

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

SINGLE BENCH: HON'BLE SHRI JUSTICE ALOK VERMA

CRIMINAL APPEAL NO.32/2000

Ritesh Jaiswal

Vs.

State of Madhya Pradesh

Shri Z.A.Khan, learned senior counsel with Shri Ramesh Gangare, learned counsel for the appellant.

Shri Peeyush Jain, learned counsel for respondent/State.

J U D G M E N T

(Passed on this 16th day of February, 2017)

This criminal appeal is directed against the judgment passed by the learned Special Judge under SC/ST (Prevention of Atrocities) Act, Ujjain in Sp.S.T.No.80/1999 dated 01.01.2000, whereby the learned Special Judge found the present appellant guilty under Section 307 of IPC and sentenced him to 4 years R.I. and fine of Rs.400/- and also ordered to undergo further imprisonment of 3 months in case of default of payment of fine.

2. The prosecution case in brief is that on 29.12.1997, at about 4 P.M. the complainant Prashant alongwith his younger brother Raj Dronawat went to STD booth of Rakesh Shah which was managed by Yogendra

Singh Bhadoria. When they were on the STD booth, appellant Ritesh came there alongwith two other co-accused persons. Appellant Ritesh was carrying a knife, another co-accused were carrying Khanjar and Iron rod. It was alleged that after reaching on STD booth, the present appellant and other co-accused started giving blows by knife, Khanjar and iron rod due to which the complainant sustained injuries. The matter was reported to the police and the complainant was taken to district Hospital, Ujjain, where Dr.M.D.Sharma examined him and prepared MLC report. Various injuries were found in his body including penetrating wound on his left chest. Subsequently, during the treatment it was found that his pleura and diaphragm were cut and due to the penetrating injuries the abdominal cavity was filled with blood. A corrective surgery was performed and subsequently, complainant was discharged. After due investigation charge sheet was filed.

3. The appellant alongwith other co-accused faced trial under Section 307 read with Section 34 of IPC and Section 3(2)(v) and 3(1)(x) of SC/ST(Prevention of Atrocities) Act (hereinafter referred to as 'Act').

4. The learned Special Judge acquitted all the accused persons from charges under Sections 3(2)(v) and 3(1)(x) of the Act. The learned Special Judge also acquitted co-accused Mahesh and Shekhar Sen from charges under Section 307 read with Section 34 of IPC and convicted the present

appellant under Section 307 of IPC and sentenced him as aforesaid. Aggrieved by this order of conviction and sentence, this Criminal Appeal is filed on the ground that:- (i) the learned Special Judge erred in acquitting the co-accused persons on similar set of evidence, while the Court proceeded to convict the present appellant on the basis of same evidence (ii) if the oral evidence produced by the prosecution, was disbelieved for two other co-accused persons, then it should have been disbelieved for the present appellant as well (iii) if the trial Court found that the two other accused persons were falsely implicated, then false implication in respect of the present appellant should also be inferred and he should also be acquitted by him (iv) the injuries sustained by the complainant were not dangerous to life and when he was examined in the hospital his condition was not very serious and, therefore, no charge under Section 307 of IPC was made out (v) there was material variance in oral evidence and medical evidence in respect of injuries sustained by the complainant and, therefore, the oral evidence should not be believed (vi) the independent witness did not support the prosecution story and, therefore, learned Special Judge erred in relying only on the testimony of interesting witnesses (vii) the learned Special Judge misread and mis-appreciated the evidence adduced by the prosecution.

5. Learned counsel for the appellant submits that in this case two

accused persons were acquitted and on similar set of evidence, while the present appellant was found guilty under Section 307 of IPC on the same evidence. For this purpose, learned counsel for the appellant relies on judgment of Hon'ble Apex Court in the case of **Joginder Singh Vs. State of Punjab 1994 (I) MPWN 24**. In this case, it was laid down by Hon'ble Apex Court that when statements of eye witnesses were disbelieved and it was found that they falsely implicated some of the accused, the same statement cannot be used for holding guilty the other accused persons. However, in that case, the Hon'ble Apex Court observed that the High Court while appreciating evidence of some of the prosecution witnesses observed that false implication of three accused persons could not be ruled out. However, subsequently the High Court proceeded to convict these three accused persons merely because they had motive to attack. It was found that the accused could not be convicted merely because they had motive to attack.

6. However, in the present case, the situation is entirely different. The learned Special Judge appreciated the evidence adduced in respect of co-accused Mahesh and Shekhar in detail. Firstly, it was observed by the learned Special Judge that their names did not appear in the FIR. They were not known to the complainant. Subsequently, a letter was written to the Police Station, which is Ex.P-17, in which it was mentioned that one of

the accused was seen by the complainant in Court premises, and thereafter, he was arrested. Even on that day, he did not know his name and his name was new to him. Rajendra Sharma and Rimpi, these two witnesses were examined before the Court and they both turned hostile and did not state before the Court that they identified them in the Court alongwith the complainant, and as such, their identity was doubted by the learned Special Judge. However, so far as the present appellant is concerned, he was known to the complainant, prior to the incident. He was specifically named in the FIR and in his Court statement also there were specific allegations against him, without much contradictions and, therefore, inference drawn by the learned Special Judge in respect of two co-accused persons were based on cogent reasons given by the learned Special Judge and it cannot be said that the same set of evidence was available against the present appellant. Infact, the conviction of the present appellant is based on other evidence available against him.

7. Next important aspect pointed out by the learned counsel is variance in the statement of the complainant and medical evidence and for this purpose, he cites judgment of the Division Bench of this Court in the case of **Bahadur Singh Vs. State of Madhya Pradesh 2003 (4) MPLJ 243** and in the case of **Mangu Vs. State of M.P. 1993 JLJ 163**. It is to be seen whether there is material discrepancies in the medical evidence

and the oral evidence given by the complainant. The complainant is examined as PW-5. In his statement, he has stated that that Ritesh inflicted injury by knife in his left rib; Mahesh gave a blow of iron rod and Shekhar by knife on his hand. Dr. M.D.Sharma, PW-8 examined him immediately after the incident on 29.12.1997. He found one penetrating wound, cavity deep on left side of chest on outer side and one penetrating wound on left side of chest on lower side and one incised wound on left side of his head on temporal region. There is no lacerated wound on his head, as stated by the complainant which should have been caused by iron rod. However, there are three incised wounds two on left side of his chest and one on his left side of the head and that confirms his statement before the Court that the present appellant inflicted injuries by knife on the left side of his chest. He had stated that there were three persons at the time of incident. Two out of them, according to him carried knife and Khanjar and therefore, if three incised wounds were caused to him, it cannot be said that his statement before the Court was not reliable. The other co-accused persons were present is supported by complainant's brother Raj Dronawat, even this fact was supported by another prosecution witnesses who was managing the STD booth at the time of incident, Yogendra Singh Bhadoria, PW-6, who in his cross examination resiled from his examination-in-chief and completely turned hostile.

8. Looking to his examination-in-chief and also his statement under Section 161 Cr.P.C., it is apparent that he gave a false statement during his cross examination. His statement under Section 161 Cr.P.C. is proved by Nishank Prasad Shukla PW-14 who recorded his statement. This fact was never challenged by the defence counsel in his cross examination and, therefore, it is apparent that there were three persons and therefore, it cannot be said that there were material contradictions between the statement of the complainant and medical evidence.

9. Going through the impugned judgment it is apparent that the learned Special Judge minutely appreciated the evidence adduced by the prosecution. The inferences drawn by the learned Special Judge are according to the principles of appreciation of evidence. The inferences drawn are well reasoned and warrant no interference. Accordingly, in my considered opinion, this appeal is devoid of merit and is liable to be dismissed and dismissed accordingly.

The conviction under Section 307 of IPC and sentence of 4 years R.I. and fine of Rs.400/- including the default stipulation awarded on the present appellant is hereby confirmed.

C.C. as per rules.

(ALOK VERMA)
JUDGE

RJ/