IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 30th OF NOVEMBER, 2023

CRIMINAL APPEAL No. 11662 of 2023

BETWEEN:-

VIJAY S/O NANURAM GUJAR, AGED ABOUT 31 YEARS, OCCUPATION: LABOUR VILLAGE JUNA BALWADA P.S. BALWADA DISTT. KHARGONE (MADHYA PRADESH)

.....APPELLANT

(BY SHRI MUKESH KUMAWAT, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION BALWADA DISTT. KHARGONE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI RAJESH JOSHI, GA FOR THE STATE)

.....

Heard on :30.10.2023

Delivered on :30.11.2023

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

JUDGMENT

Appellant has preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the judgment dated 15.05.2023 passed by 1st ASJ, Barwah, Khargone (M.P.) in S.T. No.11/2017, whereby the appellant has been convicted for the offence punishable under Section 307 of I.P.C. and sentenced to undergo 07 years with a fine of Rs.2000/- respectively and in default of payment of fine, to further undergo one

months R.I.

2. As per the prosecution story, on 18.12.2016 at about 4:30 PM, the complainant Manoji, Vikas and Vasim were going towards Balwada on Motorcycle. The appellant, Vijay and co-accused Jitenra was coming from Balwada on motorcycle. All of a sudden, there was a collision taken place between both the motorcycles and on this issue, there was a dispute between the parties. They started to beat each other. In the heated spur of moment, the applicant Vijay picked a wooden stick from the spot itself and caused injury to injured Vikas, the dispute was intervened by other persons. Later on, an FIR was lodged under Section 294, 323, 506 of IPC. During the investigation and after the MLC, the offence under Section 307 of IPC was added. After due investigation, charge-sheet was filed against the appellant/accused under Sections 307, 294, 323, 506/34 of IPC against the appellant and co-accused persons.

03. In turn, the case was committed to the Court of Session and thereafter, appellant was charged for offence under Section Section 307, 294, 323, 506/34 of IPC. He abjured his guilt and took a plea that he had been falsely implicated in the present crime and prayed for trial.

04. In support of the case, the prosecution has examined as many as 12 witnesses namely Vaseem (PW-1), Sachin (PW-2), Manoj (PW-3), Dr. Milesh (PW-4), Dr. Nitin Bhargava (PW-5), Ramsingh Bodana (PW-6), Firduyus Toppo (PW-7), Praveen Bhagwate (PW-7), Dharmendra (PW-8), Pappu Singh (PW-9), Vikas (PW-10), Dharmandra Panwar (PW(11) & Rajkumar Awashti (PW-12). No witness has been adduced by the appellant in his defence.

05. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 15.05.2023 and

finally concluded the case and convicted the appellant for commission of the said offence under the provisions of Section 307 of IPC while acquitted him from the charges under Section 294, 506/34 of IPC. The learned trial Court has also acquitted co-accused Jitendra & Sonu from all the offences. However, by order of this Court passed in CRR No.807/2017, co-accused Sonu @ Vikki has been discharged from all the charges.

06. 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. Counsel for the appellant further submits that the appellant has not caused any fatal injury to the injured because there is nothing on record to show that the injured has received serious injury. 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. It is further submitted that there was no previous enmity between the parties, the incident had happened all of a sudden, there is no knowledge and intention or motive to assault the injured, no deadly weapon was carrying by the accused, hence, the offence shall not travel more than the offence under Section 335 of IPC, but the learned trial Court has wrongly convicted appellant under Section 307 of IPC without considering the evidence available on record. Further, PW-10 Vikas, the injured was drunken and the same fact has already been established in the MLC as well by the statements of doctor and the injured himself has admitted in his cross-examination that if he was not drunken then no incident would happen.

7. It is further submitted that as per the MLC and opinion of the Dr. Milesh (PW-4), Dr. Nitin Bhargava (PW-5), they have also suggested that the

injured can receive the injury on account of meeting an accident in drunken position. Hence, prays for setting aside the impugned judgement and acquittal of the appellant.

8. In alternate, learned counsel for the appellant Submits that the learned trial Court has convicted the appellant under Section 307 of IPC and sentenced for 07 years R.I., but looking to the factum that there is no knowledge and intention or motive to assault the injured, no deadly weapon was carrying by the accused, the case of the prosecution should not travel more than the offence under Section 335 of IPC. Hence, prays for reduction of the sentence to the period already undergone or as the Court may deem fit in the interest of justice.

09. Learned Public Prosecutor has opposed the prayer. Inviting my attention towards the conclusive paragraphs of the impugned judgement, learned public prosecutor has submitted that the injured has received the injuries caused by the appellant and the learned trial Court has rightly convicted the appellant by sentencing him appropriately. Hence, prays for dismissal of the appeal.

10. In the backdrop of rival submissions, the question for determination for deciding this appeal is as to whether the finding of learned trial Court regarding conviction and punishment of the appellant under Section 307 of IPC is incorrect in the eyes of law and facts or not.

11. In view of the aforesaid statements, having gone through the record o f trial Court, it is evident that Vikas PW-10 has supported the prosecution case and narrated in his examination in chief that accused Sonu assaulted him with steel bangle (*kada*), thereafter, appellant Vijay and Jitendra hit his head with stick. Further, he was taken for treatment to Balwada then Badwah and further referred to Indore. The statements of the injured Vikas find support from the

statements of eye-witness Vaseem (PW-1) who has clearly deposed in his examination in chief that Vijay has caused injury on head of Vikas with stick, Vikas fell down and got unconscious. Sachin PW-2 and Manoj PW-4 have also supported the case of prosecution in their examination in chief. The statements of all these witnesses have not been rebutted in their cross-examination.

12. Learned counsel for the petitioner has adverted to some discrepancies came in the statements of the witnesses, but during whole arguments, he is not able to point out any discrepancies or contradictions which hit the root of the case.

13. With regard to the discrepancies in the statements of witnesses, the Hon'ble Apex court in **Babasaheb Apparao Patil v. State of Maharashtra [AIR 2009 SC 1461]** the Hon'ble Apex Court held as under:-

> *"12. It is to be borne in mind that some discrepancies in the ocular account of a witness, unless these are vital, cannot per se affect the credibility of the evidence of the witness. Unless the contradictions are material, the same cannot be used to jettison the evidence in its entirety. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. Merely because there is inconsistency in evidence, it is not sufficient to impair the credibility of the witness. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court would be justified in discarding his evidence."*

14. Learned counsel for the appellant submitted that since the co-accused person namely Jitendra was acquitted from the same set of evidence, then the appellant cannot be convicted on the same. The law laid down by Hon'ble

Supreme Court in its Full Bench decision, rendered in the case of **Gurcharan Singh Vs. State of Punjab reported in AIR 1956 SC 460,** is poignant in this regard. The relevant part of the judgment is mentioned below :-

> *" Be that as it may, we are no more concerned with the case against those two accused persons who have been acquitted by the High Court; but so far as the appellants are concerned, the evidence of the four eyewitnesses referred to above is consistent and has not been shaken in cross-examination. That evidence has been relied upon by the courts below and we do not see any sufficient reasons to go behind that finding. It is true that three out of those four witnesses are closely related to the deceased Inder Singh. But that, it has again been repeatedly held, is no ground for not acting upon that testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses who could be expected to be near about the place of occurrence and could have seen what happened that afternoon. We need not notice the other arguments sought to be advanced in this Court bearing upon the probabilities of the case because those are all questions of fact which have been adverted to and discussed by the courts below."*

15. Here, it has to be kept in mind that this Court is not testing the legality of acquittal of two accused persons. However, in this appeal on the basis of evidence available on record, this Court is satisfied that the findings of learned trial Court is in accordance with law and facts to the extent that appelant Vijay has inflicted grievous injury to the injured. It is also well settled principle that the maxim "falsus in uno falsus in omnibus" has no application in India. Hon'ble Supreme Court in the case of **Shaktilal Afdul Gaffar Khan Vs. Basant Raghunath Gogle reported in (2005) 7 SCC 749** has held as under :-

> *".....it is the duty of Court to separate grain from chaff. Falsity of particular material witness or material particular would*

not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The

maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence".

16. In view of the aforesaid propositions, the testimony of the witnesses cannot be discredited or wiped out only on the basis that other co-accused person is acquitted on the same set of evidence. As such the aforesaid contention is also not liable to be accepted.

17. Here, it is pertinent to mention here that Vikas is an injured witness, after injury, he got unconscious for some time. Hence, his statements has special status in the eyes of law.

18. Certainly, in this case, witnesses Praveen PW-7, Dharmendra PW-8, Pappu Singh PW-9 and Dharmendra panwar PW-11 have turned hostile and have not supported the case of prosecution. But instead of that, the case has been well supported by Vikas PW-10, hence, prosecution case cannot be thrown out. Virtually, in such type of cases, the Court is bound to test and enquire the testimonies of injured witnesses and other witnesses who are supporting the prosecution case. With regard to the testimony of injured witnesses, the Hon'ble Apex 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."*

19. Now, turning to the next limb of arguments wherein learned counsel for the appellant has submitted that said offence is not coming in purview of Section 307 of IPC but rather it came in purview of Section 335 of IPC.

20. So far as the contention of learned counsel for the appellant regarding not traveling the present offence not more than the offence under Section 335 of IPC is concerned, the provisions of Section 335 of IPC is worth mentioning to refer here as under:

> *"335.* ***Voluntarily causing grievous hurt on provocation.—Whoever 1[voluntarily]*** *causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either*

description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both."

21. Virtually, if the defence counsel wants to rely on the provision of Section 335 of IPC, he has to prove the fact of grave and sudden provocation. However, after going through the whole cross-examination of the prosecution witnesses, no suggestion regarding grave and sudden provocation has been advised by counsel for the appellant before the trial Court. Even in the examination of accused under Section 313 of IPC, accused Vijay has relied on total denial of the case. He has caused a single blow only and in his statement, he has not submitted anything regarding grave and sudden provocation, hence, he cannot be benefited by the provision enshrined under Section 335 of IPC.

22. Now, the question for consideration is as to whether the offence of appellant came in purview of the attempt to murder. As per the prosecution, only single blow was cased by the appellant on the head of injured. No repeated blow is there. Initially, the MLC conducted by Dr. Nitin Bhargav PW-5 clearly shows that *"an abrasion on right side of forehead measuring 1x3cm without oozing blood and swelling"*. Although, in next line, he has stated that blood was in vomatting. The aforesaid statement of Dr. Bhargava and medical report clearly shows that only singly injury on the head was found. Certainly, Dr. Mithlesh PW-4, in his reply of a query, stated that the said injury was dangerous to life and the injury can be caused by wooden stick. It also emerges by the said report that there was a fracture in parietal bone of right side of head.

23. Further, in view of the reports and the nature of the injuries, it cannot be ascertained that the accused has intention to murder, or knowledge as to the fact that the injured would be killed by these injuries. The prosecution has also not setup that the said injury was sufficient to cause death in the ordinary course

of nature. In this regard, The Hon'ble Apex Court in the case of **Jai Narayan Singh vs. State of Bihar [AIR 1972 SC 1764]** mandated as under:-...

"11.Taking the case of appellant Suraj Mishra, we find that he has been convicted under Section 307 IPC and sentenced to 5 years rigorous imprisonment. According to the evidence Suraj was responsible for the chest injury which is described by Dr. Mishra P.W. 6 as a penetrating wound 1 1/2" x 1/2 x chest wall deep (wound not probed) on the side of the right side of the chest. Margins were clean out. Suraj, according to the evidence, had thrust a bhala into the chest when Shyamdutt had fallen as a result of the blow given by Mandeo with the Farsa on his head. According to the Doctor the wound in the chest was of a grievous nature as the patient developed surgical emphysema on the right side of the chest. There was profuse bleeding and, according to the Medical Officer the condition of the patient at the time of the admission was low and serious and the injury was dangerous to life. Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death In the present case however, three injuries are of simple nature though deadly weapons were used and the fourth injury caused by Suraj, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. The benefit of doubt must, therefore, be

given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is not one under Section 307 IPC but Section 326 IPC is set aside and we convict him under Section 326-IPC. His sentence of 5 years rigorous imprisonment will have to be reduced accordingly to 3 years rigorous imprisonment."

24. In ***Mahendra Singh vs. State of Dehli Administration*** **[AIR 1986 SC 309]**, it is held that grievous heart caused by blunt weapon like lathi, can fall within section 325 of IPC and not under Section 326 of IPC. Likewise, in another case, **Halke vs. State of M.P. [AIR 1994 SC 951]**, wherein it is held that the accused caused death of deceased by inflicting blows on him with stick. Head injury proved to be fatal and deceased died after a week. In this case, the accused was held liable and punished under Section 325 of IPC. The following excerpts of the aforesaid judgement is worth to refer here:-

"9.....No doubt the injury on the head proved to be fatal after lapse of one week but from that alone it cannot be said that the offence committed by the two appellants was one punishable under Section 304 Part II IPC. The injuries found on the witnesses are also of the same nature and for the same they are convicted under Section 325 of IPC."

25. Further, the learned trial Court in para no.37 of the impugned judgement has clearly mentioned that *"thus, it is obvious that the intention of accused Vijay was only to cause grievous injury to injured Vikas".* From the aforesaid finding of the learned trial Court, it is elucidated that the appellant has caused single blow with intention to causing him grievous injury, therefore, he cannot be convicted under Section 307 of IPC and the appellant should be convicted for voluntarily causing grievous injury punishable under Section 325

of IPC.

26. Hence, in view of the aforesaid analyses, the conviction under Section 307 of IPC is liable to be and is hereby set aside and instead of that the appellant is liable to be convicted under Section 325 of IPC. Accordingly, this appeal is partly allowed with regard to the fact that the appellant is convicted under Section 325 of IPC instaed of the offence under Section 307 of IPC.

27. So far as the sentence is concerned, looking to the facts and circumstances of the case and the appellant has already undergone approximately more than one year of his incarceration period, and he is facing the criminal case since 2016, hence, to meet the ends of justice, the appellant is sentenced for the period already undergone with fine of Rs.5000/-. In case of default of payment of fine amount, the appellant shall further undergo for 03 months S.I.

28. He be set at liberty forthwith if not required in jail in any case immediately subject to deposit the fine amount after completion of the aforesaid period. The fine amount, if any deposited earlier shall be adjusted.

29. Out of the fine amount so deposited by the appellant, Rs.3000/- be paid to the injured Vikas by the learned trial Court.

30. The judgment regarding disposal of the seized property stands confirmed.

31. A copy of this order be sent the learned Court below concerned for information.

Consequently, the appeal is partly allowed and disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

amit