

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

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 2078 of 2023

BETWEEN:-

**GOVIND S/O BHOLARAM, AGED ABOUT 20 YEARS,
OCCUPATION: LABOUR VILLAGE LALMITTI KHEDA P.S.
BADNAWAR DISTRICT DHAR (MADHYA PRADESH)**

.....APPELLANT

(SHRI R.B.SINGH APPEARED FOR APPELLANT)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION BADNAWAR
DISTT. DHAR (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI SAMEER VERMA PL APPEARING ON BEHALF OF ADVOCATE
GENERAL.***

CRIMINAL APPEAL No. 1258 of 2023

BETWEEN:-

**KALURAM S/O SURESH BHIL, AGED ABOUT 23 YEARS,
OCCUPATION: AGRICULTURE R/O GRAM LAL MITTI
KHEDA P.S. BADNAWAR DISTT. DHAR (MADHYA
PRADESH)**

.....APPELLANT

***(SHRI RITU RAJ BHATNAGAR, LEARNED COUNSEL FOR THE
PETITIONER .***

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION BADNAWAR
DISTT. DHAR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SAMEER VERMA PL APPEARING ON BEHALF OF ADVOCATE

GENERAL.

Reserved on :22.09.2023

Delivered on :17.10.2023

These appeals coming on for hearing, with the consent of parties, heard finally and the court passed the following:

JUDGMENT

Both the appeals are connected and arising out of the same judgement passed by learned trial Court, hence both the appeals are being heard and decided by this common order analogously.

3. Appellants have preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the judgment dated 18.10.2022 passed by Additional Sessions Judge, Badnawar, District Dhar in S.T. No.04/2021, whereby the appellants have been convicted for the offence punishable under Section 304 (2) of I.P.C. and sentenced to undergo 10-10 years fine of Rs.5,000/-, each respectively and in default of payment of fine, to further undergo 06 months R.I.

4. As per the prosecution story, on 04.12.2020, the complainant has lodged the FIR by stating that on the date of incident, at about 06PM, she alongwith her mother was at the house then Govind and Kalu armed with stick asked about her brother Dhannalal, when she refused that she is not aware then they abused them in filthy language when her sister-in-law intervene, Govind assaulted by stick on the head of mother, thereafter, the appellants fled away from the spot threatening them. During the treatment, the injured Bhanwaribai died. Hence, the police party, after following due procedure, arrested the accused person and registered the case against the appellant. After due investigation, charge-sheet was filed against the appellants/accused persons

under Sections 294, 323, 506, 302/34 of IPC.

05. In turn, the case was committed to the Court of Session and thereafter, appellant was charged for offence under Section Section 294, 506(2) and 302 of IPC. They abjured their guilt and took a plea that they had been falsely implicated in the present crime and prayed for trial.

06. In support of the case, the prosecution has examined as many as 15 witnesses namely Sunita (PW-1), Smt.Dali (PW-2), Sawan (PW-3), Rajubai (PW-4), Rekhabai (PW-5), Nanuram (PW-6), Dilip (PW-7), Dhannalal (PW-8), Dr. Sandeep Benjamin (9), Mohd. Aarif Ansari (PW-10), Dr.Sunny Jaiswal (PW-11), R.C.Bhabhar (PW(12), Dr. Jitendra Sharma (PW-13), Badriprasad Tiwari (PW-14) and Sanjay Purohit (PW-15). No witness has been adduced by the appellants in their defence.

07. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 18.10.2022 and finally concluded the case and convicted the appellant for commission of the said offence under the provisions of Section 304-II of IPC while acquitted them from the charges under Section 302, 294 and 506(2) of IPC.

08. Learned counsel for the appellants submits that the appellants are innocent and the learned trial Court has convicted the appellants wrongly without considering the evidence available on record. Counsel for the appellants further submits that the appellants have not caused any fatal injury to the deceased because there is nothing on record to show that the deceased died due to the injury caused by the appellant. 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 appellants. It is further submitted that the prosecution has made

witnesses of one family who are allegedly to be the eye-witnesses and all of them are interested witnesses.

9. It is further submitted that the the deceased expired due to improper medical facilities. Dr. Sanjiv Benjamin PW-9 himself admitted that the injuries on the deceased were of simple in nature and were not sufficient to cause death of the deceased. It is also emerged that the hospital of the deceased was changed during treatment. There is no motive or dispute between the parties, the incident had happened all of a sudden. It is further submitted that in para no.28 of the judgment, the learned trial Court found that according to the medical documents, no organ of the head comes out and there was no fracture. It is further submitted that in the present case, the learned trial Court has awarded maximum sentence to the appellants. It is also submitted that the allegation of assault is only against the appellant Kaluram not Govind. It is further submitted that the learned Court below has failed to appreciate the prosecution evidence and has also erred in convicting the appellant. Hence, prays for acquittal of the appellant.

10. In alternate, learned counsel for the appellants Submits that the learned trial Court has convicted the appellants under Section 304(II) of IPC and sentenced for 10 years R.I. which is maximum as per the provisions of law. The appellants have already undergone approximately 03 years of their incarceration period and prays that if the appellants are awarded sentence of jail to the period of the imprisonment already undergone under the provisions of Section 304(II) of IPC then the ends of justice will be met. In support of this contention, counsel for the appellant has placed reliance upon the judgment of this Court in the case of **Vimal Rana & Others vs. State of Madhya**

Pradesh passed in Criminal Appeal No.745/2006 dated 19.07.2010 whereby the Division Bench has awarded Six years of jail sentence under Section 304(2) of IPC.

11. 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 deceased had died due to the injury caused by the appellant and the learned trial Court has rightly convicted the appellant by sentencing them appropriately. Hence, prays for dismissal of the appeal.

12. I have considered rival contentions of the parties and perused the record.

13. The statements of the eye-witnesses of the incident who are Sunita (PW-1), Smt. Dali (PW-2), Sawan (PW-3), Rajubai (PW-4), Rekhabei (PW-5), have been recorded before the trial Court. All of these witnesses have supported the case of prosecution. Complainant Sunita graphically disposed that on the day of incident, the appellants came her house armed with stick and started hurling abuses. Meanwhile, the deceased Bhavaribai came to intervene, at that time, the accused Govind assaulted with lathi on her head. On account of that, she fell down. When the accused came to beat her, son of her uncle rescued her. Thereafter, the appellants/accused fled away. Statements of this witness have been supported by other eye-witnesses namely Smt. Dali (PW-2), Sawan (PW-3), Rajubai (PW-4) & Rekhabei (PW-5). In cross-examination, the testimony of these witnesses has not been rebutted. The prosecution case is also well fortified by the & Dr. Jitendra Sharma (PW-13)

14. Learned counsel for the appellant, on this point, vehemently contended that the testimony of these witnesses are full of contradictions and

omissions and since they are relatives of the deceased, they should not be relied.

15. On this aspect 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."

16. Now, the contention of learned counsel regarding relative witnesses, is also required to be pondered. Certainly, all eye-witnesses are relatives of deceased, however, the defence failed to evince the submission regarding their interestedness against the appellant,. On this aspect, the decision laid down by Hon'ble Apex Court in the case of **Laltu Ghosh vs. State of West Bengal 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".

17. 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....."

18. So far as the conclusion of the learned trial Court regarding the

offence of culpable homicide not amounting to murder under Section 304(2) of IPC is concerned, since no appeal has been filed by the State regarding enhancement. In this regard, it is not expected from this Court to analyse that finding. Anyway, after perusing the judgment, finding of the learned trial Court regarding conviction under Section 304(2) of IPC, is also found absolute and correct.

19. Actually, in many of the criminal cases, it is quiet often that the offence is witnessed by close relatives of the victim whose presence on the spot of the incident would be natural. The evidence of such witnesses cannot automatically be discarded by leveling them as interested witnesses. In order to arrive at the conclusion of the guilt, the Court has to judge the testimony of the witnesses by the yardstick of the probabilities and their intrinsic worth.

20. In terms of the culpability of both accused in offence, virtually, the liability of Kaluram will be considered within the periphery of common intention as defined under Section 34 of the IPC. The offence pertaining to this case involves a physical act for which the presence of accused persons is necessary at the scene of the offence. In fact, Section 34 has been inacted on the principal of joint liability for the commission of criminal act. The section is only rule of evidence and does not create a substantive offence. An act committed by two or more persons jointly and intentionally can be taken as if it were committed by each of them individually. In the case at hand, both accused persons are admittedly siblings, who are involved simultaneously in the incident. In the case of Shreekantiah Ramayya Munipalli Vs. State of Bombay, AIR 1955 SC 287, the Hon'ble Full Bench of the Supreme Court has held that the accused must be physically present at the scene of occurrence and must actually participate in the commission of the offence in some way or other at the

time of crime is actually being committed.

21. In view of the aforesaid appreciation of evidence, the presence of the co-accused persons namely Kaluram Govind are disclosed from the evidence available on record. Appellant Kaluram is also present at the place of incident with stick. Thus, it can be held that both the accused persons are liable for commissions of the act as they have committed the same jointly or in furtherance of a common intention.

22. In view of the aforesaid propositions of law, the finding of learned trial Court regarding conviction of the appellant under Section 304(2) r/w 34 of IPC, is found immaculate and infallible.

23. So far as the sentence part is concerned, certainly, this case is pending since 04.12.2020 and the period of three years is going to be completed and the appellants are in jail and suffering the sentence so awarded by learned trial Court. On this aspect, guidelines can be taken from the judgment of the Division Bench of this Court rendered in *Vimal Rana (Supra)*. It is worth mentioning here that the punishment of 10 years under Section 304(2) of IPC is maximum sentence. This is a case of single blow, where ferocious intention is not emanated from the record. Hence, the sentence part of the accuse is required to be modified.

24. On this aspect, the following excerpt of the judgment of Hon'ble Apex Court rendered in **Bhagwan Narayan Gaikwad vs. State of Maharashtra; [2021 (4) Crimes 42 (SC)** which is as under:-

"28. Giving punishment to the wrongdoer is the heart of the criminal delivery system, but we do not find any legislative or judicially laid down guidelines to assess the trial Court in meeting out

the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation, etc."

25. In conspectus of aforesaid proposition of law and mitigating circumstances of the case, these appeals are partly allowed. The finding of the learned trial Court regarding conviction for the offence under Section 304(II) r/w 34 of IPC is affirmed with modification of sentence to the extent of six years R.I. instead of 10 years of R.I. and with fine of Rs.10000/- in place of Rs.5000/-. In case of default of payment of fine amount, the appellants shall undergo further three months Simple Imprisonment.

26. They be set at liberty forthwith if not required in jail in any case after completion of the aforesaid jail sentence. The judgment regarding disposal of the seized property stands confirmed. Out of the total fine amount, if recovered fully, Rs.10000/- be paid to Husband of deceased namely Nanuram S/o Rugga.

27. The fine amount already deposited and the compensation amount already paid, shall be adjusted.

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

29. A copy of this order be placed in the record of connected Criminal Appeal also.

30. Pending application, if any, stands closed.

Certified copy, as per rules.

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