

1  
**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

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

**CRIMINAL APPEAL No. 4782 of 2021**

**BETWEEN:-**

**HEMCHAND S/O PIDIYA BHURIYA, AGED ABOUT 40  
YEARS, OCCUPATION: LABOURER VILLAGE  
GOPALPURA, P.S. KALYANPURA (MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI VIKRAM SINGH BULE, ADVOCATE )***

**AND**

**THE STATE OF MADHYA PRADESH INCHARGE POLICE  
STATION THROUGH P.S. KALYANPURA (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(BY SHRI SANTOSH SINGH THAKUR - GOVT. ADVOCATE)***

**Reserved on: 15.06.2023**

**Delivered on :04.07.2023**

*This appeal coming on HEARING this day and with the consent of  
parties, heard finally and the court passed the following:*

**JUDGEMENT**

1. This criminal appeal is preferred under section 374 of Cr.P.C. by the appellant being aggrieved by the judgment dated 02.08.2021 passed by Principal Session Judge, Jhabua in S.T. No..148/2019 whereby the appellant is convicted for the offence punishable under Section 307 of IPC and sentenced for 05 years with fine of Rs.1000/- and default stipulations.

2. At the very outset, counsel for the appellant prays for withdrawal of the application for suspension of jail sentence I.A.2762/2023 and prays for final hearing of this appeal at motion stage.

3. As per the prosecution story, 20.07.2019, at about 10:30 PM, the complainant reached on the shop of Valiya Pal to take Biri, whereon accused Hemchand has called him to his house and asked as to why the complainant is standing in front of his house and what is the relation of the complainant with his wife and further he started assault on the complainant with kicks and fists. Therefore, on the complaint of the injured, the FIR was registered against the appellant under Section 294, 323 and 506 of IPC.

4. During investigation, medical examination was conducted, spot map was prepared, seized articles were sent to the Forensic Laboratory and thereafter recording the statements of the witnesses the chargesheet was filed to the Court of JMFC, Jhabua under Sections 294, 506, 323 and 326. In turn, the matter was committed to the Sessions Judge, Jhabua. Thereafter, the learned trial Court framed the charges under Section 294, 506 and 307 of IPC. The appellant/accused abjured his guilt and he took a plea that he is innocent.

5. In this regard, the prosecution has examined as many as 07 witnesses namely the Valia, (PW-1), Soma @ Huma (PW-2), Rev Singh @ Ravji (PW-3), Dinesh (PW-4), S.S. Saktawat (PW-5), Dr. B.S. Baghel (PW-6), Dr. B.S. Davar (PW-7). So far as the defense evidence is concerned, Seubai (DW-1), has been adduced on behalf of the defence in this case.

6. The learned trial Court, after considering the evidence and material available on record has convicted the appellant under Section 307 of IPC by acquitting him from the charges under Sections 294, 506 of IPC.

07. The appellant has preferred the present appeal mainly on the ground that judgment and order of the trial Court is contrary to law and facts available on record. The learned trial Court committed error in not considering the

material contradictions and omissions appeared in the statements of prosecution witnesses. It is also contended that the complainant has lodged the false report due to old enmity between the parties and no independent witness has fortified the prosecution story. Apart that learned counsel for the appellant has further submitted that the learned trial Court has not considered the statements of witness in its right prospect and wrongly discarded the same, which is clear violation of principle of natural justice. Learned counsel for the appellant has vehemently contended that the learned trial Court has not correctly discussed, analyzed and evaluated the prosecution evidence and the medical reports. Therefore, in such a situation, the approach of learned trial Court holding guilty to the appellant for the aforesaid offence being perverse, deserves to be set aside.

8. During the course of arguments, learned counsel for the appellant submits that the appellant has assaulted the complainant only with kicks and fists and there is nothing on record so that the charges under Section 307 of IPC can be applied in the present case, but the learned Trial Court without considering the aforesaid fact and nature of injuries so caused by the kicks and fists, has wrongly convicted the appellant under Section 307 of IPC. It is further alternatively submitted that out of 05 years of his period of incarceration, the appellant has already undergone almost 02 years and he is in jail since 02.08.2021 i.e. from the date of judgement. It is further submitted that at the most, the offence of the appellant will come into the purview of Section 323 of IPC and in view of the nature of offence entreated for reduction of the jail sentence of the appellant to the period already undergone or as the Court may deem fit.

9. Learned Public Prosecutor has opposed the prayer. Inviting my

attention towards the conclusive paragraphs of the impugned judgement, learned public prosecutor has expostulated that the injury caused by the appellant was serious in nature. He supported the judgment and order by submitting that there is clear and overwhelming evidence against the appellant, therefore, according to the learned Public Prosecutor, the appeal deserves to be dismissed.

10. In view of the rival submissions, arguments advanced by learned counsel for both parties and the evidence available on record, the point for consideration is as to whether the findings of learned trial Court convicting and sentencing the appellant under Section 307 of IPC is incorrect on the point of law and facts.

11. In order to evaluate the prosecution evidence, at the outset, the statements of complainant/injured Soma @ Huma (PW-2) is required to be ruminated. The complainant has deposed that when he had gone to purchase biri, the accused called him and after some altercation, beaten him with stick. In this sequence, he had given the details of injuries which were supported not only by his father PW-3 but also by his brother PW-4 Dinesh and which also further fortified the medical testimony of Dr. B.S. Baghel PW-6 and Dr. B.S. Dabar PW-7 and their respective reports. The testimony of these prosecution witnesses recorded in their examination in chief, has not been shaken in their cross examination.

12. 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....."* सत्यमेव जयते

13. Similarly, the argument regarding interested witnesses is also appears to be feeble arguments. So far as the relatedness and interestedness is concerned, the 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".*

14. 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.

15. Having said that, this case is well fortified by injured Soma (PW-1). 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."*

16. In view of the aforesaid propositions of law, it emerges that the prosecution case is supported by injured himself and medical testimony of doctor and also by the instant FIR. As such the testimony of these witnesses could be relied subject to proper scrutiny of the evidence.

17. Now, turning to the facts of injuries, as per prosecution evidence and MLC report Ex.P/7, the injured has received six injuries. According to MLC and X-ray report (Ex.P/8), there was an injury in the abdomen of the injured, where free gas under the diaphragm was found. Dr. B.S. Dabar (PW-7), has further deposed that in reply to enquiry report, he answered that the said injury was dangerous to life in lack of treatment and the death of injured would be probable. In the aforesaid report, the nature of injuries has been examined. In this regard, the provisions of Section 320 of IPC is required to be referred to, which reads as under:-

**18. 320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:**—

*(First) — Emasculation.* न्यमेव जयते

*(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."*

19. The 8th point of the aforesaid provision defines that any hurt which endangers life would be grievous. Since, Dr. B.S. Dabar (PW-8) has explicitly elucidated that the injury was dangerous to life, hence, the finding of learned trial Court regarding grievous injury, is found infallible and intact.

20. Now, the question as to whether the injuries were 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.

21. 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 injuries are inflicted, are also taken into account to determine the nature of the offence. The role of motive is also ought to be taken into consideration.

22. 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."*

23. In this case, as per the charge framed by learned trial Court, the injured Soma was beaten by kicks and fists. Here it is staggering that use of stick has not been mentioned in the charges leveled against the appellant. However, even if it is assumed that the stick was used, then only on the basis of using of stick, it cannot be ascertained that accused has caused the injuries to the injured with intention to cause death. In the MLC, no injury was found which is sufficient in the ordinary course of nature to cause the death of the injured. The motive behind offence is also not evinced by the prosecution.

24. 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.

25. Having gone through the record and medical reports including the statements of witnesses, this is crystal clear that the injured has received 06 injuries and out of them, one injury on stomach was found grievous. The prosecution has not succeeded to prove that the said injury was caused by any sharp or dangers 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 with kicks and fists.

26. 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, the appellant is liable to be convicted under Section 325 of IPC.

27. Now, turning to the point of sentence, looking to the fact that the said incident of offence has happened in the year 2019, the appellant is liable to be sentenced under Section 325 of IPC for two years R.I. with fine of Rs.3000/-.

28. 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 325 of IPC and sentenced to undergo for two years R.I. with fine of Rs.3000/- and in default of payment of fine further undergo for three months S.I. The fine amount if recovered fully, out of that Rs.2000/- be paid to the injured/complainant Soma @ Huma as compensation under Section 357(1) of Cr.P.C. Accordingly, the appeal is partly allowed.

**29. He be set at liberty forthwith if not required in any other case in jail after completion of the aforesaid incarceration period subject to deposit of fine amount.**

30. The order of the trial Court regarding disposal of the seized article stands confirmed.

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

Certified copy, as per rules.

**(PREM NARAYAN SINGH)  
JUDGE**