

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 17th OF NOVEMBER, 2022

CRIMINAL APPEAL No. 718 of 1999

Between:-

**RAJU @ RAJKUMAR S/O NARAYAN GUPTA,
AGED ABOUT 24 YEARS,
OCCUPATION – BUSINESS,
R/O: M.G. ROAD, IN FRONT OF GEETA
BHAVAN, SONKATCH, DISTT. DEWAS
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI M.S. CHOUHAN ADV.)

AND

**STATE OF MADHYA PRADESH,
THROUGH P.S. SONKATCH,
DISTRICT DEWAS (M.P.)**

.....RESPONDENT

(BY SHRI SANJAY KARANJAWALA, GA)

WHETHER APPROVED FOR REPORTING: YES

This appeal coming on for hearing this day, the court passed the following:

JUDGMENT

1/ This appeal has been preferred by the appellant under Section 374 of the Criminal Procedure Code, 1973 (in short “Cr.P.C.”) against the impugned judgment dated 26.5.1999 passed by the Addl.

Sessions Judge, Sonkatch, District Dewas in S.T. No.57/98, whereby the appellant has been convicted under Section 326 of Indian Penal Code (in short "IPC") and sentenced to undergo 3 years R.I. and fine of Rs.1,000/- with default stipulation of 6 month's S.I.

2/ Brief facts of the case are that on 11.12.1997 at about 12.45 p.m. when complainant Vinod Solanki (PW-1) was reading banner in front of his shop, at that time from the backside present appellant came there armed with sword and with intention to kill him, he gave a blow of sword over his head, due to which complainant Vinod sustained injuries over his head. Appellant gave second blow of sword to the complainant and in order to save himself, complainant caught hold the sword, due to which he sustained several injuries over his fingers. Thereafter appellant gave two more blows of sword over his hand and back. The incident was witnessed by Prakash, Jaisingh, Ratanlal and Poonamchandra. There was old enmity between complainant and the appellant. Complainant lodged an FIR at P.S. Sonkatch, District Dewas, which was written by Sub Inspector V.D. Yadav (PW-13). Victim's MLC has been conducted by Dr. Praveen Mishra. During the investigation sword was recovered from the possession of the appellant. Victim's blood stained clothes were seized by the police and all the seized articles were sent to the FSL for their chemical examination. As per the FSL report and report of the serologist, human blood was found over all the articles.

3/ After completion of the investigation, charge sheet has been filed against the appellant before the JMFC, Sonkatch, who committed

the case to the Sessions Judge, Dewas, later on the case was transferred to the Addl. Sessions Judge, Sonkatch for its trial. The Addl. Sessions Judge, Sonkatch on the basis of the allegations made in the charge sheet, framed the charges under Section 307 of IPC and Section 25(1)(a) of Arms Act. The appellant abjured the guilt and pleaded complete innocence and took the plea that he has been falsely implicated.

4/ In order to bring home the charge, prosecution has examined as many as 13 witnesses and exhibited the documents Ex.P/1 to P/21. Appellant did not examine any witness in his defence.

5/ The trial Court after considering the submissions advanced by both the parties and scrutinizing the entire evidence available on record, convicted and sentenced the appellant as mentioned hereinabove and acquitted him from the charge under Section 307 of IPC and Section 25(1)(a) of Arms Act. Being aggrieved by the impugned judgment, the appellant has preferred the present appeal before this Court.

6/ Learned counsel for the appellant submits that the trial Court has erred while relying upon the sole statement of the complainant Vinod (PW-1). All the independent witnesses namely Prakash (PW-3), Jaisingh (PW-5) and Ratanlal (PW-7) have turned hostile and they have not supported the prosecution story. Dr. Praveen Mishra (PW-6) and other doctors who were examined before the trial Court have deposed that the victim has sustain only simple injuries, therefore, no offence under Section 326 of IPC is made out. There was previous enmity between the appellant and the complainant, due to which appellant has been falsely

implicated in this offence. Seizure witness Sourabh Purohit (PW-4) has also turned hostile. There are material contradictions and omissions in the statement of the complainant Vinod and other witnesses. The trial Court has failed to appreciate the facts and circumstances reasonably and appropriately. The judgment passed by the trial Court is illegal, erroneous and without jurisdiction. Therefore, appeal may be allowed and the conviction of the appellant be set aside and the appellant be acquitted from the charge under Section 326 of IPC.

7/ Per contra, learned counsel GA for respondent/State opposed the prayer and prayed for dismissal of the appeal by submitting that the learned trial Court has rightly convicted and sentenced the appellant and there is no need of any interference in the findings of the trial Court.

8/ Heard learned counsel for both the parties and perused the entire record.

9/ In order to appreciate the merit of the rival contention in the right perspective, it is necessary to first advert the medical evidence on record.

10/ Dr. Praveen Mishra (PW-6) has proved undermentioned injuries over the body of the victim Vinod Solanki:-

(i) Incised wound – 7x3 c.m. bone deep over left hand with the clotted blood.

(ii) Incised wound – 7x2 c.m. bone deep over the right side of the skull with the clotted blood.

(iii) Incised wound – 3x1/4 c.m. muscle deep over the left forearm with clotted blood.

(iv) Abrasion – 7x1/4 c.m. over the left scapula bone.

As per the opinion of the doctor, the above injuries were caused by sharp cutting object within 24 hours. Victim was referred for x-ray examination for injuries No.1 and 2, but injuries No.3 & 4 were simple in nature. His MLC report is Ex.P/7.

11/ Dr. Kuldeep Shrivastava (PW-11) further testified that victim Vinod was admitted at Mahatma Gandhi District Hospital, Dewas. His OPD slip is Ex.P/15. Dr. Yogesh Valambe (PW-12) also testified that victim Vinnod was admitted in the surgical ward and he treated him. He was admitted on 11.12.1997 and discharged on 13.12.1997. His bed head ticket is Ex.P/16.

12/ Dr. Narayan Prasad (PW-10) further proved that after x-ray examination he found no bony injury over the left hand of the victim Vinod, but he found fracture of occipital bone on the back side of the head. His x-ray report is Ex.P/14.

13/ The statement of Dr. Praveen Mishra, Dr. Kuldeep Shrivastava, Dr. Yogesh Valambe and Dr. Narayan Prasad were not specifically denied by the appellant during his examination under Section

313 of Cr.P.C. Dr. Praveen Mishra (PW-6) has denied in his cross-examination that the above injuries may be caused accidentally, but he has stated that during the inquiry he found that rust was present over the blade of the sword but such rust was not found in the injuries of the victim.

14/ Learned counsel for the appellant has placed reliance upon the judgment of the coordinate bench of this Court in the case of **Mohan Vs. State of M.P. reported in 1988(2) MPWN Note No.204**, in which it has been held that if no bony injury is caused by the penetrating weapon and nature of the injury is not determinable, then offence false under Section 324 of IPC. He has also placed reliance upon the judgment of the coordinate bench of this Court in the case of **Ramchandra Vs. State of M.P. reported in 1989(1) MPWN Note No.118**, in which it has been held that if nature of injuries are not mentioned in the medical report, accused cannot be punished under Section 307 of IPC. He has also placed reliance upon the judgment of the Apex Court in the case of **Rehmat Vs. State of Haryana reported in AIR 1997 SC 1526**.

15/ In the present case bony injury has been found over the occipital bone of the victim as per the conclusive x-ray report (Ex.P/14) proved by Dr. Narayan Prasad (PW-10). Therefore, in view of the above these citations are not applicable in the instant case.

16/ On the basis of the statement of Dr. Praveen Mishra (PW-6) and Dr. Narayan Prasad (PW-10) as well as x-ray report (Ex.P/14), it is found proved that victim Vinod Solanki has sustained various injuries

over his body by sharp cutting object and he also sustained bony injury over his head, therefore, it is proved that victim Vinod sustained bony injury by using sharp cutting object, which may be caused by the sword because sword is also a sharp cutting object. Such bony injury falls in the category of grievous injury as defined in Section 320 of IPC.

17/ Now the next question for consideration is, whether the appellant is the author of the above injury or not?

18/ The injured Vinod Solanki (PW-1) clearly deposed that at the time of incident at about 12.30 p.m. when he was reading a banner behind his shop, at that time appellant came there from the back side armed with a sword and attacked by sword over his head. He also gave second blow of sword, due to which victim got injuries over the fingers of his left hand. When appellant gave third blow, then he caught hold the sword by his left hand, due to which he got injury over his left palm. Lastly appellant gave another blow over his back. At the time of incident Pooran, Santosh, Prakash and Ratanlal were present there. Thereafter appellant fled away from the spot. There was old enmity between the appellant and his father since 1992-93. After the incident he went to the hospital along with Ashok Gautam by scooter. He also lodged FIR Ex.P/1 at the Police Station. After the stitching he was referred to Dewas hospital for further treatment.

19/ Prosecution has examined Santosh (PW-2), Prakash (PW-3) and Jaisingh (PW-5) as eyewitnesses, but all these eyewitnesses have turned hostile and not supported the prosecution story and they have

denied all the facts, but Sub Inspector V.D. Yadav (PW-13) has corroborated that he has lodged the FIR (Ex.P/1) at the instance of complainant Vinod.

20/ Learned counsel for the appellant submitted that none of the eyewitnesses have supported the statement of the victim Vinod Solanki. There are material contradictions and omissions in the statement of Vinod Solanki (PW-1) and his FIR (Ex.P/1). Therefore, his statement cannot be relied upon. But during the cross-examination of victim Vinod, counsel for the appellant did not indicate any material contradictions and omissions in his statement and the FIR (Ex.P/1). Same was found during the cross-examination of the Sub Inspector V.D. Yadav (PW-13). Although admittedly there was previous enmity between the appellant and the complainant Vinod Solanki, but no material contradiction and omission has been found in the statement of Vinod Solanki (PW-1) and his FIR (Ex.P/1).

21/ Learned counsel for the appellant further contended that there are some discrepancy between the ocular evidence and the statement of the victim Vinod, but no medical discrepancy has been found in the statement of the victim Vinod (PW-1). Victim Vinod deposed that appellant gave 4 blows of sword over his head, left hand and on his back. As per the MLC report, injuries have been found on the concerned body parts of the victim, therefore, it is found that there is no material discrepancy. In this regard the Hon'ble Apex Court in the case

of **Yunis @ Kariya Vs. State of M.P. reported in (2003) 1 SCC 425**

has held as under:-

“6. Coming to the alleged discrepancy between medical evidence and evidence of the eyewitnesses, it is to be noted that at least three injuries referred to by the autopsy surgeon and forming part of the medical evidence and as stated by the eyewitnesses are common. These three injuries are by themselves sufficient to cause death. The autopsy surgeon has not mentioned the knife injury on the back side of the buttock and another injury. The mere non mention of the two injuries by the autopsy surgeon does not and cannot lead to rejection of the prosecution case. The two injuries might have escaped the notice of the doctor. Both the courts below have found the prosecution case to be fully established and proved beyond any doubt whatsoever and we see no reason to take a different view.”

22/ It is true that no independent witness has corroborated the statement of the victim Vinod (PW-1) but it is remarkable that Vinod (PW-1) is the injured witness and his evidence is well corroborated by the medical evidence available on record. The Hon’ble Apex Court in the case of **State of U.P. Vs. Kishan Chand and others reported in (2004) 7 SCC 629** has held that “the testimony of an injured witness is accorded a special status in law. This is a consequence of the facts that the injury to the witness is an inbuilt guarantee of his presence at the scene of crime and becoming the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there is a strong ground for rejection of his evidence on the

basis of major contradictions and discrepancies therein.” This citation is completely applicable in the instant case.

23/ Apart from the above, investigating officer, Sub Inspector V.D. Yadav (PW-13) had prepared the spot map (Ex.P/13) on the same day of the incident. He arrested the accused as per arrest memo (Ex.P/18) and recovered a sword from his possession, vide seizure memo Ex.P/5. He also recovered the blood stained Pant and Shirt from the possession of the victim vide seizure memo Ex.P/2. He has sent all the seized articles for chemical examination and as per the FSL report (Ex.P/20) and serologist report (Ex.P/21) human blood has been found over all the articles, therefore, statement of the victim Vinod is well supported by all the seizure and the FSL report also. No explanation has been offered by the appellant with regard to the presence of blood on the sword, recovery was also at his instance. It is additional incriminating factor against the appellant.

24/ Considering all the facts and circumstances and the evidence available on record in the instant case, the prosecution has proved its case beyond any reasonable doubt that the appellant used a sharp edged weapon like sword, which was already carried by him, the blow was aimed to a vital part of the body with sufficient force so as the injured got bony injury over his head and he remained in the hospital for his treatment for several days. Therefore, I do not find that the trial Court has committed any illegality or irregularity. Hence, it has been found

proved that the appellant has committed offence under Section 326 of IPC.

25/ So far as the quantum of sentence is concerned, learned counsel for the appellant contended that appellant is a 50 years old person. He is facing criminal trial and other criminal proceedings since 1997. He has already suffered jail incarceration for a period of about 2 months. During the trial as well as during pendency of this appeal he has cooperated. He has no criminal past. Therefore, his sentence be reduced to the period already undergone by him.

26/ The submission made by learned counsel for the appellant appears to be just and proper. Appellant is facing trial since last 25 years, which is a long period. He is a 50 years old person. Under these circumstances, the sentence of the appellant is reduced from 3 years R.I. to one year R.I. for the offence punishable under Section 326 of IPC and the fine amount is enhanced from Rs.1,000/- to Rs.15,000/-. The enhanced amount should be deposited before the trial Court within a period of 30 days from the date of receipt of certified copy of this judgment. In lieu of the payment of enhanced amount within the stipulated period, the appellant shall suffer further 3 months R.I.

27/ Resultantly, the appeal succeeds and is **allowed in part** to the extent the impugned judgment and order has been modified. The appellant is on bail. His surety and bail bonds are cancelled. The appellant is directed to surrender before the trial Court on **30.11.2022** for undergoing the remaining part of jail sentence. On failure to do so, the

concerned trial Court is directed to take necessary steps for arrest of the appellants.

28/ The order regarding disposal of the property as pronounced by the trial Court is also affirmed.

29/ Let a copy of this judgment along with the record of the trial Court be sent back to the concerned trial Court for information and necessary compliance.

C.C. as per rules.

(ANIL VERMA)
JUDGE

Trilok/-