

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

**BEFORE**

**HON'BLE SHRI JUSTICE PREM NARAYAN SINGH  
CRIMINAL REVISION No. 896 of 2022**

**BETWEEN:-**

1. **BABLU S/O SHRI GYASUDDIN, AGED ABOUT 47 YEARS, OCCUPATION: LABOUR INPUN ROAD, SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
2. **SABBAN S/O SHRI GYASUDDIN, AGED ABOUT 39 YEARS, OCCUPATION: LABOUR INPUN ROAD, SANAWAD, THANA SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
3. **ISHU D/O SHRI GYASUDDIN, AGED ABOUT 34 YEARS, OCCUPATION: LABOUR INPUN ROAD, SANAWAD, THANA SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
4. **FIROZ S/O SHRI REHMAN KHAN, AGED ABOUT 44 YEARS, OCCUPATION: LABOUR INPUN ROAD, SANAWAD, THANA SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
5. **NABBO BEE W/O SHRI SHEIKH WAHED, AGED ABOUT 44 YEARS, OCCUPATION: LABOUR INPUN ROAD, SANAWAD, THANA SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
6. **JUGRO BEE W/O SHRI WAHID, AGED ABOUT 44 YEARS, OCCUPATION: LABOUR INPUN ROAD, SANAWAD, THANA SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
7. **ANWARE W/O SHRI SHEIKH FARED, AGED ABOUT 54 YEARS, OCCUPATION: LABOUR INPUN ROAD, SANAWAD, THANA SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
8. **SHAREEF W/O SHRI NAJEER, AGED ABOUT 49 YEARS, OCCUPATION: LABOUR INPUN ROAD, SANAWAD, THANA SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
9. **FARED KHAN W/O SHRI UMAR, AGED ABOUT 30 YEARS, OCCUPATION: LABOUR INPUN ROAD,**

SANAWAD, THANA SANAWAD DISTRICT  
KHARGONE (MADHYA PRADESH)

10. AARIF W/O SHRI BASER, AGED ABOUT 34 YEARS,  
OCCUPATION: LABOUR INPUN ROAD, SANAWAD,  
THANA SANAWAD DISTRICT KHARGONE  
(MADHYA PRADESH)
11. RASED S/O SHRI BASER, AGED ABOUT 29 YEARS,  
OCCUPATION: LABOUR INPUN ROAD, SANAWAD,  
THANA SANAWAD DISTRICT KHARGONE  
(MADHYA PRADESH)
12. HAKEM S/O SHRI IRFAAN, AGED ABOUT 34  
YEARS, OCCUPATION: LABOUR INPUN ROAD,  
SANAWAD, THANA SANAWAD DISTRICT  
KHARGONE (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI ABHISHEK SHARDA, ADVOCATE)

**AND**

1. THE STATE OF MADHYA PRADESH STATION  
HOUSE OFFICER THROUGH POLICE STATION  
SANAWAD (MADHYA PRADESH)
2. SAVITRI BAI W/O KANHAIYALAL KHADERE  
THAKUR INPUN, BHOGAON ROAD, SANAWAD  
(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI H.S. RATHORE, GOVERNMENT ADVOCATE)

(BY SHRI HARISH CHANDRA TRIPATHI, ADVOCATE)

.....  
**RESERVED ON** : **01.12.2023**

**PRONOUNCED ON** : **11.12.2023**  
.....

*This criminal revision having been heard and reserved for orders,  
coming on for pronouncement this day, the Court passed the following:*

**ORDER**

With consent of the parties heard finally.

01. This criminal revision under Section 397 and 401 of Cr.P.C. has  
been filed by the petitioners being aggrieved by the judgment dated 16.02.2022

passed by the Additional Sessions Judge, Sanawad, District-Mandleshwar in Criminal Appeal No.64/2020, by which learned Sessions Court partly allowed the appeal and modified the order dated 14.10.2017 passed by Judicial Magistrate First Class in Criminal Case No.798/2012, wherein learned Sessions Judge affirming the sentence under Section 148 of IPC modified the sentence from 6 months R.I. with fine of Rs.100/- to only fine of Rs.10,000/- and default stipulation to each petitioner. Likewise, the learned trial Court affirmed the conviction under Section 323/149 of IPC but modified the sentence from 6 months R.I. with fine of Rs.100/- to only fine of Rs.1,000/-. Similarly, the learned trial Court affirming conviction under Section 427 of IPC rectified the sentence from 6 months R.I. with fine of Rs.200/- to only fine of Rs.25,000/- and default stipulation to each petitioner for the offence.

02. Since the revision has been filed on behalf of petitioners namely Bablu, Sabban, Ishu, Firoz, Nabbo Bee, Jugro Bee, Anware, Shareef, Fared Khan, Aarif, Rased and Hakem, hence, the findings of the learned trial Court regarding these petitioners are required to be considered.

03. Briefly stated facts leading to the present revision in short are that on 20.11.2012 at morning 9 o'clock, the accused persons reached at home of the complainant-Savitri, abused the complainant Savitri and her family members and also assaulted with stone on the head and leg of the complainant-Savitri. Motorcycle bearing registration No. MP10MD2472 and Pulsar bearing registration No. MP09 MB 0524 was broken by the accused persons. When the complainant said to her husband, son Vicky and brother-in-law Kullu to get inside of the house, the accused persons warned them to kill, for which, complainant-Savitri lodged report for the offences under Sections 148, 294, 323/149, 427, 506 (Part-II) about the said incident. Thereafter, the police party,

after following due procedure, arrested the accused persons and registered the case against the appellants. After due investigation, charge-sheet was filed against the appellants/accused as aforesaid.

04. In turn, appellants were charged by the learned trial Court for offences under Sections 148, 294, 323/149, 427 and 506 (Part-II) of IPC. They abjured their guilt and took a plea that they had been falsely implicated in the present crime and prayed for trial.

05. In support of the case, the prosecution has examined as many as 10 witnesses namely Savitribai Thakur (PW-1), Kanhaiya Thakur (PW-2), Kullu @ Kulsingh (PW-3), Vicky Thakur (PW-4), Seemabai (PW-5), Nitin (PW-6), Sachin (PW-7), Vishal (PW-8), Virendra Mandloi, Doctor (PW-9), Surendra Singh Jhala, Retd. DSP (PW-10). No witness has been adduced by the appellants in their defence.

06. Learned trial Court, on appreciation of the evidence and arguments advanced by the parties, pronounced the impugned judgment on 27.02.2023 and finally concluded the case and convicted the appellants as aforesaid. Against which, the petitioners have filed an appeal before the learned Appellate Court. Thereafter, the learned Appellate Court adjudicated the case as aforesaid.

07. Being crestfallen by learned Appellate Court, the petitioners have preferred this criminal revision on several grounds but during the course of arguments, learned counsel for the petitioners did not press this revision on merit and nor assail the finding part of judgment. They confine their arguments on the point of fine only. It is also submitted that the petitioners have already deposited the fine amount so awarded by the learned trial Court. It is further

submitted that the petitioners deserve some leniency as they have already suffered the ordeal of the trial since 2012 i.e. for a period of 11 years. It is further submitted that this petition be partly allowed and fine amount imposed upon the petitioners be reduced.

08. Learned counsel for the petitioners further contended that the fine amount imposed under Section 427 of IPC is also against the law as it cannot be more than Rs.10,000/- for which the trial Court empowered.

09. Learned counsel for the State on the other hand supports the impugned judgment and prays for dismissal of this revision.

10. In backdrop of the rival submissions, the point for determination in this revision is that as to whether the impugned order passed by learned Appellate Court is suffering from impropriety, illegality and infirmity ?

11. Although, learned counsel for the petitioners has not contended anything regarding merits of conviction of this case. However, the learned trial Court as well as the learned Appellate Court has not committed any error in appreciation of evidence available on record. The prosecution case is well supported by the testimony of eye witnesses and injured witnesses. It is also well fortified by testimony of medical witnesses as well as police personnel. **As such, it is found that both the Courts below, having considered the material available on record, correctly found that the case of the prosecution is well supported by the injured and other witnesses.** Hence, no infirmity is found in the impugned order of conviction passed by both the Courts below, accordingly, the same is upheld.

12. Now coming to the point of sentence, only the single question arose before this Court is, as to whether the learned Appellate Court can enhance the fine amount to the extent of Rs.25,000/-. As per Section 29(2) of Cr.P.C.,

learned Judicial Magistrate First Class has been empowered to pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees or of both. On this aspect, the law enshrined in second proviso of Section 386 of Cr.P.C. is worth referring here :-

"Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal."

13. On this aspect, this Court can beneficially refer the law laid down by the Full Bench of Hon'ble Apex Court in the case of *Jagat Bahadur Vs. State of Madhya Pradesh, AIR 1966 SC 945*, in which it has been held that on principal as well as on authority, the power of the appellate Court to pass a sentence must be measured by the power of the Court from whose judgment, an appeal has been brought before it. The following excerpt of the aforesaid judgment is condign to quote here :-

"Therefore, both on principle and authority it is clear that the power of the appellate court to pass a sentence must be measured by the power of the court from whose judgment an appeal has been brought before it."

14. In view of aforesaid proposition, considering the law enshrined under Section 29(2) of the Cr.P.C. and second proviso of Section 386 of the Cr.P.C., it is crystal clear that since the Court of a Magistrate of the first Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees or of both, as per second proviso to Section 386 of the CrPC, the appellate Court shall not inflict greater punishment for the offence, than might have been inflicted by the Court passing the order or sentence for that offence. As such, if the Judicial Magistrate 1st Class has

jurisdiction to try the offence in question, the appellate Court could not have passed the sentence more than the one which can be passed by the respective JMFC for that offence. Therefore, enhancement of fine amount exceeding the jurisdiction of the Magistrate by the appellate Court is not in accordance with law and the same is not sustainable.

15. In view of the aforesaid analysis of law as well as ratio held by Hon'ble Apex Court, the order of First Appellate Court regarding imposed fine of Rs.25,000/- under Section 427 of IPC is suffering from grave illegality and infirmity, which is required to be modified. Accordingly, the fine imposed under Section 427 is reduced from 25,000/- to Rs.10,000/- to each of the petitioners. If the petitioners have already deposited the fine amount before the trial Court, which refers to the fine amount imposed upon them, the trial Court is directed to refund the remaining amount to the petitioners after adjusting the aforesaid imposed amount, on an appropriate application filed in this behalf. Remaining part of the judgment does not warrant any interference.

16. With the aforesaid direction, this revision petition is partly allowed and disposed of.

17. A copy of this order be sent to the concerned trial Court for necessary compliance.

18. All the other interlocutory applications, if any, shall stand **disposed of**.

Certified copy as per rules.

(PREM NARAYAN SINGH)  
JUDGE

