

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

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 6538 of 2023

BETWEEN:-

- BABULAL S/O GANPATALAL GURJAR,
AGED ABOUT 28 YEARS, OCCUPATION:**
- 1. LABOUR R/O. GRAM FARDKHEDI,
THANA MOHAN BARODIA, DISTRICT
SHAJAPUR (MADHYA PRADESH)
GANPAT S/O MOTILAL GURJAR, AGED
ABOUT 69 YEARS, OCCUPATION:**
 - 2. LABOUR R/O. GRAM FARADKHEDI,
THANA MOHAN BADODIYA, DIST.
SHAJAPUR (MADHYA PRADESH)**

.....APPELLANTS

(SHRI A. K. SAXENA- ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THROUGH POLICE STATION
SARANGPUR, DISTRICT
RAJGARH (BIAORA) (MADHYA
PRADESH)**

.....RESPONDENT

(SHRI GAURAV RAWAT - DY. GOVT. ADVOCATE)

Reserved on : *14.08.2023*

Delivered on : *01.09.2023*

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

JUDGMENT

This criminal appeal has been filed under Section 374 of Cr.P.C. by the appellants being crestfallen by the judgment dated 02.05.2023 passed by the learned 2nd Additional Sessions Judge, Sarangpur, District Rajgarh in ST No.64/2019 whereby the appellant Babulal has been convicted for offence under Sections 307/34 of IPC, 1860, Section 25 (1B)(b) of Arms Act, 1959 sentenced to undergo 5 years and 2 years R.I. and fine of Rs.1000/- and 500/- respectively with default stipulations and appellant-Ganpatlal has been convicted for the offence under Sections 307/34 of IPC, 1860, sentenced to undergo 5 years R.I. with fine of Rs.1000/- and with default stipulation.

02. Briefly stated facts leading to the present appeal in short are that the complainant lodged a complaint that there was a conversation with regard to marriage of her brother's children with the children of one Ganpat Gurjar. Ganpat was ready for the marriage but, complainant's sister-in-law was not ready for marriage. On this issue, on 11.07.2019 at about 6 AM, when her sister-in-law alongwith her son was going towards the well with animal, at that time, the complainant was also going behind them. Ganpat Gurjar alongwith his son Babulal reached thereon a motorcycle. Ganpat caught hold complainant's sister-in-law and with intention to kill her, Babulal assaulted the injured with knife. He assaulted on stomach, back, neck and face of her sister-in-law. On screaming, other villagers came on the spot, the accused

persons fled away from the spot and the injured was taken to hospital at Shajapur. Thereafter, the police party, following due procedure, arrested the accused persons, registered the case against the appellants. After necessary investigation, charge-sheet was filed against the appellants under Sections 307/34 of IPC and under Section 25 of the Arms Act.

03. In turn, the case was committed to the Court of Session vide order dated 03.12.2019 and thereafter, appellants were charged for offence under Section Section 307/34 of IPC and under Section 25 of the Arms Act. They abjured their guilt and took a plea that they had been falsely implicated in the present crime and pray for trial.

04. In support of the prosecution case, the prosecution has examined as many as 18 witnesses namely Rajubai (PW-1), Ladkunwarbai (PW-2), Brijesh (PW-3), Devkalabai (PW-4), Mukesh Goud (PW-5), Anuradha (PW-6), Radheshyam (PW-7), Bhagwandas (PW-8), Chandar Singh (PW-9), Kalicharan (PW-10), Mujeeb Patel (PW-11), Nitin Bhargava (PW-12), Jitendra Rawat (PW-13), Babulal (PW-14), Brijmohan Sharma (PW-15), Malkhan Singh Bhati (PW-16), Sunil (PW-17), & Sandeep (PW-18). No witness has been adduced by the appellants in their defence.

05. Learned trial Court, on appreciation of the evidence and arguments adduced by the parties, pronounced the impugned judgment on 02.05.2023 by concluding the case and convicted the appellants for commission of the said offence by sentencing

them as hereinabove.

06. Learned counsel for the appellants submits that the learned trial Court has not considered the material evidence available on record, the learned trial Court has committed grave error of law in not considering the material contradictions and omissions in the statements of the prosecution witnesses. Dr. Mukesh Gaud, (PW-5) in his statements before the learned trial Court has clearly stated that the injuries so received by the injured were not dangerous to life. It is further submitted that Appellants are father and son and there is no one to look after the family and they are facing the trial since 2019. It is further submitted that appellant No.2 is an old aged person and aged about 69 years and no fruitful purpose would be served to keep the old age person in judicial custody. It is further submitted that out of the five years of jail sentence, appellants have already undergone approximately four years of their jail sentence.

07. Learned counsel for the appellants further submitted that Chandar Singh (PW-9) and Mujeeb Patel (PW-11), seizure witness turned hostile and did not support the case of the prosecution. If the recovery of so called seized articles itself is not proved, the case of the prosecution is having no force against the appellants and this fact has clearly been considered by learned trial Court in para No.32 and 33 of the impugned judgment. In alternate, learned counsel for the appellants has further prayed that looking to the nature of dispute, period already undergone by the appellants (specially appellant no.2, father who has not played any active role in the offence), their sentence be reduced to the

period already undergone by enhancing the fine amount as the Court may deem fit.

08. Learned counsel for the State on the other hand supports the impugned judgment and prays for dismissal of this appeal by submitting that the appellants are father and son and they have assaulted the injured lady and caused multiple injuries to her. Hence, they are not entitled for any relief from this Court.

09. In back drop of the arguments advanced by counsel for both parties, the point for consideration is as to whether the findings of the learned trial Court in convicting and sentencing the appellants under Section 307 read with Section 34 of IPC and Section 25 of Arms Act, are erroneous in the eyes of law and facts.

10. At the outset, the statement of injured Ladkunwar Bai (PW-2) is required to be enumerated. She has deposed that when she went to the well with her buffalo, accused Ganpat came and asked as to whether she will solemnize the engagement of Brijesh or not? On this, when she declined, Ganpat came and suppressed her from back and another appellant Babulal assaulted her with knife with intention to kill her. During her deposition before the learned trial Court, this witness has drawn the attention of the Court to the respective scars caused by the assault. The statement of this injured witness has not been controverted in cross-examination.

11. Rajubai (PW-1) has lodged a report (Ex.-P/1) and also vindicated the prosecution story in the same way. She asseverated that Ganpatlal caught hold the hands of Ladkunwar Bai and

Babulal assaulted her with knife. This statement finds support from the testimony of other witnesses namely Brijesh (PW-3), Devkalabai (PW-4) and Anuradha (PW-6). The witness Anuradha (PW-6) has deposed that when she was in her house, she heard the screaming noise, after that, she came out from her house and went to the spot and saw so many persons were gathered thereon and injured/Ladkunwar Bai lying near a tree in unconscious condition. The statements of these witnesses remained unshaken during their cross-examination.

12. Dr. Mukesh Gaud (PW-5) has found five following injuries on the person of injured Ladkunwar Bai (PW-2) when he has examined her :-

1. Lacerated wound over right side of upper limbs approx 2X0.5 cm.
2. Lacerated wound right side of neck approx 5X0.5 cm.
3. Lacerated wound over neck 3X0.5 over left side of neck.
4. Lacerated wound over neck minor size.
5. Lacerated wound near left side of chest approx 3X0.5 cm.

13. However, this witness has stated that he has not found any injury which can be dangerous to life. On going thorough the examination of injured Ladkunwar Bai, it is found that she has clearly stated in Para 5 that she was hospitalized in M.Y. Hospital for 20-25 days which shows she received grievous injuries by knife in the said incident.

14. That apart, the prosecution case has already been supported by Radheshyam (PW-7) and Bhagwandas Gupta (PW-8). Shri Akhilesh Kumar Saxena, learned counsel for the appellants has submitted that no independent witness has supported the

prosecution case, it is only vindicated by relatives. In this regard, it should be kept in mind that injured/Ladkunwar Bai (PW-2) is grievously injured in the incident, hence, her statements would have a special status in the law.

15. On this aspect, the law laid down by Hon'ble the Apex Court rendered in *Bhajan Singh alias Harbhajan Singh and others Vs. State of Haryana [AIR (2011) SC 2552]* is made to mention here under :-

“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. It is also contended that there are many omissions and inconsistency in the statements of these witnesses. With regard to this aspect, another case law of Hon'ble the Apex Court, rendered in *Balkrishnan and others vs. State of Tamil Nadu [2018 LawSuit (SC) 247]*, which is held as under :-

“[7] We have considered the specific grounds on which the evidence of the aforesaid two witnesses have been sought to be assailed. On such consideration, we find that the inconsistencies and contradictions do not affect the core of their testimonies. The said witnesses have without any ambiguity implicated the accused for the injuries caused leading to the death of Chelladurai and also the injuries caused to PW-1 and PW-2.”

17. Learned counsel for the appellants, vehemently, contended that all the witnesses are relatives witnesses, therefore, their testimonies cannot be relied on in view of relatedness. Virtually, it is now well settled that a relative witness cannot be said to be an interested as merely by virtue of being a relatives of the victim. In this context, the following proposition held by Hon'ble Supreme Court, in *Laltu Ghos v. State of West-Bengal*, [AIR (2019) SC 1058], is relevant to quote 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....."

18. Actually, in many of the criminal cases, it is often that the offence is witnessed by closed 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.

19. Learned counsel for the appellants has also placed his demurrer regarding seizure memo of said knife and submitted that witnesses of seizure were turned hostile. Certainly, Chandar Singh (PW-9) and Mujeeb Patel (PW-11) have been turned hostile regarding memorandum of seizure of knife from the appellants, but the Investigating Officer, Nitin Bhargava (PW-12)

in his statements, has supported the memorandum statement as well as seizure memo which has duly been signed by the seizure witnesses.

20. So far as, the hostility of independent witnesses, Chander Singh (PW-9) and Mujeeb Patel (PW-11) is concerned, it is by now well settled that the testimony of police witnesses regarding disclosure statement and seizure memo could not be discarded merely on account that independent witnesses have not supported the seizure and memorandum statement disclosed by accused to the Investigating Officer. In this regard the following ratio decidendi laid down by Hon'ble Supreme Court rendered in ***Karamjit Singh v. State (Delhi Administration), AIR 2003 SC 1311***, is propitious to produce here:-

"8.....The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony can not be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds....."

21. In a recent full bench decision of Hon'ble Apex Court rendered in **Rizwan Khan v. State of Chhatisgarh, dated 10.09.2020** reported as AIR ONLINE 2020 SC 722, it is held as under:-

".....It is true that all the aforesaid witnesses are police officials and two independent witnesses, who were panchnama witnesses had turned

hostile. However, all the aforesaid police witnesses are found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police witnesses and the accused. No such defence has been taken in the statement under Section 313 Cr.P.C. There is no law that the evidence of police officials, unless supported by independent evidence, is to be discarded and/or unworthy of acceptance."

22. In another recent decision of Hon'ble Supreme Court rendered in **Surinder Kumar v. State of Punjab, 2020(2) SCC 563**, while considering somewhat similar situation, it was observed that "The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status."

23. Applying the aforesaid law laid down by Hon'ble the Apex Court, the evidence of Investigating Officer, Nitin Bhargava (PW-12) regarding memorandum statement of Babulal (exhibit-P/6) and on that basis recovery of said knife by seizure memo (exhibit-P/7) is well proved and thereby the recovery of said knife and other materials is found to be reliable and trustworthy.

24. Another limb of submissions propounded by Shri A.K. Saxena is that the said injury was not dangerous to life. Therefore, on the basis of such injury, the accused cannot be convicted for the offence of attempt to murder.

25. Per Contra, Shri Gaurav Rawat, learned Government Advocate, expostulated that in order to justify a conviction under

Section 307 of the I.P.C., it is not always essential that fatal injuries capable to causing death should have been caused.

26. In view of the arguments canvassed by both parties, the injury of injured Ladkunwar Bai and the medical report in this regard have been examined. There were injuries on stomach, back, neck and face of injured Ladkunwar Bai by knife, which was a sharp edged and dangerous object being fatal for life. Due to these injuries, the injured was hospitalized for more than 20-25 days in a hospital. The said penetrating injury is incised wound over right side of upper limbs measuring 2X0.5 cm, incised wound right side of neck measuring 5X0.5 cm, lacerated wound over neck 3X0.5 over left side of neck, lacerated wound over neck minor size, lacerated wound near left side of chest measuring 3X0.5 cm. In this regard, the intention of the accused has to be unearthed from the circumstances like the nature of the weapon used, the part of the body whereon the injury was caused, and the nature of the injury inflicted by the accused. In this regard, the following ratio of the Hon'ble Apex Court rendered in *State of M.P. v. Kashiram, (2009) 4 SCC 26*, is pertinent to refer here :-

“[9] To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be concluded from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section

makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

27. In this case, the accused, Babulal and Ganpat, along with a knife, reached the place where the injured was going and, thereafter, during an altercation, gave knife blows on her stomach, back, neck and face. In this regard, the full bench of the Hon'ble Supreme Court in the case of *Surendra Singh Vs. State 2021 LawSuit (SC) 772* adumbrated as under:-

"20. It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a Court must consider, first, whether there was any intention or knowledge on the part of accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim."

28. In a case, where simple injury was caused by a deadly

weapon knife on the stomach, a vital part of the body, the another Bench of this High Court, while relying on the decisions of the Hon'ble Apex Court in *Jageram Vs. State of Haryana (2015) 11 SCC 366* and *State of M.P. Vs. Kanta @ Omprakash, AIR 2019 SC 713*, ordained in its recent decision rendered in *Satish @ Gudda @ Gudda Vs. State of M.P., CRA No. 2483 of 1998*, dated 05.04.2022 as under -

"29. On the basis of above discussion, it can be said that whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge as the case may be and not the nature of the injuries."

29. In this case, the accused attacked with a knife on the stomach, back, neck and face of injured. Although the injured was rescued in a hospital, nevertheless, the knowledge and intention of the accused are gathered by their act. Certainly, there was only one injury on the stomach of the injured person, but the stomach is a vital organ of the body, and the nature of the weapon is also dangerous to life. Therefore, having regarded the nature of the weapon, the nature of the injury on the vital organ, the intensity of the blow, this Court is of the considered view that the accused persons have inflicted the injury on the injured with the intention to cause her death.

30. On the basis of the preceding discussions in entirety and for the reasons assigned hereinabove, the act of the accused comes

only within the purview of section 307 of the IPC. The prosecution has successfully proved beyond all reasonable doubts that accused Babulal and Ganpat has assaulted upon the injured Ladkunwar Bai (P.W.2) with intention to cause her death. Accordingly, accused persons are liable to be convicted for the offence of attempt to murder, punishable under Section 307 of the IPC.

31. So far as the conviction of Babulal under Section 25(1B)(b) of Arms Act is concerned, since the seizure of said knife is well authenticated by Investigating Officer, Nitin Bhargava (P.W.-12), it is also well established that the accused/Babulal has caused the injury to Ladkunwar Bai by the said knife. Hence, the findings of the learned trial Court regarding conviction of Babulal for the offence under Section 25(1B)(b) of the Arms Act, is also appeared to be inviolable in the eyes of law and facts.

32. In view of aforesaid evidence in entirety, the findings of the learned trial Court regarding conviction of the appellants Ganpat and Babulal under Section 307 read with Section 34 and appellant/Babulal under Section 25(1B)(b) of Arms Act do not warrant any interference.

33. Now, coming to the part of punishment/sentence of both of appellants, they were involved in causing grievous injuries to a lady/Ladkunwar Bai aged about 44 years by knife. Hence, punishment of five years R.I. cannot be ascertained as harsh. The punishment given by the learned trial Court was kind enough. The learned trial Court has passed the impugned judgment rightly

and has committed no error of law neither on facts nor on the law points. Hence, the findings of the learned trial Court regarding conviction and sentence to the appellants, are hereby affirmed. Resultantly, the appeal stands dismissed.

34. Appellant No.1 is already in jail and appellant No.2 is on bail being suspended, hence, appellant No. 2 Ganpat Lal Gurjar is directed to surrender before the learned trial Court within 15 days for completion of his remaining jail sentence of five years as awarded by learned trial Court under Section 307 of IPC.

35. They be set at liberty forthwith after completion of five years of their jail sentence. The judgment of the learned trial Court regarding disposal of the seized property stands affirmed.

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

Certified copy as per rules.

(PREM NARAYAN SINGH)

JUDGE

vindesh