IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 31st OF JANUARY, 2024

CRIMINAL APPEAL No. 8751 of 2023

BETWEEN:-

GHANSHYAM @ PUSHKARLAL S/O ISHWARLAL PATIDAR, AGED ABOUT 27 YEARS, OCCUPATION: AGRICULTURIST VILLAGE RAJAKHEDI P.S. NAI ABADI DISTRICT MANDSAUR (MADHYA PRADESH)

.....APPELLANT

(BY SHRI SANTOSH KUMAR MEEN, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION NAI ABADI DISTRICT MANDSAUR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI RAJESH JOSHI, GA FOR THE STATE)

Heard On:21.12.2023
Delivered on 31.01.2024

This appeal was heard and the Court has pronounced 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 14.06.2023 passed by Sessions Judge, District Mandsaur in S.T. No.148/2021, whereby the appellant has been convicted for the offence punishable under Section 304 (2) of I.P.C. and sentenced to undergo 07 years R.I. with a fine of Rs.5000/- and in default of payment of fine, to further undergo one months R.I.

2. Briefly stated facts of the case are that, the deceased Bhanwarlal and his brother Ishwarlal lived in their Tapris (huts) and their field are adjacent to each other. There was a boundary line between fields of both the parties. Ishwarlal used to tamper such boundary line and on account of that there was a dispute between them. On 16.05.2021 at around 7PM, Ishwarlal and his son Ghanshyam (accused) were making some change in the boundary line by removing stone pieces put thereon. As per the further case of the prosecution, Bhanwarlal objected Ishwarlal and Ghanshyam to replace the stone pieces and due to that both brought sticks from their Tapri and assaulted Bhanwarlals with intention to kill him. Both the accused have caused injury on head to Bhanwarlal, resulted him falling on the ground. Gopal Patidar and Govind Patidar intervened them and thereafter, the appellant and co-accused ran away from the spot. The injured was hospitalized to the District hospital Mandsaur and the offence was registered against the appellant under Section 307 of IPC. But during treatment, the injured expired, therefore, the offence under Section 302 of IPC was converted.

3..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 appellant/accused under Section 302 of IPC.

4 . In turn, the case was committed to the Court of Session and thereafter, appellant was charged for offence under Section Section 302 of IPC. He abjured his guilt and took a plea that he had been falsely implicated in the present crime and prayed for trial.

5. In support of the case, the prosecution has examined as many as 08 witnesses namely Gopal Patidar (PW-1), Dr. Anil Patidar (PW-2), Rajula Patidar (PW-3), Govind Patidar (PW-4), Rahul Patidar (PW-5), Dr.

Mohammad Irfan (PW-6), B.S. Gore (PW-7) & Lal Singh Dodiya (PW-8). No witness has been adduced by the appellant in his defence.

06. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 14.06.2023 and finally concluded the case and convicted the appellant for commission of the said offence under the provisions of Section 304-II of IPC.

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. Counsel for the appellant further submits that the appellant has not caused any fatal injury to the deceased because there is nothing on record to show that the deceased was 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 appellant. The offence was committed in the heated spur of moment and the incident was ocurred without any specific intention or knowledge. It is further submitted that PW-3, Rajula Patidar son of the deceased has turned hostile and has not supported the case of the prosecution and as per the statement made by this witnesses, the injury has been received by his father by slipping over a stone. There is no independent witness in the present case and all the witnesses are almost relatives of the deceased.

8. It is also submitted that as per the MLC report, the doctor has opinion only single injury on the head whereas the allegations against two accused persons are to cause injury by stick only. It is submitted that if the case of the prosecution is received in its face value, the same shall not be traveled beyond

the provisions of Section 325 of IPC.

9 . It is further submitted that 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 appellant Submits that the learned trial Court has convicted the appellant under Section 304(II) of IPC and sentenced for 07 years R.I. which is on higher side as per the provisions of law. The appellant has already undergone approximately 2 years and 8 months of his incarceration period and prays that if the appellant is 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.

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 him appropriately. Hence, prays for dismissal of the appeal.

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

13. In view of the evidence available on record and the contentions advanced by counsel for both the parties, this Court has to decide the question as to whether the findings of learned trial Court regarding conviction under Section 304-II of IPC, are correct in the eyes of law and facts or not?

14. In this case, the prosecution has relied upon the testimony of witness Gopal Patidar, PW-1. the witness has stated in his examiation in chief that when the deceased has intervened the accused persons not to remove the boundaries

of the filed, they assaulted Bhanwarlal with wooden sticks, when he went there to intervene, they fled away from the spot after causing injury to Bhanwarlal. At that time, the injured was fallen down and there was a head injury and blood was oozing out. Testimony of this witness has not been controverted in his cross-examination. Certainly, other eye-witnesses Rajulal Patidar PW-3, Govind Patidar PW-4 and Rahul Patidar PW-5 have not supported the case of prosecution.

15. Now, the question is as to whether without support of another eye-witness on the basis of sole testimony of Gopal Patidar, 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 single witness. It is quality not the quantity of evidence, to be considered while appreciating the available evidence.

16. 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 Zendge 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 :-

> 6. On a consideration of the relevant authorities and the provisions of the IndianEvidence 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.

7. Therefore, there is no hesitation in holding that the contention that in a murder case the court should insist upon plurality of witnesses, is much too broadly stated.

17. In view of the aforesaid principle of law, the statement of Gopal

Patidar would be accepted even it does not find support from other eye-witnesses. On this point, the view of Hon'ble Apex Court in the case of **Vinayak Singh vs. State of Bihar [1997 (1) SCC 2083]** is worth referring here where the maximum *"evidence has to be weighed and not to be counted"* is well recognized.

18. That apart, the testimony of Gopal Patidar find support from the statement of Dr. Ail Patidar who has initial examined the injured and found one injury, which was right side on the head measuring 8x1cm. In this case, Dr. Mohd. Irfan PW-6 has conducted the post mortem examination and given post mortem report as Ex.P/9 and the report has supported the fact that there was only single injury on the right perital region of the deceased. This doctor has also opined that this injury is sufficient to endanger the life.

19. 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....."

20. In view of the aforesaid principle, if the witnesses have not supported the prosecution case regarding injury and the incident, it does not create any surprise because virtually, most of the public persons did not want to be intricated between the others dispute because they have no sympathy or apathy with the deceased. However, only on that basis, the case of the prosecution could not be overboarded because they are well supported by the statements of other witnesses and medical testimony.

21. Now, coming to the next limb of argument, learned counsel for the appellant vehemently contended that this is a case of single blow, therefore, it cannot be assumed against the appellant that he has caused injury to the injured with intention to kill the deceased. Had he had such type of intention, he would cause cause repeated blow upon the deceased.

22. On this aspect, the law laid down by the Hon'ble Apex Court in the case of **Mohd. Ishaq Mohammad vs. State of Maharashtra [1979 Law Suit (SC) 212]** is worth referring here as under:-

"We have heard learned Counsel for the parties and have gone through the judgment of the High Court and of the Sessions Judge. The occurrence in the course of which the deceased was assaulted, took place suddenly and after hot exchange of abuses, which took

place between the deceased and the appellants. The appellants are said to have assaulted the deceased with sticks. There is no evidence to show as to which of the appellants struck the fatal blow on the deceased. Having regard therefore to the circumstances of the present case and the nature of injuries sustained by the appellants, we are unable to agree with the High Court that the case falls under Section 302. There is no evidence of any intention on the part of the appellant either to cause death of the deceased or cause such injuries of which the appellant could have the knowledge that it was likely to cause death although it cannot be doubted that the appellant had the common intention to cause grievous hurt to the deceased by lathis. Thus the offence falls under Section 325/34 and not under Section 302 or 304(1). It appears that the appellants have already served their sentences or at any rate a substantial part of it. For these reasons, therefore, we would allow this appeal to this extent that the conviction of the appellants are altered from that under Section 302/34 to one under Section 325/34 and the sentences are reduced to five years in each case.".

23. On the same point, Hon'ble Apex Court in the case of **Ratan Singh, Ran Singh & Anr. vs. State of Punjab [1988 Law Suit (SC) 214]** has observed as under:-

"2. Admittedly according to the prosecution's own case Ran Singh and Rattan Singh were carrying lathis which could be described as hard and blunt object. Such injuries on the person of the deceased were either on hands or on feet and at best what could be attributed to them could be injuries resulting in fractures. None of

these two appellants could be convicted for causing injuries individually which could make out an offence under Section 302. At best they could only be convicted under Section 325 of IPC only."

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. Having gone through the evidence available on record, the case of the appellant came under "Eighthly" of Section 320 of IPC which defines "Grievous Hurt". Since the deceased had suffered a head injury which endangers his life as suggested under the clause. It is established that the deceased was conscious throughout the treatment and he expired after five days of the incident i.e. on 21.05.2021. The medical evidence also does not bring out that the injury which was caused, was fatal fatal injury in ordinary course of

nature to cause death. Admittedly, a single blow was used, hence, in the considered opinion of this Court, the appellant can only be attributed for committing the offence punishable under Section 325 of IPC.

26. On substratum of the aforesaid analysis in entirety, the appellant cannot be convicted under section 304-II of IPC but rather the appellant would be convicted only under Section 325 of IPC. As such, the impugned judgment passed by learned trial court qua the conviction of the appellant under Section 304-II of IPC, is hereby set aside and the appellant is convicted under Section 325 of IPC.

27. Now, coming to the question of sentence, the appellant has already suffered 2.5 years of jail sentence and the maximum sentence is provided upto seven years under the provision of Section 325 of IPC. The appellant has already suffered the ordeal of this case since 04 years, hence, looking the nature of injury, sentence of three years would meet the ends of justice. Resultantly, the appeal is partly allowed and the appellant is convicted under Section 325 of IPC and sentenced for 3 years R.I. with fine of Rs.10000/-. In case of failure to deposit the fine amount, he shall further to undergo for 3 months S.I.

28. The appellant is in jail, he be set at liberty forthwith if not required in jail in any case after completion of the aforesaid jail sentence and thereafter, his bail bond shall be discharged thereafter, subject to deposit the fine amount.

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

30. A copy of this order be sent to the learned trial Court concerned for information.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

AMIT