IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 514 of 2000

BETWEEN:-

BHAGWAN S/O BADRILAL
AGED 20 YEARS, LABOURER,
R/O SUNWANIGOPAL, DISTRICT DEWAS
(MADHYA PRADESH)

.....APPELLANT

(SHRI BHAGWAN SINGH YADAV, ADVOCATE)

AND

THE STATE OF M.P.
THROUGH P.S. : BANK NOTE PRESS,
DISTRICT DEWAS (MADHYA PRADESH)

.....RESPONDENT

(SHRI RAJESH JOSHI, GOVERNMENT ADVOCATE)

HEARD ON : 11.01.2024
RESERVED ON : 29.01.2024

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 05.04.2000 passed by the learned First Additional Session Judge, District Dewas (M.P.) in ST No.192/1992, whereby, the appellant has been convicted under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to undergo 05 years R.I. with fine of Rs.1000/-.

2. As per the prosecution case, on 15.03.1998 at about 02 PM, the

complainant Bhagwansingh with his maternal uncle Manishankar reached his field where one Jivan Gari was grazing his goats, he interrupted for not grazing the same and took the stick of Jivan. Due to the said hot talk, at about 11 PM in the night, Bandi @ Narendra Singh, Badri Gari, Jivan Gari with other co-accused persons reached the house of complainant, Manishankar opened the door. At that time, Dinesh Patel, maternal uncle of Bhagwansingh came there, during the scuffle, an unknown person assaulted with *Katar* on the stomach of Dinesh Patel, thereafter, the appellant alongwith other co-accused fled away from the spot. On the same date, the complainant/injured was taken to the hospital at Ujjain. Thereafter, the police recorded the statements of the witnesses and registered the FIR under Sections 147, 148, 149 and 307 of IPC. After completion of investigation, charge-sheet was filed. Thereafter, the learned trial Court has framed charges against the appellant under Section 147 & 307 of IPC. Later on, the matter was committed to the Court of Session.

3. In support of the case, the prosecution has examined as many as 14 witnesses namely Omprakash (PW-1), Chagganlal (PW-2), Suresh (PW-3), Ramnarayan (PW-4), Dinesh Patel (PW-5), Manishankar (PW-6), Bhagwansingh (PW-7), Bhahadursingh (PW-8), Kailash (PW-9), Vikramsingh (PW-10), Yashwantsingh (PW-11), S.P. Singh, Sub-Inspector (PW-12), Arvindra Kumar (PW-13), Dr. P.N. Verma (PW-14). 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 of IPC, vide the impugned judgment.

5. Learned counsel for the appellant, being crestfallen by the aforesaid

finding of the Trial Court, submitted that on the same set of evidence, the learned trial Court has acquitted five other co-accused persons. Out of 12 witnesses of the prosecution seven witnesses have turned hostile and have not supported the case of prosecution. Further, there is no identification was conducted in the matter by the prosecution. It is also submitted that in the FIR, the complainant has not named the present appellant but in the statements recorded before the trial Court, the complainant has named the present appellant that he has caused the injury. Manishankar (PW-6) has also not named the person who has caused the injury and he simply stated that out of the accused persons, one has caused the injury to the injured with *Katar*. In his statements, the injured had clearly stated in his examination-in-chief that Bhagwan Singh has caused injury with *Katar*, therefore, there are material contradictions and omissions in the statements of the witnesses. The statement of witness injured Dinesh Patel was recorded on 15.07.1998 whereas the incident happened on 14.03.1998, therefore, his statements cannot be relief upon being afterthought.

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 324 and 326 of IPC. The appellant has already suffered months of his incarceration out of the five 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 five 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 by enhancing the fine amount and giving compensation amount.

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 Dinesh Patel (PW-5) is required to be ruminated. Dinesh Patel (PW-5) has asseverated that when he rescued himself, he hold the *taami*, the appellant Bhagwansingh had attacked with *katar* and due to that he fell down to ground feeling dizziness. The statement of Dinesh Patel (PW-5) finds support from the statement of Omprakash (PW-1), Chhaganlal (PW-2), Suresh (PW-3), and Ramnarayan (PW-4) with regard to the injury caused in his stomach. Although, these witnesses have not supported the fact that the injury was caused by appellant. The witnesses Manishankar (PW-6) and Bhagwansingh (PW-7) have clearly stated that accused has caused the injury to the injured Dinesh Patel (PW-5). The statements of Dinesh Patel (PW-5), Manishankar (PW6) and Bhagwansingh (PW-7) have not been shaken in their cross-examination. That apart, the said injury was also fortified by Dr. P.N. Verma by his MLC report.

11. Now turning to eye witnesses of the case, Manishankar (P.W.-6) and Bhagwansingh (P.W.-7), both have unanimously supported the prosecution case and clearly authenticated the fact that appellant has assaulted Dinesh Patel by katar. Manishankar (P.W.-6) has stated that appellant Bhagwansingh has caused injury on the stomach of injured with katar. Bhagwansingh (PW.-7) has also supported the fact in same manner. The testimony of these witnesses has not been rebutted in their cross-examination.

12. In so far as, the injuries of Dinesh Patel is concerned, it is also well fortified by Dr. P.N. Verma (PW-14). He has found that whole intestine of injured got out and the injuries received by the injured were serious in nature. Aforesaid witnesses namely Manishankar (P.W.-6) and Bhagwansingh (P.W.-7), all have averred in the same manner that appellant assaulted Dinesh Patel 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 Dinesh Patel is well proved.

13. Shri Bhagwan Singh Yadav, 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."

14. 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 b e 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."

15. 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 Bangal 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".

16. 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.

17. Learned counsel for the appellant expostulated that since the co-accused persons 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."

18. Here, it has to be kept in mind that this Court is not testing the legality of acquittal of other 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".

19. 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 not liable to be accepted.

20. 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....."

21. 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 Dinesh Patel (PW-5). 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."

22. In upshot of the aforesaid analysis of evidence as well as proposition of law, this Court 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 facts of injuries, as per the statement of Dr. P.N. Verma (PW-14), due to injury caused by knife, whole intestine of injured Dinesh Patel got out. It is also apparent that injured (PW-5) himself has stated that the appellant has caused injury on injured's stomach by using *katar*. Other witnesses Omprakash (PW-1), Suresh (PW-3), Manishankar (PW-6) and Bhagwansing (PW-7) have also supported the case of the prosecution. Omprakash (PW-1) has deposed that the injured had received the injury by knife *(Katar)* but, he has not named anyone, as such, this witness has turned hostile. Nevertheless, the testimony of witness regarding causing injury by knife has not been controverted in their cross-examination. However, it is envisaged that the appellant Bhagwan has caused only one injury and this statement has

not been rebutted regarding single blow.

23. 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:-

24. 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."

25. The 8th point of the aforesaid provision defines that any hurt which endangers life would be grievous. Since, Dr. P.N. Verma (PW14) 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.

26. 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.

27. 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 injures are inflected, are also taken into account to determine the nature of the offence. The role of motive is also ought to be taken into consideration.

28. 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."

29. 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."

30. 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 i s 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."

31. 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.

32. 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 stomach 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.

33. 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.

34. 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. The appellant is liable to be sentenced under Section 326 of IPC for two years R.I. with fine of Rs.10,000/-.

35. 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 two years R.I. with fine of Rs.10,000/- and in default of payment of fine further undergo for three months S.I. Accordingly, the appeal is partly allowed.

36. 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 injured-Dinesh Patel.

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

38. Pending I.A., if any, stands closed.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

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