IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 542 of 2000

BETWEEN:-

SAIRAM @ RAJESH S/O MOHANLAL NAI,
AGED 25 YEARS R/O GULABBAI COLONY,
NAGDA, DISTRICT-UJJAIN (MADHYA PRADESH)
.....APPELLANT

(BY SHRI V.SINGH, ADVOCATE)

AND

THE STATE OF M.P. THROUGH P.S. NAGDA
DISTRICT-UJJAIN (MADHYA PRADESH)
.....RESPONDENT

(BY SHRI RAJESH JOSHI, GOVERNMENT ADVOCATE)

Reserved on : 23.08.2023

Delivered on : 22.09.2023

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

JUDGMENT

This criminal appeal has been filed under Section 374 of the Code of Criminal Procedure, 1973 by the appellant being crestfallen by the judgment dated 02.05.2000 passed by the learned Additional Sessions Judge, Khachrod, District-Ujjain in

Sessions Trial No.161/1997 whereby the appellant Sairam @ Rajesh has been convicted for the offence punishable under Sections 450 & 326 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to undergo 3 years R.I. and 5 years R.I. with fine of Rs.500/- & Rs. 500/- respectively and default stipulations.

02. The prosecution case in a nutshell is that Arvind who is brother of Murlidhar works in Chemical Division of Nagda Grasim Industries and resides at Ram-Sahaye Marg. Arvind and his brother Murlidhar have also a house in Gulabbai Colony, Nagda. At weekend on 01.04.1997, after making food, Arvind went to his new home and at about 12:30 pm, Arvind went to old home and told his brother Murlidhar that Sairam had assaulted him with intention to kill him and caused injuries on his shoulder, thigh and also on his private parts. When Arvind was telling about the incident to Murlidhar, Harisingh was also there. Both of them, took Arvind to the hospital and got him admitted. Thereafter, they lodged a report against Sairam stating that about two years back, Gopal who is brother of Sairam borrowed money, on account of which, Sairam assaulted Arvind. Thereafter, the police party, following due procedure, arrested the accused and registered the case against the appellant. In course of investigation, spot map was prepared and statements of witnesses were recorded and the medical examination of injured was conducted. After completion of investigation, charge-sheet was filed before JMFC, Khachrod, District-Ujjain.

03. In turn, the case was committed to the Court of Session vide

order dated 02.07.1997 and thereafter, appellant was charged for offence under Section 450 and 307 of IPC. He abjured his guilt and took a plea that he had been falsely implicated in the present crime and entreated for trial.

04. In order to bring home the prosecution case, the prosecution has examined as many as 10 witnesses namely Dr. D.D. Jaju (PW-1), Ashoksingh Gautam (PW-2), Arvind (PW-3), Murlidhar (PW-4), Harisingh (PW-5), Onkarlal (PW-6), V.P. Sharma, Sub Inspector (PW-7), Rajendrasingh (PW-8), Dr. Mahendra Nahar, Surgeon (PW-9) and Dr. Chandrashekhar Dhakte, Assistant Surgical Doctor (PW-10). No witness has been adduced by the appellant in his defence.

05. The learned trial Court, on appreciation of the evidence and arguments adduced by the parties, pronounced the impugned judgment dated 02.05.2000 by concluding the case and convicted the appellant for commission of the said offence by sentencing him as hereinabove.

06. Learned counsel for the appellant submits that the learned trial Court has not considered the material evidence available on record, the learned trial Court has committed grave error of law in not evaluating the material contradictions and omissions in the statements of the prosecution witnesses. It is also expostulated that the sole testimony of Arvind (PW-3), the injured is not of sterling character and also not reliable. There is no corroboration of any independent witness. It is further submitted that there is no one to look after the family of appellant and he is facing the trial

since 1997. The appellant is aged about 50 years and no fruitful purpose would be served to keep the old age person in further incarceration.

07. Learned counsel for the State, on the other hand, supports the impugned judgment and prays for dismissal of this appeal by submitting that the appellant has assaulted the injured and caused injuries to him. Hence, he is not entitled for any relief from this Court.

08. In back drop of the arguments advanced by learned counsels for both parties, the point for consideration is as to whether the findings of the learned trial Court in convicting and sentencing the appellant under Section 450 and 326 of IPC, is erroneous in the eyes of law and facts.

09. At the outset, the statement of injured/Arvind (PW-3) is required to be reminated. He has deposed that on 01.04.1997, he was taking rest in his house situated at Gulab Bai Colony, at about 11:30 o'clock, the Sairam entered into his home and said his father called the injured for returning the money. The witness also stated that he gave an amount of Rs.2500/- to the Gopal, brother of accused, from which, Rs.1,600/- was remained to be returned back. When he was getting ready after changing his clothes to go there, accused started to assault him with knife and caused injuries in four parts of the body. Out of which, two injuries were caused on both thigh, one was caused on private part and one was on left hand near shoulder.

10. Dr. D.D. Jaju, Assistant Surgical Doctor (PW-1) has found

four following injuries on the person of injured/Arvind (PW-3) when he has examined him :-

> (I) Stab wound near private part approx 2.5X1 cm., depth cannot be measured due to heavy blooding.
>
> (II) Stab wound over left thigh approx 2.5x1x2 cm.
>
> (III) Stab wound over right thigh approx 2.5x1x1 cm.
>
> (IV) A cut wound over right hand below the shoulder approx 3x1/4x1/4 cm.

11. However, this witness has stated that out of these four injuries, injury No. 1 was grievous in nature. On going through the examination of injured/Arvind, it is found that in Para 3 of his statement he deposed that he got treated in Civil Hospital, from where he was referred to Jan Sewa Hospital, thereafter, treated in Choithram Hospital and got discharged on 05.04.1997.

12. The injured-Arvind (PW-3) has elucidated in his examination-in-chief that the accused assaulted with knife on right thigh at first time, at second time, he has assaulted left leg and in third attack he caused injury on his private part. After five minutes of incident, Onkarlal (PW-6) came to the scene of crime, thereupon the accused fled away from there. The testimony of injured-Arvind (PW-3) regarding injuries finds support from other witnesses like Dr. D.D. Jaju (PW-1), Ashoksingh Gautam (PW-2), Murlidhar (PW-4), Harisingh (PW-5), Onkarlal (PW-6), V.P. Sharma, Sub-Inspector (PW-7), Rajendrasingh (PW-8), Dr. Mahendra Nahar, Surgeon (PW-9) and Dr. Chandrashekhar Dhakte, Assistant Surgical Doctor (PW-10). The statements of these witnesses have not been rebutted in their cross-

examionation.

13. Now, turning to the arguments of counsel for the appellant regarding reliability of sole testimony of injured-Arvind (PW-3). In view of the available evidence, matter has been considered. Certainly in this case, only the injured Arvind (PW-3) has supported the prosecution case and no other eye witnesses came in support of him. Even, Murlidhar who is complainant of the case and is also a brother of injured Arvind, has not authenticated the prosecution case as an eye witness.

14. Now, the question is as to whether on the basis of sole testimony of injured Arvind, the findings of the learned trial Court regarding conviction and sentence can be affirmed. It is paramount principle that even number of witnesses have not supported the prosecution case, the conviction can be based on the sole testimony of single witness. It is quality not the quantity of evidence, to be considered while appreciating the available evidence.

15. Section 134 of the Evidence Act, specifically mandates that no particular number of witnesses shall in any case be required for the proof of any fact. On this aspect, the law laid down by Hon'ble Supreme Court in the case of ***Vithal Pundalik Zendge Vs. State of Maharashtra reported, AIR 2009 SC 1110*** is worth referring to the context of the case. Relevant para 6 and 7 of the said judgment is reproduced below :-

> **6.** On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, 1872 (in short the 'Evidence

> Act') the following propositions may be safely stated as firmly established:
>
> (i) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.
>
> (ii) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.
>
> (iii) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.
>
> 7. Therefore, there is no hesitation in holding that the contention that in a murder case the court should insist upon plurality of witnesses, is much too broadly stated.

16. In this case, the Court is bound to test and enquire the single testimony of the injured Arvind (PW-3). He has specifically deposed that the accused assaulted him with knife with intention to kill him and caused injuries on his shoulder, thigh and on private parts. The statement of this witness has not been rebutted in his cross-examination which was run in almost 3 pages. Here, it is pertinent to mention that, being an injured witness, testimony of Arvind has special status in the eyes of law. On this aspect, Hon'ble Supreme Court in the case of

Chandrashekar Vs. State of Tamilnadu reported in (2017) 13 SCC 585, endorsing another case of the Supreme Court, viewed as under :-

> **10.** Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:
>
> *"28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built 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."*

17. In the light of aforesaid proposition, the testimony of injured-Arvind (PW-3) has its immanent value. The testimony of this witness has been fortified by three doctors namely Dr. D.D. Jaju (PW-1), Dr. Mahendra Nahar, Surgeon (PW-9) and Dr. Chandrashekhar Dhakte, Assistant Surgical Doctor (PW-10) and also fortified by another witnesses like Murlidhar (PW-4), Harisingh (PW-5), Onkarlal (PW-6), V.P. Sharma, Sub-Inspector (PW-7) and Rajendrasingh (PW-8). The witness Ashoksingh Gautam (PW-2) has clearly stated that when he went to the Civil Hospital Nagda, he has seen the injured Arvind and blood was oozing thereon. Murlidhar (PW-4) has stated that he has seen injuries on the hands and thigh of Arvind. He has also seen injury near his penis. Onkarlal (PW-6) has also supported the fact regarding injuries. He has stated that Arvind told about the fact that squabble was happened between Sairam and him and injuries

by knife were caused. Harisingh (PW-5) has also supported the prosecution case. Although, he has not named the accused in Court statement. The statements of these witnesses are relevant under the provision of Section 6, 8 and 14 of the Evidence Act.

18. In this way, the contentions of learned counsel regarding sole testimony is not worth the candle because the testimony of injured was not only supported by doctors but also it finds support from other witnesses whose testimonies are relevant as res gestae.

19. As a next point, learned counsel for the appellant has contended that all witnesses are relative and interested witnesses. Thus, on the basis of these statements, the appellant cannot 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 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."

20. 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."

21. 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."

22. That apart, in the case at hand, the aforesaid witnesses namely Ashoksingh Gautam (PW-2), Murlidhar (PW-4), Harisingh (PW-5), Onkarlal (PW-6) and Rajendrasingh (PW-8) are not supporting the whole prosecution case rather they are supporting the prosecution story to some extent. Virtually they have vindicated the injuries caused on the body of injured.

Hence, their reliability cannot be disputed in circumstances of the case.

23. 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....."

24. In the case of ***Mohd. Naushad Vs. State (Govt. of NCT of Delhi)***, ***2023 LawSuit (SC) 659***, the Full Bench of Hon'ble the Apex Court, considering the kind of apathy adopted by the general public in not coming forward to depose to associate with the prosecution, endorsed the aforesaid verdict. As such, only on

the basis of non-examination of any independent witness, the prosecution case cannot be thrown out, specially when the testimony of witnesses inspires confidence.

25. Learned counsel has also remonstrated that the blood group was not matched, hence, the accused should be given the benefit of doubt. Certainly, in this case, blood group was not matched but only on this basis, accused cannot be acquitted. As per FSL report (Exhibit-P/13) blood was found on the seized clothes of accused and on the knife. Similarly, the blood was found in underwear of the appellant and as per report Exhibit-P/15, since the blood was disintegrated, group of blood could not be ascertained.

26. In this context, this Court can profitably **rely** upon verdict of Hon'ble Supreme Court rendered in John ***Pandian & ors. v. State represented by Inspector of Police, Tamilnadu, 2010 LawSuit (SC) 1023,*** wherein, it has been observed as under -

> "33... It has been accepted by both the Courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the Forensic Science Laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case."

27. In a latest case, rendered in ***Balwan Singh v. State of Chhatisgarh & ors., AIR 2019 SC 3714***, the Full Bench of Hon'ble Apex Court has occasion to consider the similar fact,

wherein approving the ratio laid down in catena of cases, it has been ordained as under-

> "From the aforementioned discussion, we can summarise that if the recovery of bloodstained Articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the Articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The Court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match."

28. In the case at hand, even though, owing to disintegration of blood, exact blood group could not be ascertained, but inasmuch as the accused has not ascribed any explanation regarding human blood over his shirt (Article 'A') and a knife (Article ' D') as to how the human blood came on his shirt and the weapon, which was recovered at his instance.

29. At this juncture, the attention of this Court drawn by learned counsel of accused towards the opinion of Hon'ble Apex Court in ***Subhash Harnarayanji Laddha v. State of Maharashtra (2006) 12 SCC 545***, wherein it was held that "Suspicion, howsoever grave may be is no substitute for proof." It is further contended that in lack of any independent eye witness, the accused can not be convicted on basis of fictitious story.

30. On this point, this Court intends to rely on ***State of Rajasthan v. N.K.,The accused (2000) 5 SCC 30***, wherein, ***Hon'ble R.C.***

Lahoti J. on behalf of the Full Bench viewed as under :-

> "....It is true that the golden thread which runs throughout the cob-web of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the Court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists..."

31. Further in a latest case, rendered in ***Nawab v. Uttarakhand, (2020) 2 SCC 736***, wherein, the Hon'ble Supreme Court approving its earlier judgments, of which the extract thereof reproduced as under :-

> "...A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties..."

32. So far as the question of false implication of the appellant in the offence is concerned, the accused in his examination recorded under Section 313 of Cr.P.C. made allegation of enmity. However, no witness has been placed regarding this fact of enmity.

33. Virtually, The aforesaid ground of enmity between the

parties, has not been established properly by the defence, however, even if it is proved, the statement of prosecution witnesses can not be set at naught. On this facet, it is well settled that enmity is a double edged weapon which can be a basis for false implications and on the contrary it can also be a basis for the crime. The principle laid down by Hon'ble Supreme Court in ***Ruliram v. State of Haryana, (2002) 7 SCC 691***, is recently followed by Hon'ble High Court of M.P. in ***Kalu Khan v. State of M.P. 2018 LawSuit (MP) 1872***.

34. In this case on conspectus of the aforesaid settled proposition of law and factual matrix of the case, this Court is of the considered opinion that the prosecution has succeeded in proving its case beyond reasonable doubt that appellant has caused grievous injury with sharp edged knife on the thigh of injured Arvind (PW-3). It is also proved beyond reasonable doubt that the accused has committed house trespass by entering into injured house in order to commit the aforesaid crime which is punishable for life imprisonment and thereby, he is entitled for conviction under Section 450 of IPC.

35. As such the findings of the learned trial Court regarding regarding conviction of accused under Section 326 and 450 of IPC is found immaculate and infallible in the eyes of law and facts.

36. Now turning to the sentencing part of the case, learned counsel for the appellant placing reliance on the judgment ***Naib Singh Vs. State of Punjab (1986) 4 SCC 401, Manohar Das Vs.***

State of Madhya Pradesh and other (2007) 2 MPWN 60 has submitted that in this case inasmuch as the appellant accused Sairam @ Rajesh is already undergone incarnation for a period of 45 days, he may be sentenced only for period of already undergone with enhancement of fine amount. On this aspect, the view of Hon'ble Supreme Court in the case of ***Jaswinder Singh (dead) through legal representative Vs. Navjot Singh and others*** reported in ***AIR 2022 SC 2481*** Para No. 26, 27 and 28 are reproduced below :-

> 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.10 It has, thus, been observed that the punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated.
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> 27. A three Judges Bench of this Court in State of Karnataka v. Krishnappa12 while discussing the purpose of imposition of adequate sentence opined in para 18 that ".....Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence." Sumer Singh v. Surajbhan

> Singh (2014) 7 SCC 323.
>
> 28. The sentencing philosophy for an offence has a social goal that the sentence has to be based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric.13 While opportunity to reform has to be kept in mind, the principle of proportionality also has to be equally kept in mind.

37. Hence, I am not inclined to let off the appellant with period already undergone. This is a case, where only owing to that injury caused by appellant, the injured had suffered a grave pain threatening his life. In such circumstances, the accused may not be offered for any leniency or sympathy. However, the fact, that the appellant has suffered ordeal of this case since 1997 i.e. approximately 26 years, is to be considered as mitigating circumstance.

38. Looking to the factual matrix of the case and considering the aforesaid mitigating circumstance, the sentence of five years rigorous imprisonment seems to be on the higher side and the same is required to be rectified.

39. Having contemplated all circumstances of the case, this Court is of the considered opinion that the appellant should be sentenced for the offence under Section 326 of I.P.C. for 3 years with fine of Rs.10,000/- and in default, he will suffer 3 months and the period which he has already suffered be adjusted. The fine amount so deposited by the appellant, be paid to the injured-Arvind (PW-3) as compensation. Insofar as, the sentence

awarded under Section 450 of IPC is concerned, is hereby affirmed.

40. In view of the aforesaid terms, the present appeal is partly allowed and disposed off.

41. A copy of this judgment alongwith the record be sent to the learned trial Court for information and necessary compliance.

42. The appellant is directed to surrender before the learned trial court within 15 days from the pronouncement of this judgment. If he fails to surrender before the learned Trial Court, the Trial Court will proceed to comply with order and send the appellant in jail for suffering the remaining jail sentence, as aforesaid.

43. The order of learned trial Court regarding disposal of the seized property stands confirmed.

Certified copy as per rules.

(PREM NARAYAN SINGH)
JUDGE

vindesh