

**High Court of Madhya Pradesh: Bench at Indore**  
**Single Bench: Hon'ble Shri Justice Ved Prakash Sharma**

**Cr.A. No.964/2015**

**Mangal S/o Baisakhi Mehto**

**Versus**

**State of M.P.**

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Shri Manish Sharma, learned counsel for the appellant.

Shri Peyush Jain, learned Public prosecutor for the  
respondent/State.

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**J U D G E M E N T**

**(Delivered on 17/04/2017)**

This appeal preferred under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') is directed against judgment and order dated 26.02.2015 passed by the learned Additional Sessions Judge, Dhar in S.T. No.63/2014, whereby appellant Mangal on being found guilty under Section 326 of IPC has been sentenced to undergo 3 years RI and to pay a fine of Rs.15,000/- and in default of the payment of fine further to undergo one year's RI.

02. As per prosecution, complainant Dev Pujan Mehto (P.W.2), appellant Mangal Mehto and few other persons namely, Kamlesh, Omprakash, Sikandar and Awadh Vihari, all residents of Village Badban Shah Tola, Distt.Shivang

Bihar had come in search of livelihood to Pithampur. All of them were working in Mittal Works Company, Pithampur, Sector-3 and were residing in a room of the company, situated at Labour Colony, Pithampur. Allegedly, on 30.10.2013, in the evening Dev Pujan Mehto (P.W.2) alongwith appellant Mangal Mehto returned from market after fetching vegetables etc. Around 9 to 9.30 p.m., there was some altercation between them on account of some dispute pertaining to payment of money, due to which the appellant had a scuffle with Dev Pujan Mehto (P.W.2). Allegedly, during scuffle, the appellant suddenly picked up a knife lying nearby and assaulted Dev Pujan Mehto (P.W.2) on the left side of the abdomen below the armpit thereby causing injury to him. As per prosecution, after the incident appellant fled away from the spot. Dev Pujan Mehto (P.W.2) was immediately rushed to MY Hospital, Indore, where he was examined by Dr. R.S. Raikwar and Dr. V. Dhakad. He remained hospitalized there up to 13.11.2013. Same day after midnight at 12.30 a.m. Awadh Vihari Mehto lodged F.I.R. (Ex.P/1) at Police Station – Pithampur in this regard. The investigation ensued. Girdharilal Chouhan (P.W.1), the then Sub-Inspector, Police Station, Pithampur, visited the spot and prepared site map Ex.P/2. The appellant was arrested on 26.12.2013, vide arrest memo Ex.P/3 and on the basis of the disclosure said to have been made by him, vide Ex.P/5, at his instance a 3 inch long knife was seized, vide Ex.P/5. On a query being made by the police, Dr. Prashant Mishra opined that the injury found on

the person of Dev Pujan Mehto could have been caused by the knife and that the same was of grievous nature. The witnesses were interrogated.

03. On completion of investigation, a charge-sheet was laid before the Competent Magistrate, who after compliance of Section 207 of 'the Code' committed the case to the Court of Sessions from where it was made over to the learned Addl. Sessions Judge, Dhar for trial. The learned Addl. Sessions Judge framed the charge under Section 326 of IPC against the appellant, who abjured the guilt and claimed to be tried.

04. In his statement recorded under Section 313 of 'the Code', the appellant either denied the incriminating circumstances appearing against him in the prosecution evidence or expressed ignorance about the same. Though a plea of false implication was raised, however, no evidence was led by the appellant in that regard.

05. The prosecution in order to bring home the charge examined three witnesses namely, Girdharilal Chouhan (P.W.1), who is said to have conducted investigation, Dev Pujan Mehto (P.W.2), the injured and Sandeep Kumar Mehto (P.W.3), his son. Apart this, documents Ex.P/1 to Ex.P/9 were also marked in evidence. The appellant choose not to adduce any evidence oral or documentary, however, police statement of Sandeep Kumar Mehto (P.W.3) was marked as Ex.D/1.

06. The learned trial Court on the basis of evidence available before it, vide the impugned judgment, convicted and sentenced the appellant as stated herein above in para-1.

07. The conviction and sentence has been challenged by the appellant on the ground that the same is against the evidence adduced by the prosecution. The contention is that the learned trial Court has overlooked material omissions and contradictions present in the prosecution evidence; the FIR was lodged belatedly and that independent witnesses have not been examined to substantiate the charge; motive of alleged assault was also not disclosed, therefore, the conviction and sentence is liable to be set aside.

08. Per contra, it is submitted by learned Public Prosecutor that the learned trial Court on due appreciation and analysis of evidence has recorded conviction and sentence and that no ground is made out to interfere with the same.

09. Heard the learned counsel for the parties and perused the record. What is required to be considered is whether the learned trial Court has committed a legal or factual error in recording the conviction and sentence against the appellant?

10. Dev Pujan Mehto (P.W.2), who is said to be the injured, deposing about the alleged incident has stated that on the date of the incident, he had a quarrel with the appellant because of some dispute with regard to accounting of money and that during quarrel, the appellant had suddenly picked up a knife and assaulted him on abdominal region due to which he sustained injury. As per this witness, he was immediately rushed to hospital where he remained hospitalized for around three months and that Ex.P/9 is his discharge card. During cross-examination, this witness has stated that he along with appellant came back from market around 7 p.m. and that the incident occurred inside the room wherein all were residing. This witness has further deposed that the knife used for the assault was small one, used for cutting vegetables and that after the incident the appellant fled away from the spot. This witness has denied that he sustained injury because of fall on the tin sheets.

11. Dev Pujan Mehto (P.W.2) has denied that he is falsely deposing to implicate the appellant. He has further denied that he sustained injury because of fall on the tin sheet. The testimony of this witness has stood the test of cross-examination as no material infirmity, omission or contradiction has emerged therein so as to discredit him.

12. Though, it is contended that the FIR was lodged belatedly and delay in lodging the FIR was not explained,

however, considering the facts and circumstances of the case, particularly, the fact that Dev Pujan Mehto (P.W.2) was immediately rushed to the hospital, it cannot be said that FIR (Ex.P/1) which was lodged at 12.30 post midnight i.e. within 3 hours of the incident, is belated. Hence, the question of explaining delay did not arise.

13. As regards lack of corroboration from independent source, the law is settled that if the testimony of a witness is found to be reliable and trustworthy then the same cannot be thrown away on the ground of lack of corroboration. In the instant case, the testimony of Dev Pujan Mehto (P.W.2) has been found by the trial Court trustworthy and inspiring. This Court on re-appreciation is inclined to take the same view, therefore, lack of corroboration cannot be a ground to throw away the testimony of Dev Pujan Mehto (P.W.2).

14. Girdharilal Chouhan (P.W.1) the then Sub-Inspector, Police Station Pithampur has deposed that he recorded First Information Report (Ex.P/1) at the instance of Awadh Vihari and thereafter, he visited the place of occurrence and prepared the spot map (Ex.P/2). This witness has further stated that on interrogation the appellant disclosed about a knife which was recovered, vide seizure memo (Ex.P/5) and on a query being made the concerned doctor opined, vide Ex.P/6 and P/7 that the injury found on the

person of the Dev Pujan Mehto (P.W.2) was caused by knife and the same was grievous in nature.

15. No evidence was adduced before the learned trial Court to establish that the knife allegedly, seized on the basis of information said to have been given by the appellant had bloodstains, therefore, in absence of requisite evidence, it cannot be said that the same knife was used for assault, however, from the testimony of Dev Pujan Mehto (P.W.2), the injured witness, which is found to be trustworthy, it is proved beyond reasonable doubt that on the alleged date and time, he was stabbed by the appellant with a knife due to which he sustained injury on the abdomen.

16. The question arises whether the injury caused by the appellant was of grievous nature as held by the learned trial Court? It is noticeable that the doctor who attended Dev Pujan Mehta (P.W.2) during his treatment at M.Y. Hospital, Indore was not examined before the Court. Though the discharge ticket (Ex.P/9) was placed on record and further Ex.P/7 was marked in evidence in which opinion of Dr. Prashant Mishra to the effect that injury was grievous is recorded, however, Dr. Prashant Mishra was also not examined before the Court. Thus, it is not clear as to on what basis, the learned trial Court formed the opinion that the injury sustained by Dev Pujan Mehto (P.W.2) was of grievous nature. Indeed, it was for the prosecution to affirmatively

prove by producing the medical record and also by examining concerned doctor who attended Dev Pujan Mehto (P.W.2) in the hospital that the injury sustained by him was grievous in nature within the meaning of Section 320 of IPC. However, in absence of such evidence, the learned trial Court ought not to have usurped the task of an expert. In *Gambhir vs. State of Maharashtra, AIR 1982 SC 1157*, the apex Court dealing with the matter regarding formation of opinion by the Court, where the same should be on the basis of opinion of the expert, held that the Court has to draw its conclusion on the basis of the materials supplied by the expert and that the Court cannot usurp the function of an expert. Therefore, in absence of expert opinion regarding nature of the injury sustained by Dev Pujan Mehto (P.W.2), it cannot be said that the injury was grievous in nature. Hence, the conviction recorded against the appellant deserves to be altered from Section 326 of IPC to Section 324 of IPC.

17. Accordingly, the conviction of the appellant is altered from Section 326 to Section 324 of IPC. As a consequence to the alteration of conviction from Section 326 of IPC to Section 324 of IPC, the sentence of imprisonment also deserves to be appropriately reduced. In the facts and circumstances of the case, in the considered opinion of this Court, the sentence of 3 years RI and a fine of Rs.5000/- will serve the ends of justice. In default of payment of fine the



appellant shall further undergo 6 months R.I. The sentence is accordingly, altered.

18. The appeal is partly allowed in the aforesaid terms. The suppression warrant be prepared accordingly and sent to the trial Court for further compliance.

**(Ved Prakash Sharma)**  
**Judge**

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