spot but he admitted his signature on seizure memo (Ex.P/11). Statement of SHO S.K.S. Tomar (PW/13) is supported by Fate Singh (PW/4). Therefore, statement of SHO S.K.S. Tomar (PW/13) is reliable.

21. As per statement of SHO S.K.S. Tomar (PW/13), he had arrested accused Radheshyam and Kalu on 02.07.1997 and prepared arrest memo (Ex.P/19 & P/20 respectively). He recorded memorandum statement of accused Kalu and Radheshyam u/S 27 of the Indian Evidence Act, 1872 and prepared memorandum (Ex.P/1 & P/2) respectively. Thereafter, he seized a farsi and a knife at the instance of Kalu and Radheshyam and prepared seizure memo (Ex.P/3 & P/4) respectively. Seizure witness Ram Singh is not examined in the Trial Court by the prosecution. Only Gangaram (PW/1) has been examined. Gangaram (PW/1) has completely turned hostile and has not supported the case of prosecution, but he admitted his signature on memorandum (Ex.P/1 and P/2) and seizure memo (Ex.P/3 and P/4). Accused persons Radheshyam and Kalu admitted in their statement recorded u/S 313 of Cr.P.C. that the police had arrested them and arrest memos (Ex.P/19 and P/20) were prepared. On perusal of statement of SHO S.K.S. Tomar (PW/13), it does not appear that he was interested anyhow to falsely implicate the accused persons, therefore, statement of SHO S.K.S. Tomar (PW/13) cannot be

discarded merely on the basis that seizure witness Gangaram (PW/1) has not supported the case of prosecution. Hence, statement of SHO S.K.S. Tomar (PW/13) appears to be reliable and it is clear that he had seized a knife and a farsi at the instance of accused persons Radheshyam and Kalu.

22. SHO S.K.S. Tomar (PW/13) stated that he seized blood stained shirt and baniyan from the injured Raghunath Singh (PW/3) and prepared seizure memo (Ex.P/17). Though Govind (PW/9) has denied seizure of clothes of injured before him but has admitted his signature on the seizure memo (Ex.P/17). Therefore, statement of SHO S.K.S. Tomar (PW/13) is reliable.

23. SHO S.K.S. Tomar (PW/13) stated that he had sent the seized articles to FSL, Indore for chemical examination through letter (Ex.P/21). As per FSL report (Ex.P/22), it appears that only blood was found to be present in blood stained soil seized from the spot, farsi and knife which were seized from the accused persons and clothes seized from the injured person. Blood grouping of the blood from the aforementioned articles could not be performed. Therefore, it is not established that the aforementioned knife and farsi which were seized from the accused Radheshyam and Kalu were used in the incident. But the prosecution case is dependent upon the statement of the injured and eye-witnesses. Therefore, case of prosecution is not affected adversely.

24. In the case of ***Kuldeep Singh Rajawat V State of Madhya Pradesh [Criminal Appeal No.502 of 2011]***, this Court has held as under:-

“37. It is settled principle of law that merely because the witnesses may be related to the victim or the deceased, their testimony may not be rejected. There is no legal canon that only unrelated witnesses shall be considered credible. On the contrary, we are of the view that it is not natural for the related witnesses to implicate a person falsely leaving aside the actual culprit. It is pertinent to mention here that only the interested witnesses want to see the real culprit is brought to book.”

25. On perusal of the statement of Raghunath Singh (PW/3), Sarju Bai (PW/8) and Bapu (PW/10), it appears that all the witnesses are close relatives and it also appears from the statement of Raghunath Singh (PW/3) and Bapu (PW/10) that there was inimical relationship between the parties. Therefore, statement of these witnesses has to be appreciated cautiously and carefully.

26. As per statement of Raghunath Singh (PW/3), at the time of the incident, accused Kalu assaulted his head by means of farsi and accused Radheshyam stabbed him in his stomach twice. But sister of Radheshyam, Sarju Bai (PW-8), only stated that son of Kalu assaulted

injured by means of knife. She has not stated that accused Kalu had assaulted the injured person. In paragraph-6 of cross-examination, she has stated that Kalu has 4 sons, though she has not specified that which son of Kalu had stabbed the injured. But accused Radheshyam is son of accused Kalu and as per statement of Raghunath Singh (PW/3), accused Radheshyam stabbed him in his stomach. Apart from that the prosecution has not declared Sarju Bai (PW/8) hostile. Therefore, the prosecution is bound by her statement.

27. As per statement of Bapu (PW/10), accused Kalu gave lathi blow on the head of injured Raghunath Singh (PW/3). This witness has not stated that accused Kalu assaulted the injured by means of farsi. As per statement of medical evidence, no lathi blow was found on the body of the injured. Therefore, it appears that statement of Bapu (PW/10) is contradictory from the statement of injured Raghunath Singh (PW/3). In this situation, participation of the accused Kalu in the incident and injury caused by him by farsi to the injured Raghunath is doubtful. So far as injury caused by accused Radheshyam by means of knife on the stomach of injured Raghunath Singh (PW/3) is related, statement of Raghunath Singh is supported by FIR (Ex.P/8) which was lodged promptly without any delay. There is no omission and contradiction in the statement of injured person in this respect. Aforementioned statement of injured person is also supported by medical evidence. Therefore, his statement appears to be reliable and it is clear that at the

time of the incident, accused Radheshyam stabbed injured person twice in his stomach and caused grievous injury.

28. The accused persons examined Shakila (DW/1), who is the wife of accused Radheshyam. This witness stated that at the time of the incident, Raghunath Singh (PW/3) entered in his house by jumping the boundary wall with intent to outrage her modesty. Therefore, she assaulted him by knife twice. Thereafter, the injured person fled away from the front door. After that she raised alarm then, her father-in-law/accused Kalu had come at that time her husband/accused Radheshyam had returned from the well. In paragraph-5 of cross-examination, she stated that she lodged an FIR at Police Station Ingoriya and copy of FIR is with her. But the accused persons have not filed the aforementioned copy of FIR in this case. She further stated that even after stabbing the injured Raghunath, he did not bleed. Thus, this Court is of the view that the aforementioned statement of the witness appears unnatural that even after stabbing knife, the injured did not bleed. Therefore, statement of this witness is not reliable and learned Trial Court had also not erred by disbelieving this witness.

29. On the basis of foregoing discussion, it appears that as far as statement of Raghunath Singh (PW/3) is concerned regarding the time of incident, accused Radheshyam stabbed on his stomach twice is supported by FIR and medical evidence. Therefore, aforementioned statement of injured Raghunath Singh (PW/3) is reliable and it is clear

that at the relevant time, accused Radheshyam had stabbed knife twice on the stomach of injured Raghunath and caused him grievous injury.

30. The accused Radheshyam had used deadly weapon i.e. knife, and has chosen vital part of the injured person i.e. abdomen. He had stabbed the injured twice and caused grievous injury, therefore, it appears that accused Radheshyam had inflicted injury with intent to kill the injured Raghunath.

31. On the basis of foregoing discussion, it is clear that the prosecution has failed to prove its case beyond reasonable doubt that the appellant/accused Kalu in furtherance of common intention with Radheshyam had given blow to the injured Raghunath Singh (PW/3) with intent to kill him. But the prosecution has succeeded to prove that accused Radheshyam stabbed twice on the stomach of injured person with intent to kill him, which is punishable u/S 307 of IPC, therefore, learned Trial Court has committed error in appreciation of evidence in respect of accused Kalu and has wrongly convicted and sentenced him u/S 307 r/w 34 of IPC. Learned Trial Court has not committed any error in appreciation of evidence in respect of accused Radheshyam and has rightly convicted and sentenced him in the alleged offence.

32. Consequently, the appeal is partly **allowed**. Conviction and sentence u/S 307 r/w 34 of IPC of accused Kalu is set aside and he is acquitted from the charge u/S 307 r/w 34 of IPC. The conviction of

accused Radheshyam is altered to Section 307 of IPC in place of Section 307 r/w 34 of IPC. The sentence imposed upon the appellant Radheshyam for RI of 5 years with fine of Rs.500/- appears to be reasonable, and the same is hereby upheld.

33. The appellants are on bail. Bail bonds of appellant Kalu is hereby discharged.

34. Appellant Radheshyam is directed to surrender forthwith before the learned Trial Court to undergo his remaining jail sentence, failing which the Trial Court shall be at liberty to take necessary steps against the appellant. After his surrender before the Trial Court, his bail bonds shall be discharged.

35. Copy of this judgement alongwith records of the Trial Court be sent back to the Trial Court for necessary compliance.

36. Accordingly, present appeal stands disposed of.

Certified copy, as per Rules.

(PRAKASH CHANDRA GUPTA)
JUDGE

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