# IN THE HIGH COURT OF MADHYA PRADESH

# AT INDORE

## BEFORE

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

**CRIMINAL APPEAL No. 407 of 2000**

**BETWEEN:-**

**GHANSHYAM, S/O GOVARDHAN**
**AGED ABOUT 36 YEARS**
**R/O : VILLAGE KUMANGAON,**
**TEHSIL: KHATEGAON, DISTRICT-DEWAS,**
**(MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI MANISH YADAV, ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH,**
**POLICE STATION : KHATEGAON**
**DISTRICT-DEWAS (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI GAURAV RAWAT, GOVERNMENT ADVOCATE)***

*Reserved on : 04.08.2023*

*Delivered on : 29.08.2023*

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*This appeal coming on for orders this day, with the consent of parties, heard finally and the Court passed the following:*

**JUDGMENT**

1. This criminal appeal preferred under Section 374 of

Criminal Procedure Code, mounts challenge to the judgment dated 13.03.2000 passed in S. T. No.205/1998 delivered by Additional Sessions Judge, Kannod, whereby appellant was held guilty for offence under Sections 304-II, 323 of Indian Penal Code, 1860 (hereinafter referred to 'IPC'), sentenced to undergo 10 years and 3 months R.I. with fine of Rs.1000/- and Rs.200/- respectively and in default of payment of fine, to further undergo 1 year and 1 month S.I.

2. At the outset, it is relevant to mention here that other co-accused persons Anokhi and Govardhan were acquitted by the learned trial Court under Sections 302 and 323 of IPC, and no appeal is pending before this Court in this regard.

3. Admittedly, appellant Ghanshyam was in judicial custody during the trial from 05.10.1998 to 30.03.2000 and thereafter, his remaining sentence was suspended only on 11.05.2000 by this Court and in pursuance of that order he was released on 19.05.2000 from jail, that means he has already suffered the incarceration period from 05.10.1998 to 19.05.2000.

4. Shorn of unnecessary details, the prosecution story with regard to appellant Ghanshaym, can be summed up in this manner that on account of previous enmity, appellant caused injury to Devraj with rope at 3.00 pm on 02.10.2018. On being prevented by Ramsingh, the appellant along with other co-accused persons caused vital injuries to Ramnarayan, Ramsingh and Kushal with *lohangi latti* and stone. In this regard Ramnarayan has lodged report against appellant and other co-accused, which was registered at crime No.188/98 for offence under Section 326, 323/34 of IPC, 1860. After MLC it was aggravated to Section 307

of IPC. Following that on 03.10.2018 Ramsingh succumbed to injuries and resultantly Section 302 of IPC was imposed against accused persons.

5. During investigation, lash punchnama, postmortem reports were prepared, accused persons were arrested and their statements were recorded under Section 27 of Evidence Act. A latti attached with iron wire (lohangi) was seized from the appellant. In course of investigation, spot map was prepared and statements of witnesses were recorded and the medical examination of injured persons were conducted. After completion of investigation, charge-sheet was filed before JMFC, Khategaon, District-Dewas. In turn learned Magistrate has committed the case to the Court of Sessions wherein the appellant was charged for offence under Section 323 and 302 of IPC, 1860.

6. In order to bring home the charges, the prosecution has examined as many as 11 witnesses namely Dr. S.C. Suryawanshi (PW-1), Ramnarayan (PW-2), Kushal (PW-3), Ramu (PW-4), Sonibai (PW-5), Gahsiram (PW-6), Babulal (PW-7), Sathyanarayan (PW-8), Omprakash (PW-9), Sitaram (P.W.10), Devendrasingh Raghuwanshi (P.W.11). No witness has been examined on behalf of the defence by the appellant. The appellant abjured his guilt and he took a plea that he is innocent.

7. Learned trial Court having considered the evidence and having heard both the parties, convicted and sentenced appellant as mentioned herein above.

8. Learned counsel for the appellant in his appeal memo and arguments submitted that learned trial Court over looking the fact and glassing over the legal points, erringly analysed the

evidence and thereafter, gave the findings of conviction. Learned trial Court was unable to appreciate that Devraj, the son of the deceased did not receive any rope injury. Though prosecution case is that the appellant was assaulting Devraj with rope and on seeing him the deceased Ramsingh along with Kushal and Ramnarayan came on the spot, the learned Trial Court failed to appreciate that as to how the appellant received 20 injuries. It has evidently emerged that the deceased had received only one injury on his head which was said to be caused by appellant in his private defence. That apart, all the prosecution witnesses are interested witnesses and they are related to each other, so their statements cannot be relied upon. Learned counsel for appellant has also contended that the sentence of 10 years under Section 304(2) of IPC is a maximum sentence and it should only be awarded when there is a rarest case. As such the sentence of 10 years is also improper and unjustifiable under the circumstances of the case.

9. On the contrary, learned Govt. Advocate borne out the findings of conviction and sentence passed in the impugned judgment rendered by the learned trial Court. Further he has submitted that the instant appeal, being sans merit, be dismissed.

10. In the light of the evidence and arguments advanced by both the parties, the point for consideration is as to whether the findings of trial Court convicting and sentencing the accused/appellant under section 304(2) and 323 of IPC is incorrect in the eyes of law and facts.

11. At the outset, the statement of Dr. S.C. Suryawanshi (P.W.1) is worth referring. Dr. Suryawanshi deposed that on the

date of the incident, he found following injuries on the person of deceased Ramsingh:-

- Lacerated wound clotted blood present on head on right parietal bone 1½ away from midline placed transversely on front third part ½" x ¼" x bone deep.
- Lacerated wound clotted blood present ¾" post and parallel to injury no.1size ½" x ¼" bone deep.
- Lacerated wound clotted blood present 1" post and parallel to injury no.2 size ¾" x ¼" bone deep.
- Lacerated wound clotted blood present 1" post and parallel to injury no.3 size ½" x ¼" bone deep.
- Right Parietal bone depressed.

Further this witness has also conducted postmortem of Ramsingh and found that the deceased expired in coma due to injuries sustained on his head. The statement of Doctor in his examination-in-chief, has not been rebutted in his cross-examination.

12. Now turning to eye witnesses of the case, Ram Narayan (P.W.2) Khushal (P.W.3), Ramu (P.W.4) Sonibai (P.W.5) Gasiram (P.W.6) all have unanimously supported the prosecution case and clearly authenticated the fact that appellant has assaulted Ramsingh by *latti*. Ram Narayan (P.W.2) has stated that appellant Ramsingh has caused injury on the head of deceased with *latti.* Kushal (PW.3) has also supported the fact in same manner. Ramu (P.W.4) has deposed that he had seen that Ghanshyam assaulted Ramsingh with *latti* encircled by iron wrie. Sonibai and Gasiram have also supported the prosecution case. The testimony of these witnesses has not been rebutted in their cross-examination.

13. In so far as, the injuries of Devraj is concerned, it is also well fortified by Dr. S.C. Raghuvanshi (PW-1). He has found two

contusions and one lacerated wound on the body of Devraj. Aforesaid witnesses namely Ram Narayan (P.W.2) Khushal (P.W.3), Ramu (P.W.4) Sonibai (P.W.5) Gasiram (P.W.6), all have averred in the same manner that appellant assaulted Devraj and therefore, he received injuries. The statements of these witnesses have not been controverted in their cross-examination. Hence, the charge of offence for causing hurt voluntarily to Devraj is well proved. As such accused deserves to be convicted under Section 323 of I.P.C.

14. Shri Manish Yadav, leaned 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 Signh vs. State of Punjab***" reported as ***AIR 1953SC364*** 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."***

15. Further in the case of ***Masalti vs. State of Uṭtar 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."***

16. Endorsing the aforesaid citations, Hon'ble Apex Court in the recent judgment rendered in ***Kurshid Ahmed vs. State of Jammu and Kahsmir*** reported as ***[AIR 2018 SC 2497]*** has reiterated as under:

> ***"26. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused."***

17. Virtually, on this aspect, the law laid down by Hon'ble Supreme Court in ***M.D. Roza Ali & Ors. vs. State of Assam, Ministry of Home Affairs, through Secretary*** reported in ***(2019)19 SCC 567*** wherein Hon'ble Apex Court endorsing its

own other judgment has contended as hereunder:

> ***"10 As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now wellsettled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. 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."***

Hence this Court is of the view that only on the basis that eye witnesses are close relatives of deceased, their statements cannot be over boarded and their testimony cannot be regarded as tempted testimony, specially, when some of the witnesses had received injuries in the said incident, therefore, the stand of learned counsel regarding relativeness of witnesses of deceased appears to be without legs.

18. Now coming to the second limb of arguments of the learned counsel for the appellant that prosecution has failed to explain the injuries sustained by the appellant. In arguments, it was contended that the appellant has sustained twenty injuries and in private defence he has caused the said injuries. Regarding the said injuries, I have gone through the record of the case. Virtually the said injuries have not been proved by defence, whereas as per Section 105 of Evidence Act, the burden of proving such type of private defence is on the appellant himself,

but in this regard he has not placed any defence before the Court.

19. On this aspect, the law laid down by Hon'ble Apex Court in ***Takhaji Hiraji vs. Thakore Kubersing Chamansing& Ors.*** reported as ***[(2001) 6 SCC 146],*** held as under :-

> ***"Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear cogent and credit worthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case"***

20. Endorsing the aforesaid full Court judgment Hon'ble Apex Court in a recent judgment rendered in ***Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh*** reported as ***[2022 Lawsuit (SC) 1224],*** here under :-

> ***"We are of the view that both the sides are wrong in their own way. The settled law is that if there are serious injuries or grievous injuries found on the body of the accused then the prosecution owes a duty to explain such injuries and the failure on the part of the prosecution to explain may point towards the innocence of the accused. At the same time, the well settled law is that if the injuries are superfluous or minor in nature then the prosecution need not explain such injuries. In the case on hand, the accused appellant has offered some explanation which could be said to be compatible with the defence he has put forward. As explained earlier, the accused has to establish his defence on preponderance of***

> ***probability and not beyond reasonable doubt.....”***

21. In the case at hand, the defence has not vindicated any injury on the person of appellant. The Doctor has also not deposed regarding any injury occurred on the person of appellant/ accused. Even in his cross-examination, no suggestion was advanced by defence in this regard. Nevertheless, Investigating Officer Shri D.S. Raghuvanshi (PW-11) was suggested in this regard in his cross-examination, but still it is not proved properly that the appellant has received serious injuries in the incident. Hence the contentions regarding non-explanation of said 20 injuries is also found baseless.

22. Learned counsel for the appellant submitted that since the co-accused persons namely Anokhi and Govardhan were acquitted from the same set of evidence, then the appellant cannot be convicted on the same. The law laid down by Hon'ble Supreme Court in its Full Bench decision, rendered in the case of ***Gurcharan Singh Vs. State of Punjab*** reported in ***AIR 1956 SC 460,*** *is poignant in this regard.* The relevant part of the judgment is mentioned below :-

> ***“ Be that as it may, we are no more concerned with the case against those two accused persons who have been acquitted by the High Court; but so far as the appellants are concerned, the evidence of the four eyewitnesses referred to above is consistent and has not been shaken in cross-examination. That evidence has been relied upon by the courts below and we do not see any sufficient reasons to go behind that***

> ***finding. It is true that three out of those four witnesses are closely related to the deceased Inder Singh.***
>
> ***But that, it has again been repeatedly held, is no ground for not acting upon that testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses who could be expected to be near about the place of occurrence and could have seen what happened that afternoon. We need not notice the other arguments sought to be advanced in this Court bearing upon the probabilities of the case because those are all questions of fact which have been adverted to and discussed by the courts below."***

23. Here, it has to be kept in mind that this Court is not testing the legality of acquittal of two accused persons. However, in this appeal on the basis of evidence available on record, this Court is satisfied that the judgment of conviction passed by the learned trial Court 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 Afdul Gaffar Khan Vs. Basant Raghunath Gogle*** reported in ***(2005) 7 SCC 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".***

24. In view of the aforesaid prepositions, the testimony of the witnesses cannot be discredited or wiped out only on the basis that other co-accused persons are acquitted on the same set of evidence. As such the aforesaid contention is also not liable to be accepted.

25. Before parting, the demurrer raised by learned counsel for the appellant, though in low tune, is also required to be ruminated. Shri Yadav has contended that on the basis of single blow, the appellant can not be attributed for the offence of culpable homicide but rather, he should be punished for the offence punishable under Section 325 of IPC. Here, it has to be kept in mind that the appellant had assaulted with lathi encircled by iron wire (lohangi) on the head of deceased, which was admittedly a vital part of the body. Hence, it would be established that the appellant while using lohangi lathi, knows that he by his act is likely to cause death. Hence, he will be liable for committing culpable homicide not amounting to murder which is punishable under Section 304 (Part-II) of the I.P.C.

26. In view of the aforesaid analysis of the evidence and propositions, conclusion of the learned trial Court regarding conviction of accused under Section 304(2) of IPC and 323 of

IPC is found immaculate and infallible in the eyes of law.

27. Now returning to the part of sentence the learned counsel has vehemently submitted that the punishment of 10 years R.I. is maximum punishment hence prayed that the same be reduced to the period already undergone by the appellant. In this regard it is to be kept in mind that due to the assault of appellant an innocent person has lost his life; therefore, the appellant should be sentenced appropriately. Nevertheless, there are some mitigating circumstances are also available in this case. The appellant is facing trial from nearby 25 years, he has also suffered the incarceration period from 05.10.1998 to 19.05.2000. That apart, the offence was committed without premedition, preplaning and only on spur of movement. On this aspect, the following excerpt of the judgment of Hon'ble Apex Court rendered in the case of ***Bhagwan Narayan Gaikwad vs. State of Maharashtra; [2021 (4) Crimes 42 (SC)*** is worth mentioning here:-

> ***"28. Giving punishment to the wrongdoer is the heart of the criminal delivery system, but we do not find any legislative or judicially laid down guidelines to assess the trial Court in meeting out the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation, etc."***

28. On this facet, the law laid down by Hon'ble the Apex Court in ***Jaswinder Singh (Dead) through Lrs Vs. Navjot Singh Sidhu and others*** reported in ***AIR 2022 SC 2441*** is also condign to quote here as under :-

> ***26. An important aspect to be kept in mind is that any undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society can not long endure under serious threats and if the courts do not protect the injured, the injured would then resort to private vengeance and, therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.....”***

29. In conspectus of aforesaid propositions of law and mitigating circumstances of the case, this appeal is partly allowed. The finding of the learned trial Court regarding conviction and sentence under Section 323 of IPC is affirmed while the conviction for the offence under Section 304(II) of IPC is affirmed with modification of sentence by reducing it to the extent of five years R.I. instead of 10 years of R.I. and with fine of Rs.10,000/- in place of Rs.1000/-. In case of default of payment of fine amount, the appellant shall undergo further three months Simple Imprisonment.

30. The appellant is on bail. His bail bonds stands discharged. He is directed to surrender before the trial Court within a period of 15 days from the date of this judgment for completing the remaining part of sentence. In case, he fails to surrender, the learned trial Court shall take all steps to commit him to jail for undergoing remaining part of sentence. The judgment regarding disposal of the seized property stands confirmed. Out of the total fine amount, if recovered fully, Rs.7,000/- be paid to LRs of the deceased.

31. 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)**

**JUDGE**

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