



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 12th OF September, 2024**

**CRIMINAL APPEAL No. 309/2021**

***Mahendra Mankar  
VS.  
STATE OF MP***

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*(Shri Sanidhya Nema, learned counsel on behalf of Shri R.R.Trivedi, learned counsel for the appellant.)  
(Ms. Mridula Sen, learned panel lawyer for the respondent/State.)*  
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**JUDGEMENT**

- 1] Heard finally, with the consent of the parties.
- 2] At the outset, counsel for the appellant has submitted that the appellant, after completing his entire sentence has already been released from jail.
- 3] Be that as it may, since the appeal has been preferred by the appellant against his conviction, it is necessary for this Court to advert to the merits of the case.
- 4] This criminal appeal has been filed under Section 374 of Cr.P.C., against the judgment dated 25.8.2018, passed by the Special Judge, Barwani in Special Case No.22/2017; whereby finding the appellant guilty, the learned Judge of the trial Court has convicted the appellant as under:-

CONVICTION		SENTENCE		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of Fine
294	IPC	3 months R.I		-



323 (2 counts)	IPC	6 months	Rs.250/- each	20 days
307	IPC	5 years R.I	Rs.3,000/-	3 months R.I

5] In brief facts of the case are that an FIR was lodged on 6.5.2017, at around 7.30 in the morning, by the complainant Anita Bai (PW-1) stating that in the morning around 7.00 a.m. when she, along with her daughter/victim Preeti (PW-2) and sister-in-law Anita Bai (PW-7) were going to their field, when they reached near Narayan Mandloi's house, at that time the appellant Mahendra Mankar S/o Kalu Mankar, who was standing there with a *darata* (*Sickle*) in his hand, started abusing her daughter Preeti (PW-2), and when they tried to stop him, he started assaulting Preeti (PW-2) with the darata, as a result which she suffered grievous injury on the back side of her head and neck, and when the complainant tried to intervene she was also assaulted on her right hand, and when her brother-in-law Pappu (PW-3) came to rescue them appellant also assaulted him with darata on his leg and fled from the spot. The police came after dialing 100 by Narendra Bhai Bilore, who also called ambulance by dialing 108. On such FIR Ex-P-1, the investigation ensued, and subsequently, after filing of the charge-sheet, the learned Judge of the trial Court, after appreciating the evidence adduced on record by the parties, has convicted the appellant as aforesaid. Hence, this appeal.

6] Counsel for the appellant has submitted that although the factum of incident is not denied, however, so far as the intention



of the appellant to murder the complainant is concerned, the same cannot be made out as the incident has taken place at the spur of the moment, in the morning when the appellant was standing on the road with a Darata, which is a common device used in agriculture.

7] Counsel for the appellant has also submitted that although in the FIR it is mentioned that two other persons also suffered injuries but there is no such MLC on record. It is further submitted that injuries have also not been caused on any vital part of the victim Preeti (PW-2), which is also reflected from the deposition of (PW-5) Dr. Ritesh Kag, who has stated that the injured has suffered as many as five injuries but none of them were on the vital part of the body of Preeti, and otherwise also, (PW-5) Dr. Ritesh Kag has stated that the injured could have died had she not been provided the treatment in time, thus it is submitted that the appellant deserves to be acquitted under Section 307 of IPC and may be convicted under Section 324 of the IPC.

8] Counsel for the appellant has also relied upon the judgment rendered by the Supreme Court in the case of **Sivamani and another Vs. State reported as 2023 SCC Online SC 1581** wherein also injuries were inflicted on the shoulder and left thumb by a knife and the appellant was convicted u/s. 323 and s.324 of IPC.

9] Counsel for the respondent/State on the other hand has opposed the prayer and it is submitted that no case for interference is made out.



10] Having considered the rival submission and on perusal of the record it is found that the FIR (Ex-P-1) was lodged almost immediately after the injured was taken to the hospital, and in the hospital she was examined by Dr. Ritesh Kag (PW-5), who has found as many as five incised wound on the body of the victim Preeti as under:-

- 1- कटा हुआ घाव नियमित मारजीन का जिस पर से खून निकल रहा था जो कि दाहिनी ओर स्केपुला रीजन के उपरी भाग पर था जिसका आकार  $2^{1/2}$  इंच X  $1/4$  इंच X  $1/4$  इंच का था।
- 2- कटा हुआ घाव नियमित मारजीन का जिस पर से खून निकल रहा था जो कि दाहिनी ओर स्केपुला रीजन के उपरी भाग पर था जिसका आकार  $2^{1/2}$  इंच X  $1/4$  इंच X  $1/4$  इंच का था।
- 3- कटा हुआ घाव नियमित मारजीन का जिस पर से खून निकल रहा था जो कि बाईं ओर स्केपुला रीजन के उपरी भाग पर था जिसका आकार 6 इंच X  $1/4$  इंच X  $1/4$  इंच का था।
- 4- कटा हुआ घाव नियमित मारजीन का जिस पर से खून निकल रहा था जो कि दाहिनी ओर स्केपुला रीजन के नीचे के भाग पर था जिसका आकार  $1/4$  इंच X  $1/4$  इंच X  $1/4$  इंच का था।
- 5- कटा हुआ घाव नियमित मारजीन का जिस पर से खून निकल रहा था जो कि बाईं ओर एक चौथाई कमर के भाग पर था जिसका आकार  $1/4$  इंच X  $1/4$  इंच X  $1/4$  इंच का था।

11] Apparently the aforesaid injuries have not been inflicted on the vital part of the body, but on a close scrutiny it is found that injury no.1 to 4 were inflicted around the neck of the injured, whereas injury no.5 was on the waist of the injured. All the injuries were quite large, and it is apparent that the appellant missed the neck of the victim by a few inches only. A photograph Article A-1 is also filed on record and proved as Article A-2 by victim Preeti (PW-2). Although she has been confronted by the defence that her face is not visible in the said photograph to which she has admitted, however, considering the injuries which are reflected in the photograph and the injuries as



defined as by Dr. Ritesh Bagh (PW-5) are identical in nature, it is apparent that the injuries were tried to be inflicted on the vital region of the injured, and it was her sheer luck only that the victim survived the attack. Deposition of injured Preeti (PW-2) also reveals that she was assaulted by the appellant without any provocation on her part as he started abusing them in the morning while she was going along with her mother and her aunt, and when they tried to stop him, he started assaulting her. Thus, it cannot be said that it was a crime committed at the spur of the moment, but it appears that it was the appellant only who created such scenario and started the incident by abusing them for no apparent reason. In such circumstances, considering the fact that Anita (PW-1), who is mother of the victim has also supported the case of the prosecution, this Court has no hesitation to hold that the learned judge of the trial Court has not committed any error in convicting the appellant as aforesaid.

12] So far as the decision in the case of **Sivamani (supra)**, relied upon by the learned counsel for the appellant is concerned, the same is distinguishable on facts. In the said case, in para 10, the supreme Court has clearly stated that there was no allegation of repeated or severe blows having been inflicted. Whereas in the present case, repeated injuries have been inflicted all by Darata around the scapular region which is around the neck of the victim only

13] In view of the same, this Court is of the considered opinion that no error has been committed by the learned judge of the trial



Court in convicting the appellant, and thus, no case for interference is made out, and the impugned judgement of conviction is liable to be and is hereby affirmed.

14] Accordingly, the present appeal filed on behalf of the appellant being devoid of merits, is hereby *dismissed*.

(SUBODH ABHYANKAR)  
JUDGE

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