



**IN THE HIGH COURT OF MADHYA PRADESH,**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJEEV S. KALGAONKAR**

**CRIMINAL REVISION NO.3684 OF 2024**

***RAKESH***

***VERSUS***

***THE STATE OF MADHYA PRADESH***

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**Appearance:**

Shri Narendra Singh Rathore, Advocate for the petitioner.  
Shri Chetan Joshi, Panel Lawyer for the respondent/State.

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**Reserved on : 23/08/2024**  
**Pronounced on : 19/09/2024**

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***This revisoin having been heard and reserved for order, coming on for pronouncement this day, pronounced the following:***

**ORDER**

1/ This criminal revision under section 397 read with section 401 of the Cr.P.C. is filed assailing the judgment dated 13/07/2024 passed by learned Additional Sessions Judge, Dharampuri, District Dhar in Criminal Appeal No. 25/2021 affirming the judgment of conviction and order of sentence dated 24/12/2021 in RCT no. 200270/2014 passed by Judicial Magistrate First Class, Dharampuri, District-Dhar, whereby revision petitioner Rakesh has been convicted for the offence punishable under section 325 of the IPC. However, the sentence imposed by the trial Court was reduced to rigorous imprisonment for six months and fine of Rs.2000/- with default stipulation of simple imprisonment for two months.

2/ The revision petition *inter alia* states as under:-



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(i) Aruna Banjara reported to Police Station Dharampuri that on 18/1/2014, she was at the agricultural field of her father near Kodranala in Village Rajpura. Around 4 in the evening, Rakesh had entered his cattle for grazing in the agricultural field. She and her younger sister Gayatri objected and shouted Rakesh. Rakesh started abusing them in filthy language. Chain Singh, Sohan Singh, Phool Singh, Take Singh and Bhanu also arrived there and started abusing them. Rakesh picked up a stone and pelted it towards Gayatri. Gayatri sustained injury on back of her head. The blood started oozing out of the injury. Shivram, Mahesh and Dayaram intervened and rescued them. Accused threatened to kill them. On such allegations, Police Station Dharampuri registered FIR at Crime No.15/2014 for the offences punishable under sections 294, 323, 506 and 34 of the IPC. Injured Gayatri was forwarded for medico-legal examination. On CT-scan, linear undisplaced fracture was found in right occipital bone on skull of Gayatri. Therefore, prosecution for the offences punishable under sections 325 and 307 of the IPC was added. On completion of investigation, final report was submitted.

(ii) The matter was committed for trial to the Court of Session. The co-ordinate Bench of this Court vide order dated 17/06/2014 passed in CRR no. 488/2014 discharged the accused for the offence punishable under section 307 of section 307/149 and 147 of IPC. Accordingly, learned Additional Sessions Judge, Dharampuri framed charges for the offences punishable under sections 294, 325 and 506 Part II of the IPC against



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Rakesh and under sections 294 and 506 Part II of the IPC against other accused and remitted the matter for trial to learned JMFC.

(iii) Learned JMFC, Dharampuri, District Dhar, on completion of trial, after hearing both the parties, acquitted all the accused except petitioner/accused Rakesh. Rakesh was convicted for the offence punishable under section 325 of the IPC and sentenced to rigorous imprisonment for 1 year and fine of Rs.2000/- with default stipulation vide judgment dated 24/11/2021 passed in RCT No. 200270/2014.

(iv) Feeling aggrieved by this judgment of conviction and order of sentence, Rakesh preferred Criminal Appeal before learned Additional Sessions Judge, Dharampuri, Dhar. Learned Additional Sessions Judge, Dharampuri affirmed the judgment of conviction for the offence punishable under section 325 of the IPC vide impugned judgment dated 13/07/2024 passed in Cr.A. No.25/2021, however reduced the sentence to rigorous imprisonment for six months and fine of Rs.2000/- with default stipulation.

3/ The concurrent finding of conviction and order of sentence is assailed in the present revision petition on the following grounds:-

(a) There are material contradictions and inconsistencies in the evidence of prosecution witnesses.

(b) No Panchanam with regard to damage to crop was prepared during investigation.

(c) The seized piece of stone did not contain any blood stains. The blood stained clothes of injured Gayatri were not seized.



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(d) Medical Officer has opined that the injury on back of head may be caused due to fall. Shivram (PW4) has supported the defence version.

(e) Learned trial Court and first appellate Court ignored these important aspects of the matter.

On these grounds, it is requested that the criminal revision be allowed and the impugned judgment of conviction be set aside.

4/ Learned counsel for the petitioner, in addition to the grounds mentioned in the revision petition, contended that only one linear fracture on skull of Gayatri was found in the CT scan. The alleged incident happened at the spur of moment without any premeditation. The traditional weapon was not used for causing the injury. There was no intention to cause grievous hurt. Further, no criminal antecedent is reported against the petitioner. Therefore, sentence of rigorous imprisonment for six months is inappropriate.

5/ *Per contra* learned counsel for the State submits that both the Courts have given well-reasoned conclusion for convicting and sentencing the petitioner. No case is made out for interference in the impugned judgment of conviction and order of sentence.

6/ Heard, both the parties and perused the record.

7/ In case of ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452***, it was observed that-

5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an



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appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappraising the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same.

8/ Recently, in case of **Malkeet Singh Gill v. State of Chhattisgarh, reported in (2022) 8 SCC 204**, the Supreme Court observed as under-

“10. Before advertent to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the Appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

9/ Gayatri (PW-2) deposed that at the time of the incident, she and her sister Arunabai went to their agricultural field near *Khodar nala*



in Village-Rajpura. Around 4.00 pm in the evening, Rakesh entered his cattle for grazing in her agricultural field. She and her sister objected to grazing of cattle. Rakesh started abusing her in filthy language. On hearing her shout, Chainsingh, Sohansingh, Phoolsingh, Takesingh and Bhanu arrived. Chainsingh, Takesingh and Phoolsingh caught hold of her hand. Rakesh picked up stones and pelted it at her. She sustained injury on back of her head. The blood started oozing from the injury. Her brother Mahesh and cousin Shivram S/o Mehtab intervened and rescued her. She was taken to the hospital at Dharampuri. She was referred to Arbindo hospital, Indore. She remained admitted in the hospital for 15 days. Arunabai (PW-1), Mahesh (PW-3) and Shivram S/o Mehtab (PW-4) corroborated the evidence of Gayatri. There is no material inconsistency going to the root of the allegations, in the evidence of injured Gayatri (PW-2), eye witness Arunabai (PW-1), Mahesh (PW-3) and Shivram (PW-4).

10/ Shivram S/o Dayaram (PW-5) did not support the case of prosecution, but his evidence is inconsistent with his previous statement (Ex.-P/10), therefore, the testimony of Shivram (PW-5) is unreliable. The testimony of Shivram (PW-5) does not enure to the benefit of petitioner.

11/ Dr. Mohan Gupta (PW-7) examined Gayatri and found a lacerated wound admeasuring 2cm x 2cm on back of her head caused by hard and blunt object within 24 hours of the examination and advised for C.T. Scan of the injury. Thus, the medical opinion corroborates the testimony of Gayatri (PW-2) with regard to nature, estimated duration and cause of injury.

12/ Inspector Kailash Chouhan (PW-9) registered FIR Ex.-P/1 on 18/01/2014 at the instance of Arunabai (PW-1). The FIR was registered without any unreasonable delay. There is no material inconsistency between the testimony of Gayatri (PW-2), Arunabai (PW-1) and prompt FIR, therefore, the FIR also corroborates the prosecution evidence under



section 157 of the Indian Evidence Act. Radiologist Vijay Maskole (PW-10) opined that the C.T. Scan (Ex.-P/14) reveals linear undisplaced fracture on right occipital bone on the skull of Gayatri. Non-preparation of Panchnama with regard to damage of the crops or non-seizure of blood stained clothes are mistakes of the investigation, which cannot be given much importance in view of direct popular evidence supported by unimpeachable medical evidence.

13/ Learned trial Court, on consideration of the evidence on record, convicted Rakesh for the offence punishable under section 325 of IPC for voluntarily causing grievous hurt by stone on head of Gayatri.

14/ Learned First Appellate Court considered all the contentions raised in the appeal and affirmed the finding of conviction by the trial Court. The concurrent finding of conviction is based on proper and appropriate reasoning and critical analysis of the evidence on record. The finding cannot be said to be perverse or manifestly inappropriate being against the evidence on record, therefore, no case is made out for interference in exercise of supervisory jurisdiction in the concurrent finding of conviction of the petitioner for the offence punishable under section 325 of IPC.

15/ However, the propriety of the sentence is considered. The incident relates to the year 2014, more than 10 years have passed since the incident. The sad memories, bitterness of the incident and pain of the injury might have diminished with efflux of time. The petitioner has undergone vagaries of trial and the appeal. He must have suffered financially and undergone mental agony for years. The incident started at petty issue of grazing of cattle. The altercation aggravated into physical assault. The accused has not used any traditional or dangerous weapon, rather he picked up a stone and hurled at Gayatri, which hit on back of her head causing linear undisplaced fracture. The sequence of events suggests lower degree of criminality. The parties might have moved on with their



lives. The petitioner had already undergone jail incarceration for more than one month. In such scenario, further jail incarceration of the petitioner may revive bitterness and reignite animosity between the parties, therefore, reduction in the sentence of imprisonment and increase in the fine amount would serve the interest of justice.

16/ In view of the aforesaid discussion, present Criminal Revision is partly allowed only on the point of propriety of the sentence and the impugned order of sentence is, accordingly, amended as under:-

<b>Appellant / accused</b>	<b>Conviction U/s</b>	<b>Sentence of Imprisonment</b>	<b>Fine amount</b>	<b>Default stipulation</b>
Rakesh	325 of IPC	Rigorous imprisonment for the period of custody already undergone	Rs. 11,000/-	Rigorous imprisonment for six months

17/ The fine amount already deposited by the petitioner before the trial Court shall be set off. The period of custody during the trial and post conviction shall be set off against the sentence of imprisonment. On depositing the amount of fine, Rs. 10,000/- shall be paid to injured Gayatri as compensation under section 357(3) of Cr.P.C. The order relating to disposal of seized property is affirmed.

18/ A copy of order/judgment be forwarded to learned trial Court for necessary compliance alongwith original record.

CC as per rules.

**(SANJEEV S.KALGAONKAR)**  
**JUDGE**