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

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

CRIMINAL APPEAL No. 10001 of 2023

BETWEEN:-

**AKRAM @ AKKA S/O RAFIQ ANSARI, AGED ABOUT 24 YEARS,
OCCUPATION: FABRICATION LABOR R/O WATER PUMP
GROUND AZAD NAGAR INDORE (MADHYA PRADESH)**

.....APPELLANT

(SHRI RAVINDRA SINGH PARMAR - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER
THROUGH POLICE STATION AZAD NAGAR INDORE (MADHYA
PRADESH)**

.....RESPONDENT

(SHRI GAURAV RAWAT - DY. GOVT. ADVOCATE)

Heard on : 19.09.2023

Pronounced on : 30.10.2023

सत्यमेव जयते

This criminal appeal having been heard and reserved for judgment, coming on for pronouncement this day, the court passed the following:

JUDGMENT

With consent of the parties heard finally.

2. This criminal appeal under Section 374 of Cr.P.C. has been filed by the appellant being aggrieved by the judgment dated 06.07.2023, passed by the learned Additional Sessions Judge, Indore, in Sessions Trial No. 817/2021, whereby the appellant has been convicted for offence under Sections 326, 452, 294, 506 (Part -II) of IPC, and sentenced to undergo 05 years, 01 year, 01 month, 01 year R.I with fine of Rs. 1,000/-, Rs.500, Rs.500, Rs.500 each respectively with default stipulations.

3.The prosecution case in brief is that on 10th August, 2021 at about 6 O'clock in the evening when the complainant Arseen was at her father's house situated at Azad Nagar, water pump ground Indore, then the accused Akram alias Akka who was already acquainted with her, entered into her house forcibly and started talking to her. On this, she objected and threatened him then he abused her mother and father and assaulted her with hands. The accused while beating her, assaulted on her both cheeks with some sharp object, which started bleeding therefrom. On Arseen's shout, people residing in her street namely Salma B, Anno B and Asif came there and intervened. Thereafter, the accused fled away, threatening her to cause death. Subsequently, the complainant Arseen along with her mother went to police station Azad Nagar and lodged a report under sections 452, 323, 324, 294 and 506 at crime no. 586/2021 against the accused. Then, the investigation into the matter started.

4.In the course of investigation, a spot map of the incident place was prepared, the injured Arseen was medically examined, the accused was arrested and his memorandum under section 27 of the evidence act was recorded, and on the basis of his memorandum, two blades of wilkinson company were seized, the blood stained cloths of Arseen were seized, statements of the witnesses were recorded and after completion of the investigation, a charge sheet by adding additional section 326 of the IPC with a view to the nature of injury caused to Arseen, was presented in the JMFC Court Indore, from where this sessions case was committed in the Court of Session.

5.After completion of investigation, charges under aforementioned offences were framed and readover to the accused. On which, the accused denied and claimed to be tried.

6.In order to bring home the ingredients of the case, the prosecution has produced as many as 10 witnesses namely Arseen (PW-1), Anisha (PW-2), Salma (PW-3), Devkaran Patel (PW-4), Dr. Abhishek Singh (PW-5), Ramjaan (PW-6), Aslam Khan

(PW-7), Mahesh Prasad Tiwari (PW-8) and Mohd. Ashif (PW9) and Mohd. Iftiyar (PW10). It is worth mentioning here that on behalf of defence, no witness has been examined in this case. Having analyzed the evidence on record, the learned Trial Court convicted the appellant as aforesaid.

7.Learned counsel for the appellant submits that the the appellant is innocent and the learned trial Court has convicted the appellant wrongly without considering the evidence available on record. No eye-witness has supported the case of prosecution. It is further submitted that there are material contradictions and omissions in the statements of the prosecution witnesses but the learned trial Court has erred in ignoring the same and in convicting the appellant. The learned Trial Court has erred in considering that the complainant has grievous injuries as on that point, no medical evidence is available. Finger prints in forensic test report has not been properly proceeded by the prosecution. In spite of that, learned Trial Court has convicted the appellant. On these grounds, counsel prays for setting aside the order passed by the Trial Court. During the course of arguments, learned counsel has also alternatively contended that in such type of offence in which dispute arises suddenly, the appellant should not be sentenced for a period of five years.

8.On the contrary, learned Govt. Advocate has opposed the prayer. He supported the judgment by submitting that there is clear evidence against the appellant, therefore, he prays for dismissal of the appeal.

9.Heard learned counsel for both the parties and perused the record.

10.In view of the rival submissions, arguments advanced by both the counsels for the parties and the evidence available on record, the point of consideration is as to whether the finding of the Trial Court of convicting and sentencing the appellant is incorrect in the eyes of law and facts?

11. At the outset, the conviction under Section 294 of IPC is required to be ruminated. On this point, the statement of complainant is worth considering. Complainant/Injured Arseen (PW-1) in her cross-examination stated that at the time of incident, the accused abused her but she has not substantially stated as to what words are used by the accused. In order to establish ingredients of Section 294 of IPC, the prosecution has to establish that the accused has committed an obscene act in public place by which other persons were annoyed. The sole eye-witness has certainly stated regarding the abuse but has not mentioned the said obscene words. Therefore, it is not established that the accused has used any obscene word with the injured/complainant.

12. As far as the evidence regarding abuse is concerned, it is well settled that these types of abuses are used in general parlance and altercations between rustic people. It is significant to note here that even the injured Arseen has not stated anything about causing annoyance to others in her examination in chief. In this regard, the principle laid down by the Hon'ble High Court of M.P. in ***Dhal Singh v. State of M.P., 1957 MPLJ- 21***, is relevant to refer here-

"That in the class of society to which the parties belonged the abuses had no more significance than mere platitudinous utterances signifying the enraged state of the persons mind. As the accused were villagers and filthy abuses were not uncommon among villagers and in the strata of society to which they belonged, the sting was taken out of the words and they could not be characterised as obscene within the meaning of Section 294 of the IPC. Annoyance is the gist of the offence under Section 294 and in the absence of positive proof of annoyance, there could be no offence under Section 294, IPC."

13. In view of the above case law, it is envisaged that annoyance is main substance of the offence punishable u/s 294 IPC. The above proposition has been followed by the

Hon'ble High Court of M.P. in *Roshanlal v. State of M.P. 1966 MPLJ-87 Note-172 and Kamal Singh v. State of M.P. 2002 (4) MPHT-7*. Virtually, in colloquial language, such type of abuses are often used, and therefore; they cannot be accepted in their literal sense. In *Om Prakash Vs. State of M.P., 1989 MPLJ 657*, it has been held by the Hon'ble High Court that no literal significance can be attached to the abuses. They only delineate the enraged state of mind. Further, in *Sharad Dave and another vs. Mahesh Gupta and others, 2005 LawSuit (MP) 442*, the Hon'ble High Court of M.P. endorsing the aforesaid ratio decidendi adumbrated as under-

"Mere platitudinous utterances signifying the enraged state of the person's mind would not be sufficient to attract the application of the provisions of section 294, of the Indian Penal Code. Thus mere 'vulgar abuses' do not constitute offence under section 294 of the Indian Penal Code."

14. In light of the aforesaid propositions, in the case at hand, since no prosecution witness deposed anything about causing annoyance before the Court, the prosecution, therefore, has failed to prove that the accused person committed an obscene act by which others have been annoyed. In the upshot, accused persons deserve to be acquitted from the charge of the offence under Section 294 of the IPC. Hence, finding regarding conviction under Section 294 of IPC is perverse in the eye of law, therefore, on this point, **the finding of conviction under Section 294 of IPC and sentencing the appellant in this regard is liable to be set aside.**

15. Now, coming to the offence of intimidation under Section 506 of IPC, in this case, Arseen (PW-1) has deposed that the accused while running from the spot was stating that "today, you were rescued, but after today, he will kill." In fact, these words are expressed while accused person is fleeing away from the spot, that's why these

words cannot be attached to the offence of threatening. Rest of the prosecution witness has not supported the said statement. Hence, the prosecution is unable to establish the offence under Section 506 of IPC. Therefore, **finding of learned Trial Court regarding conviction and sentence under Section 506 of IPC is also found unsustainable.**

16. Now, coming to the offence under Section 326 of IPC, the witness Arseen (PW-1) has deposed in the Court that on 10.08.2021, at about 06:00 p.m. in the evening, when she was going to kitchen then the accused came and assaulted her on her both cheeks by the means of blades. This statement of complainant has not been controverted in her cross-examination. This witness has lodged the FIR Ex.P-1 and thereafter, she was medically examined. Witness Devkaran (PW-4) has also supported the contents of the FIR. In this way, the testimony of complainant finds support from the statement of scribe of the FIR. In addition to that, Anisha (PW-2) and Salma (PW-3) were examined as eye-witness of the case. Out of them, Anisha has been declared hostile. She has not supported the prosecution case. But witness Salma (PW-3) has asserted that when she was kneading dough, she heard the sound of screaming and then came out and thereafter, she had seen that Arseen was crying by holding her cheeks and blood was oozing therefrom. However, she stated that people told her that someone has injured Arseen. This witness has also been declared hostile. Even then the injury of Arseen finds support by this witness.

17. In this regard the statement of Dr. Abhishek Singh (PW-5) is also poignant. He has graphically stated that there was injuries on the cheeks of the injured. He has also stated that the said injury was grievous in nature and it can cause disfiguration of face. Further, he has also stated that the injured was referred for plastic surgery. His report is Ex. P-4. In this way, the statement of injured Arseen (PW-1) is also backed by the medical report. Witness Ramjaan (PW-6) is the father of the injured. He has supported

the prosecution case although the statement of this witness is relevant under Section 8 of the Evidence Act.

18. Be that as it may, the complainant Arseen (PW-1) has graphically supported the injury. Now, the question is as to whether on the basis of sole testimony of injured Arseen, 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 a single witness. It is quality not the quantity of evidence, to be considered while appreciating the available evidence. 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 Zedje 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

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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.

19. In this case, the Court is bound to test and enquire the single testimony of the injured Arseen (PW-1). She has specifically deposed that the accused assaulted her with blades and caused injuries on her cheeks. The statement of this witness has not been rebutted in her cross-examination which runs in almost 7 pages. Here, it is pertinent to mention that, being an injured witness, testimony of Arseen has special status in the eyes of law and 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."

20. Learned counsel for the appellant has also contended about the nature of injury. He has contended that the prosecution is unable to prove the fact that the injury was grievous. On this aspect, learned Govt. Advocate remonstrated that since the face of

injured was disfigured due to assault of blade, the injury would be treated as grievous injury. On this aspect, the definition of grievous injury enshrined under Section 320 of IPC is worth to be pointed out here:-

VI. Permanent disfiguration of the head or face.

21. On perusal of the record, it is revealed that the size of injury is of 5 X 2 c.m. on the right cheek while size of injury on left cheek is of 6 X 3 c.m. It is stated by Dr. Abhishek Singh that such type of injury caused on cheek having a natural result of disfiguration of face which is an important fact in case of a injured lady. In these circumstances, the contention of appellant's counsel regarding non-causing of grievous injury is found without any substance. The learned Trial Court after considering and analyzing the evidence of prosecution witness, has adjudicated that the said injury was grievous because it relates to disfiguration of the face since the injury was caused by blade, the finding of convicting accused under Section 326 of IPC is liable to be and is hereby affirmed.

22. So far as, the offence under Section 452 of IPC is concerned, the accused, after entering into the house of the complainant caused injury by the means of blade which shows that he has entered in the house with preparation to cause injury. Since the offence under Section 326 of IPC has been found proved, the appellant will also be liable for the offence punishable under Section 452 of IPC. As such, the finding of Section 452 of IPC is also found sustainable.

23. Now coming to the sentencing part of the appellant. The appellant is in jail but looking to the nature of offence, I am not inclined to let off the appellant with period already undergone. This is a case where only due to the injury, the injured has suffered a permanent disfiguration on her face which would cause a mental pain in her whole life. In such circumstances, the the accused cannot be offered for any leniency or sympathy.

However, the facts, that the appellant has no criminal past and he has suffered ordeal of this case since 2021 i.e. 02 years, are to be considered as mitigating circumstance.

24. 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 and thereby the sentence may be reduced by enhancing the fine amount.

25. In the sequence thereof, the appellant is acquitted under Section 294 and 506 of IPC and therefore, if the fine deposited for these offences, be adjusted against the fine amount imposed under Section 326 of IPC. 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 by enhancing the fine amount from Rs. 1000/- to 10,000/- and in default, he will suffer 3 months and the period which he has already been suffered be adjusted. The fine amount so deposited by the appellant, be paid to the injured- Arseen (PW-1) as compensation. The fine amount and compensation, if already deposited, shall be adjusted. Insofar as, the sentence awarded under Section 452 of IPC is concerned, the same is hereby affirmed.

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

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

28. In view of above the appeal stands **partly allowed**.

(PREM NARAYAN SINGH)
JUDGE