

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

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

CRIMINAL APPEAL No.7450 of 2023

BETWEEN:-

**GYANISINGH GURJAR S/O BHAGWAN SINGH GURJAR,
AGED 25 YEARS, OCCUPATION: LABOUR R/O GRAM
MUBARIKPUR CHIRATIYA PS AWANTIPUR DIST.
SHAJAPUR (MADHYA PRADESH)**

.....APPELLANT

(BY MS. SHARMILA SHARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH PS
AWANTIPUR BADODIYA (MADHYA PRADESH)**

.....RESPONDENT/STATE

(BY SHRI D.G. MISHRA ALONGWITH SHRI VIRAJ GODHA - PL)

Reserved on : 29.02.2024

Pronounced on : 05.03.2024

*This appeal having been heard and reserved for judgement,
coming on for pronouncement this day, this Court pronounced the
following:*

JUDGEMENT

The appellant/accused has filed this appeal u/S 374 of Cr.P.C. being aggrieved by judgment of conviction and order of sentence dated 27.02.2023 passed by 4th ASJ Shujalpur, Distt. - Shajapur in S.T. No.148/2020, whereby the learned trial Court has convicted the appellant

for the offence punishable u/S 326 of IPC and sentenced him to undergo Rigorous Imprisonment for 05 years and fine of Rs.5,000/-, with default stipulation.

2. Prosecution story, in brief is that on 24.09.2019, at 03:00 PM, complainant Kamla Bai (PW-2) alongwith her son Sonu (PW-6) was going to her agricultural land. When they reached at the agricultural land of Laad Singh Keer, the present appellant Gyan Singh Gurjar carrying *Lathi* bearing iron ring and co-accused Laad Singh carrying *Pharsi* came there and started abusing them due to old animosity. The accused persons assaulted Sonu (PW-6) by their respective weapon on his head and other parts of body with intent to kill him. The injured sustained grievous injury. Hearing cries of Kamla Bai (PW-2) and Sonu (PW-6) from the neighboring farmland, Kanta Bai (PW-3) and Sharda @ Shanta Bai (PW-1) had come to intervene in the matter and tried to rescue the injured. Meanwhile, Indar came there and after seeing him, the accused persons had fled away from the spot. Injured Sonu (PW-6) was taken to hospital and the matter was reported by Kamla Bai (PW-2). An FIR (Ex.P-2) was lodged on the same day at O/P Polaykala. On the basis of FIR (Ex.P-2), on the same day, an FIR (Ex.P-13), crime No.203/2019 was registered at P/S Avantipur, Badodia, Distt. - Shajapur against the appellant and co-accused Laad Singh.

3. During investigation, medical examination of the injured was conducted at CHC Polaykala, by Dr. Prashant Madiya (PW-8). He was admitted in Vinayak Fracture Hospital, Sarangpur for 3 days, where Dr. Sunil Sharma (PW-9) had done his treatment. Thereafter, he was also

admitted, Aurobindo Hospital, Indore from 03.10.2019 – 25.10.2019, where Dr. Rajiv Shukla (PW-15) had treated him. Medical documents were collected. Spot map was prepared. After completion of other formalities, charge-sheet for the offence punishable u/S 307, 341, 294 r/w 34 of IPC was filed against co-accused Laad Singh. The appellant was absconded. He was arrested on 11.02.2021. A *Lathi* used in the offence was recovered from him. Supplementary charge-sheet was filed against him. The matter was committed by concerned JMFC to Sessions Judge, Shajapur. Thereafter, the matter was made over to the learned trial Court.

4. Learned trial Court framed charges u/S 307, 324 and 294 of IPC against the appellant and co-accused person. The appellant and co-accused person abjured their guilt and claimed to be tried. In turn, the prosecution examined Sharda Bai (PW-1), Kamla Bai (PW-2), Kanta Bai (PW-3), Jeetmal (PW-4), Halka Patwari Anil Kumar Verma (PW-5), Sonu (PW-6), Bhagwan Singh (PW-7), Dr. Prashant Madiya (PW-8), Dr. Sunil Sharma (PW-9), HC Ajay Bhide (PW-10), ASI Nirmal Tigga (PW-11) SI Ram Gopal Verma (PW-12), SHO K.K. Chaubey (PW-13), SI Surendra Singh Mehta (PW-14) and Dr. Rajiv Shukla (PW-15) to prove its case. After completion of prosecution evidence, the accused persons were examined u/S 313 of Cr.P.C. They had taken defence that accused persons are innocent and they have been falsely implicated due to animosity. Though, the accused persons have not examined any witness in their defence.

5. The learned trial Court after hearing the parties and considering the evidence available on record had acquitted accused Laad Singh and convicted the appellant u/S 326 of IPC by acquitting him from charges u/S

294 and 324 of IPC.

6. Learned counsel for the appellant/accused submits that the appellant has not committed the offence and has falsely been implicated in the case due to old animosity. There are no independent witnesses in the case and other witnesses are close relative of the injured. Therefore, their statement is not reliable. The prosecution has failed to prove its case beyond reasonable doubt. A *Lathi* seized from the appellant was not sent for chemical examination. The co-accused Laad Singh has been acquitted by the trial Court but on the same set of evidence, the appellant cannot be convicted. The trial Court has not considered the aforementioned fact and evidence available on record properly and has wrongly convicted and sentenced the appellant. The conviction suffers from legal and factual infirmity and is not in accordance with law. Therefore, it is prayed that the impugned conviction and sentence is liable to be set aside.

7. On other hand, learned counsel for the State/respondent has opposed the prayer and has supported the impugned judgment.

8. In view of the rival submissions advanced by learned counsel for both the parties, the point of consideration is whether the appellant had inflicted grievous injury to injured Sonu with deadly weapon at the relevant time?

9. As per statement of Dr. Prashant Madiya (PW-8) on 24.09.2019, at 04:00 PM, he examined the injured and gave MLC report (Ex.P-10) mentioning following injuries:-

i. Lacerated wound 2 x 2 cm on forehead, laterally left side.

- ii. Pain on the shoulder joint, left side.*
- iii. Abrasion 1 x 1 cm on the left arm on the upper side.*
- iv. Pain on the left elbow joint.*
- v. Pain and swelling on left forearm.*
- vi. Pain and swelling on the left thumb.*
- vii. Abrasion 2 x 1 cm on the tip of left thumb.*
- viii. Pain on left wrist joint.*
- ix. Pain and swelling on right foot.*

10. The witness opined that all the injuries are caused by hard and blunt object within 24 hours. He advised X-ray of left forearm, right ankle joint, both shoulder joints, knee joint and hip joint and referred the injured to CHC, Shujalpur.

11. Dr. Sunil Sharma (PW-9) stated that he received letter (Ex.P-12) from police, wherein query was sought in respect of nature of injury sustained by the injured Sonu (PW-6). He further stated that he treated the injured at Vinayak Hospital, Shujalpur for 3 days and thereafter, referred him to Aurobindo Hospital, Indore. He stated that he had given opinion (Ex.P-12A) on 18.12.2019 as if the injured was not treated on time, there could have been serious consequences.

12. Dr. Rajiv Shukla (PW-15) stated that the injured was admitted in Aurobindo Hospital, Indore since 03.10.2019 to 25.10.2019. He had treated the injured and it was found that there was fracture in left humerus, both bone of left forearm, right tibia and compound fracture of right

thumb. The witness stated that MLC report is Ex.P-32 and discharge summary (Ex.P-33) of the injured.

13. The statement of aforementioned medical witnesses has not been shaken in their cross-examination, therefore, their statement is reliable and it is clear that the injured received 9 injuries on his body including 1 lacerating wound on head and 5 fractures. Therefore, it is clear that the injured received grievous injuries on his body.

14. As alleged, the appellant Gyan Singh voluntarily caused grievous injury by means of deadly weapon is concerned, in this respect the learned trial Court has placed reliance on the statement of injured Sonu (PW-6), his mother Kamla Bai (PW-2) and Kanta Bai (PW-3) to convict the appellant.

15. Sonu (PW-6) stated that on 24.09.2019, at around 03:00 PM, he was going to his agricultural land alongwith his mother Kamla Bai (PW-2). When they reached near agricultural land of Laad Singh, accused persons Laad Singh armed with *Pharsi* and Gyan Singh carrying *Lathi* came there and started to abuse them and with intent to kill injured Sonu (PW-6), Laad Singh gave *pharsi* blow on his head. Sonu (PW-6) felt down. Thereafter, both the accused persons assaulted him by their weapons on his hand, legs, and other body parts. Though, Kamla Bai (PW-2) and Kanta Bai (PW-3) are partly hostile, but have supported the aforementioned statement of injured Sonu (PW-6). Both the witnesses are eye-witnesses of the incident. There is nothing adverse in their cross-examination. Statement of Kamla Bai (PW-2) is also supported by FIR (Ex.P-2), which was recorded by ASI Nirmal Tigga (PW-11) within 02:45 hours of the incident. Statement of Sonu (PW-6) is also supported by medical evidences. Though, Dr. Prashant

Madiya (PW-8) in paragraph 3 of the cross-examination admitted that the injuries could have been received in motorcycle accident but the same has been denied by injured Sonu (PW-6), Kanta Bai (PW-3) and Kamla Bai (PW-2) in their cross-examination. Therefore, it cannot be assumed that the injured sustained injuries in motorcycle accident.

16. So far as the question of inimical relationship between the parties is concerned, though on perusal of statement of Sonu (PW-6) and Kamla Bai (PW-2), it appears that there was inimical relationship between both the parties, in this respect the Apex Court in the case of ***Ramashish Rai v. Jagdish Singh*** [(2005) 10 SCC 498] has opined as under:-

“7. We are clearly of the view that the findings of the High Court were erroneous, resulting in grave miscarriage of justice. The eyewitnesses — PWs 1, 2, 3, 5, 8 and 10 consistently supported the case of the prosecution throughout. They were subjected to lengthy cross-examination but nothing could be elicited from their mouth so as to discard the creditworthiness of their statements. The ocular evidence of the eyewitnesses was corroborated in material particulars by the medical evidence. In our view, therefore, the acquittal recorded by the High Court on the aforesaid reasoning is perverse. The High Court discarded the eyewitness account, branded them as inimical witnesses. This is not the requirement of law. The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence. In the present case the High Court has rejected the otherwise creditworthy testimony of eyewitness

account merely on the ground that there was enmity between the prosecution party and the accused party.”

17. Similarly, the argument relating to interested witness is concerned, it appears that both the parties are close relatives and Sonu (PW-6) is son of Kamla Bai (PW-2) and Kanta Bai (PW-3) is also relative of injured. The decision laid down by the Apex Court in the case of ***Rajinder Singh and anr. V State of Haryana*** [AIR 2009 SC 1734] observed that:-

“23. ...It is well settled that if the witness is related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would inter-alia be interested in ensuring that real culprits are punished.”

18. In the case of ***Kuldeep Singh Rajawat V State of Madhya Pradesh*** [Criminal Appeal, 502 of 2011], Division Bench of this Court has held as under:-

(37) It is settled principle of law that merely because the witnesses may be related to the victim or the deceased, their testimony may not be rejected. There is no legal canon that only unrelated witnesses shall be considered credible. On the contrary, we are of the view that it is not natural for the related witnesses to implicate a person falsely leaving aside the actual culprit. It is pertinent to mention here that only the interested witnesses want to see the real culprit is brought to book.

19. In the case of ***Bhajan Singh alias Harbhajan Singh And Ors. V State Of Haryana*** [(2011) 7 SCC 421], the Apex Court has opined as under:-

“36. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very

reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. 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." Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide Abdul Sayeed v. State of M.P. [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; Kailas v. State of Maharashtra [(2011) 1 SCC 793 : (2011) 1 SCC (Cri) 401] ; Durbal v. State of U.P. [(2011) 2 SCC 676 : (2011) 1 SCC (Cri) 877] and State of U.P. v. Naresh [(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] .)"

20. Though, the learned trial Court has acquitted the co-accused Laad Singh and has convicted the present appellant Gyan Singh. In paragraphs 42 and 43 of impugned judgement, the learned trial Court has observed that the *Pharsi* is a sharp edged weapon but as per medical evidence, all injuries received by injured were caused by hard and blunt object and not even a single injury sustained by injured was caused by sharp edged weapon. There is inimical relationship between the parties, therefore, involvement of Laad Singh in the incident is doubtful. In this respect, the Apex Court in the case of ***Janardan Singh v. State of Bihar, [(2009) 16 SCC 269]***, has opined as under:-

"6. In such cases, as noticed earlier, a duty is cast upon the court to sift the evidence and after a close scrutiny with proper care and caution, to come to a judicial conclusion as

to who out of the accused persons can be considered to have actually committed the offence. This Court in Deep Chand v. State of Haryana [(1969) 3 SCC 890] pointed out that the maxim falsus in uno, falsus in omnibus is not a sound rule to apply in the conditions in this country and, therefore, it is the duty of the court in cases where a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutinise the rest of his evidence with care and caution. If the remaining evidence is trustworthy and substratum of the prosecution case remains intact, then the court should uphold the prosecution case to that extent. To the same effect is the judgment of this Court in Ranbir v. State of Punjab [(1973) 2 SCC 444 : 1973 SCC (Cri) 858 : AIR 1973 SC 1409] . In the instant case the High Court has very elaborately dealt with the evidence of the eyewitnesses and come to the conclusion that the appellant alone is responsible for the deaths of Ashok Singh and Dalan Singh. We do not find any ground to interfere with such a finding of fact arrived at by the High Court. It may not be out of place to mention that the trial court, on facts, had also held that the accused was responsible for the murder of Ashok Singh and Dalan Singh."

21. In the instant case, there is clear and clinching evidence of the injured Sonu (PW-6) available in the case against the appellant that he caused the injuries on his body parts by means of *Lathi*, which is further supported by Kamla Bai (PW-2) and Kanta Bai (PW-3). Statement of injured witness is also supported by medical evidence. Therefore, submission of the learned counsel for the appellant that the co-accused Laad Singh has been acquitted by the trial Court and the conviction of the appellant based on the same set of evidence is not in accordance with the law, is not acceptable.

22. Though, *Lathi* seized from the appellant was not sent for chemical examination and also was not brought before Dr. Prashant Madia

(PW-8), who examined the injured for his opinion but it appears that the incident is of 24.09.2019, S.I. Surendra Singh Mehta (PW-14) stated that earlier the appellant was absconded and he was arrested on 11.02.2021 and on the same day he seized a *lathi* (Article A-19), wherein 5 iron rings were fixed at the instance of appellant vide seizure memo (Ex.P-31). There is also no evidence that the said seized *lathi* was used in the offence by the appellant but the case depends on testimony of injured and eye-witnesses that the appellant assaulted the injured by *Lathi* bearing iron rings, therefore, non production of the aforementioned *Lathi* before concerning Doctor for his opinion and lack in sending it for chemical examination cause no dent to the prosecution story.

23. In view of the aforesaid, it emerges that the prosecution case is supported by injured himself and eye-witnesses, further supported by medical evidence and also supported by FIR (Ex.P-2). Therefore, statement of injured and eye-witnesses is reliable and it is proved beyond reasonable doubt that the appellant voluntarily caused grievous injury to injured Sonu (PW-6) by deadly weapon. Therefore, the learned trial Court has rightly convicted the appellant u/S 326 of IPC. So far as the question of sentence is concerned, the injured sustained multiple fractures in his body. Therefore, looking to the facts and circumstances of the case, it appears that the learned trial Court has rightly sentenced the appellant. Hence, the same requires no interference.

24. Resultantly, the conviction and sentence passed by the learned trial court is affirmed and the appeal filed by the appellant is hereby **dismissed**.

25. Free copy of this judgment be sent to the appellant through concerning jail superintendent.

26. Record of trial Court be sent back alongwith copy of judgment for intimation and compliance.

(PRAKASH CHANDRA GUPTA)
JUDGE

Shruti

