IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 8th OF APRIL, 2022

CRIMINAL APPEAL No. 1202 of 1998

Between:-

LOKMAN , AGED ABOUT 26 YEARS, (MADHYA PRADESH)

.....APPELLANT

(BY SHRI ASADULLA USMANI - ADVOCATE)

AND

THE STATE OF M.P. (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI YOGENDRA DAS YADAV, GOVERNMENT ADVOCATE)

This appeal coming on for final hearing this day, the court delivered the following:

JUDGMENT

This criminal appeal under Section 374 (2) of the Code of Criminal Procedure has been filed by the appellant Lokman against the judgment of conviction and order of sentence dated 19.05.1998 passed by VIIth Additional Sessions Judge, Jabalpur in Sessions Trial No. 604/95 whereby appellant Lokman has been convicted for commission of offence punishable under Section 307 of IPC and has been sentenced to undergo rigorous imprisonment for a period of 5 years.

2. The prosecution story in short is that on 28.04.1995 at about 09:35 a.m. Santosh Yadav (PW-4) resident of village Gram Sundarpur P.S.Panagar lodged FIR stating that he is a milkman and sells milk. Today he by his bicycle had come to sell milk in Chandan Colony Manegoan. After giving milk in Chandan Colony with a view to purchase Khalli Chunni from Munna Khalli Chunni's shop he came to Sai Pradhan. After parking his bicycle in front of the shop of Munna, he was standing there. At around 09:05 a.m. someone from back side put a hand on his left shoulder. At this, when he looked back, he found that middle son-in-law of his uncle (*phoopha*) Phoolchand, gave a knife blow on the right side of his back and

fled away after thrusting knife in his back. His back started to bleed. He raised alarm and sat down there. Shop Keeper Munna and one Halke who were standing there had seen accused inflicting him knife blow. Munna asked who had given the blow then he told him that it was his uncle's son-in-law.

3. Ramkumar Patel, who was also standing there took out knife from his back and tied the wound with a towel and brought him to police station along with knife. He further stated that in the evening of 28.04.1995 *Barat* had come to Phoolchand Yadav's house and there his Raipurawala son-in-law was creating ruckus after consuming liquor. At this, he and others had scolded him. Over that issue, he gave a knife blow on his back with an intention to kill him. An FIR was registered at Crime No.243/95 of P.S. Ranjhi for commission of offence under Section 307 IPC by ASI R.S. Singh (PW-1) on the basis of narration given by Santosh (PW-4). R.S. Singh (PW-1) sent him to Victoria Hospital for medical examination. He seized blood stained knife from witness Ramkumar and prepared seizure memo Ex.P/5. He prepared spot map Ex.P/4. He seized blood stained clothes of injured Santosh and prepared seizure memo Ex.P/6. In Victoria Hospital Dr. M.M. Agrawal (PW-2) examined injured Santosh and gave MLC report Ex.P/3. He referred him to Medical College for further treatment. In Medical College, Dr. A.K. Tondar (PW-5) examined Santosh and found an incised wound over right side of his chest and found this injury dangerous to life in the ordinary course of nature. He gave his report Ex.P/10. Next day i.e. on 29.04.1995 Purushottam Singh (PW-6) Naib Tehsildar recorded dying declaration Ex.P/10 of Santosh. After investigation, police Ranjhi filed a charge sheet against the present appellant Lokman before the learned Judicial Magistrate, First Class, who in its turn, committed the case to the Court of Session.

4. Learned Additional Sessions Judge, Jabalpur framed charges against the accused for commission of offence under Section 307 of IPC. Accused abjured his guilt and claimed to be tried.

5. In order to prove its case, the prosecution has examined seven prosecution witnesses namely R.S. Singh (PW-1), Dr. M.M.Agrawal (PW-2), Mahendra Singh Sahu (PW-3), Santosh (PW-4), Dr. A.K. Tondar (PW-5), Purushottam Kumar (PW-6) and M.M. Khan (PW-7) whereas accused person has

not examined any witness in support of his case.

6 . Learned Additional Sessions Judge after recording the evidence of prosecution witness and hearing the parties found the appellant/accused Lokman guilty for commission of offence under Section 307 of IPC and sentenced him as aforementioned. Being aggrieved by the conviction and sentence imposed upon the appellant/accused, this appeal has been filed.

7. Learned counsel for the appellant/accused has assailed the impugned judgment and has submitted that learned trial Court has committed error in law in placing reliance on the evidence of Purushottam Kumar Naib Tehsildar (PW-6) who had recorded the dying declaration Ex.P/10 of the injured as a corroborative piece of evidence whereas no reliance should have been placed on the said dying declaration Ex.P/10 when the appellant is alive and the said dying declaration can only be used for the purpose of contradiction and not for corroboration. Mahendra Kumar Sahu (PW-3) the owner of Khalli Chunni shop where the complainant was purchasing the articles have not supported the prosecution story. Learned trial Court has committed illegality in considering the evidence of Dr. M.M. Agrawal (PW-2) and Dr. A.K. Tondar (PW-5) and placing reliance on their testimonies. Dr. M.M.Agrawal (PW-2) has not given any opinion about the nature of injury in his medical report Ex.P/3. Dr. A. K. Tondar in his cross-examination has admitted that injury caused to injured could have been the cause of his death. He further contended that learned trial Court was not justified in convicting the appellant/accused for commission of offence under Section 307 of IPC. At the most, the appellant/accused ought to have been committed for commission of offence under Section 324 of IPC in place of 307 of IPC. It was lastly submitted by learned counsel for the appellant that the sentence imposed upon the appellant is disproportionate and has prayed that it should be reduced to the period of custody already undergone by the appellant/accused.

8. On the other hand, learned Government Advocate has supported the impugned judgment passed by the learned trial Court and has submitted that the prosecution has proved its case beyond all reasonable doubts. Learned trial Court has not committed any error in convicting the appellant for commission of offence

under Section 307 of IPC as the evidence of injured Santosh (PW-4) is un-rebutted and stand corroborated by the medical evidence and promptly lodged FIR.

9. I have heard rival submissions put-forth by learned counsel for the parties.

10. Injured Santosh (PW-4) in his evidence has deposed that he knew accused from before. At around one and a half to two years ago at morning time after selling milk when he was purchasing Khalli Chunni, accused came from behind and inflicted knife blow on his back. Shopkeeper Munna, Rajkumar and two to three other persons were present at the place of occurrence, Rajkumar had taken out knife from his back. He was taken to police station by a boy working in the shop. At police station Ranjhi he had lodged FIR Ex.P/1 and had put his thumb impression on it. His dying declaration Ex.P/10 was recorded in hospital and it bears his thumb impression. Santosh (PW-4) was cross-examined at length. In his cross-examination, he has stated that on 28.04.1995 he had gone to purchase Khalli Chunni at Ranjhi. Shop was that of Munna. Rajkumar and one Yadav was also there. He has admitted that at the time of purchasing articles his face was towards shop side. He has made it clear that after infliction of injury by accused when he turned back he saw that it was the accused who had given knife blow. He has denied the suggestion offered by the defence that after sustaining injury he had fallen down on the spot and was not able to see the assailant. He has made it clear that he had lodged FIR at P.S. Ranjhi at around 10:00 a.m. He has clearly stated that he knew accused and his name as he is his relative and is son-in-law of his uncle (phoopha).

11. As far as reliability of evidence of Santosh (PW-4) is concerned, his evidence that it was appellant/accused who had given knife blow in his back is un-rebutted. He has been firm and consistent in his cross-examination and has clearly deposed that it was appellant/accused Lokman who had given knife blow on his back. Thus, there are no reasons to disbelieve his evidence.

12. Mahendra Kumar Sahu (PW-3) has been declared hostile by the prosecution. He has not supported the prosecution story but has stated that later he came to know about the incident at his shop that someone had caused injury to

Santosh Yadav.

13. Purushottam Kumar Naib Tehsildar (PW-6) has deposed that on 29.04.1995 on the basis of requisition sent by police Ranjhi for recording the dying declaration of Santosh who was admitted in Medical College Jabalpur, he after taking fitness statement from the doctor had recorded the dying declaration of Santosh Yadav. In it, he had stated that on 28.04.1995, at around 09:30 a.m.when he was purchasing Khalli Chunni from Munna's Shop appellant Lokman Yadav gave a knife blow and he sustained injury on the right side of his back. The statement recorded by him is Ex.P/10.

14. As far the evidence of injured Santosh is concerned, that finds corroboration from the medical evidence. Dr M.M. Agrawal (PW-2) has deposed that on 28.04.1995 Santosh Yadav S/o Shobharam was brought to Victoria Hospital by police Ranjhi. On examining him he had found following injury:

Incised wound one and a half inch x 1/2 inch x depth on right infra scapular.

The injury was caused by hard and sharp object. He was admitted in the ward for treatment and had mentioned that nature of injury be confirmed from the treating doctor. His MLC report is Ex.P/3. He further deposed that on 23.08.1995 weapon of offence knife was sent to him by police Ranjhi for query and according to him injury found on the person of injured could have been caused by that knife. A cut mark was found on the pink coloured shirt and vest and brown coloured stains were also found on shirt and vest. The mark of cut found on the vest and shirt were matched with the injury noted in MLC report Ex.P/3. He had suggested for the chemical examination of brown coloured stains found on the shirt and vest and had returned them to police after sealing.

15. Dr. A.K. Tondar (PW-5) in his evidence has deposed that on 28.04.1995 at Medical College,Jabalpur he had examined Santosh S/o Shobharam aged 23 years, who was admitted at ward no.11 bed no.3 of Surgical Ward and had found following injury on the person of Santosh:

Incised wound right side of chest 2 x 1 x 1/2" at 6th rib.

Injured Santosh was vomiting. He was feeling restless as blood had

deposited in his chest. The nature of the injury was grievous and in ordinary course of nature was sufficient to cause death. The injury was caused by hard and sharp object.

16. Dr. M.M. Agrawal (PW-2) has proved MLC report Ex.P/3 and query report Ex.P/4 and Dr. A.K. Tondar (PW-5) has proved MLC report Ex.P/10 and according to him injury caused to injured Santosh was grievous in nature and in ordinary course of nature was sufficient to cause his death.

17. In his cross-examination, Dr. A.K. Tondar (PW-5) has stated that Santosh may have died or may have not died due to the injury sustained by him. On the basis of aforesaid, learned counsel for the appellant has submitted that injury caused to the injured Santosh ought not to have been considered as dangerous to life. As far the submission on behalf of appellant that injury was not dangerous to life therefore learned trial Court has committed error in convicting the accused for the offence under Section 307 IPC is concerned, is not tenable. It is to be noted that the single blow injury was caused on the vital part of the body though it was caused on the back but it reached to the chest. Dr. A. K. Tondar has specifically stated that nature of injury was grievous and it was sufficient to cause death in ordinary course of nature as it was caused by a sharp cutting weapon and the nature of injury was found to be grievous caused by knife. Therefore, I am of the view that the learned trial Court has not committed any error in holding the appellant/accused guilty of offence under Section 307 of IPC.

18. It is to be noted that in Section 307 of IPC, the term "hurt" has been used which has been explained in Section 319 of IPC and not "grievous hurt" which has been explained in Section 320 of IPC. If a person caused hurt with the intention or knowledge that he may cause death, it would attract section 307 of IPC. If the accused persons have acted with the intention of knowledge that their action might cause death and hurt is caused then the provisions of section 307 of IPC would be applicable. There is no requirement for the injury to be on a vital part of the body, merely causing hurt is sufficient to attract 307 of IPC.

19. Hon'ble Apex Court in *Jageram vs. State of Haryana 2015(11) SCC 366* held as under:

For the purpose of conviction under Section 307 of IPC, prosecution

has to establish (i) intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 of IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc."

20. Hon'ble Apex Court in *State of M.P. vs. Kanha @ Omprakash AIR 2019 SC 713* held as under :

"The above judgments of this Court led us to the conclusion that proof of grievous or life threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent."

21. 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.

22. Hon'ble Supreme Court in the case of *Sadakat Kotwar and another vs State of Jharkhand, 2021 SCC online SC 1046* held as under:

3. *Now so far as the submissions on behalf of the appellants that at the most the case may fall under Section 323 of the IPC and therefore, the courts below have erred in*

convicting the accused for the offence under Section 307 IPC is concerned, it is the case on behalf of the appellants that it was a case of single blow/injury. However, it is required to be noted that the injury of a single blow was on the vital part of the body i.e. stomach and near chest. Nature of the injury is a grievous injury caused by a sharp cutting weapon. The following injuries were found on Jamil Kotwar:

Incised wound muscle deep with Haematoma formation 4 area in 4th and 5th inter costal space in mid axillary region of left axial.

***4.** The following injuries were found on Samsera Bibi:*

Incised wound 1pleura deep in 8th inter costal space mid clericular line of left half of chest.

***5.** Thus, the nature of injuries was found to be grievous caused by sharp cutting instrument.*

***6.** In the case of Mahesh Balmiki v. State of M.P., (2000) 1 SCC 319 in paragraph 9 it is held as under:*

9. there is no principle that in all cases of a single blow Section 302 Penal Code, 1860 is not attracted. A single blow may, in some cases, entail conviction Under Section 302 Penal Code, 1860, in some cases Under Section 304 Penal Code, 1860 and in some other cases Under Section 326 Penal Code, 1860. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the Appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the Appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

***7.** It is not the case of the accused that the offence occurred out of a sudden quarrel. It also does not appear that the blow was stuck in the heat of the moment. On the contrary, considering the depositions of PW7 and PW8 the accused persons pushed and took the husband of PW7 out of the house and thereafter the accused caused the injuries on PW7 and PW8 and stabbed dagger. Thus, deadly weapons have been used and the injuries are found to be grievous in nature. As the deadly weapon has been used causing the injury near the chest and stomach which can be said to be on vital part of the body, the appellants have been rightly convicted for the offence under Section 307 read with Section 34 of the IPC. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon - dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.*

23. As per the submission of learned counsel that learned trial Court was not justified in holding dying declaration Ex.P/10 as corroborative piece of evidence is also not tenable. In para 12 of the judgment, learned trial Court has covered the aspect relating to dying declaration Ex.P/10. It is trite in law that a person making a dying declaration chances to be. His statement cannot be admitted under Section 32 of the Evidence Act but it may be relied on under Section 157 to corroborate the testimony of complainant when adjourned in the case. Reliance can be placed on *Maqsoodan & Others vs State Of Uttar Pradesh*

and another- 1983 Cr.L.J 218 SC.

24. In this case a big knife has been used and incident was preplanned by the accused.

25. In this case, it cannot be overlooked that the assailant was well known to the injured complainant as he is the son-in-law of his uncle (phoopha). The appellant/accused had a motive to cause life threatening injury to the injured as the injured/complainant had some altercation in the marriage solemnized on 28.04.1995 at Phoolchand Yadav's house as he along with others had scolded him for creating ruckus in the marriage and that was the reason for resentment of appellant/accused which led him to commit the crime.

26. As far the identity of the appellant is concerned, there can be no doubt that complainant/injured identified the assailant as in the FIR he has specifically mentioned that it was middle son-in-law of of his uncle. In this case, FIR had been promptly lodged and has been proved by R.S.Singh PW-1 and maker of FIR Santosh (PW-4). Undoubtedly in this case, shop keeper Munna has turned hostile and has not supported the prosecution case but this Court had no reason to disbelieve the evidence of injured complainant supported by promptly lodged FIR and medical evidence.

27. The evidence of Santosh (PW-4) stand clearly corroborated from the medical evidence of Dr.M.M. Agrawal (PW-2) and Dr.A.K. Tondar (PW-5). Thus, the learned trial Court has committed no error in believing the evidence of injured eyewitness Santosh (PW-4) fully supported by the medical evidence and promptly lodged FIR. Even otherwise, it is well settled that the testimony of an injured witness stand on a higher pedestal than other witnesses and is considered reliable as it comes with a built-in-guarantee of his presence at the scene of occurrence. See (*Jodhan vs State of M.P.- 2015 (11) SCC 12*).

28. As the testimony of an injured witness has its own relevancy and is accorded special status in law. Hence, testimony of such injured witness can not be brushed aside. Reliance can be placed on *State of U.P. Vs. Naresh 2012 (1) MPLJ (Cr) SC 19*.

29. In the light of the analysis made herein and considering the findings

recorded by the learned trial Court that accused gave single blow on the vital part of body of Santosh and medical evidence of Dr.A.K. Tondar (PW-5) that injury was grievous in nature and was sufficient in the ordinary course of nature to cause his death, I am of the view that learned trial Court has rightly convicted the accused/appellant for commission of offence under Section 307 of IPC. Thus, the conviction of appellant under section 307 of IPC does not suffer from any legal infirmity. Therefore, no such interference is called for.

30. As far as the point of sentence is concerned, learned counsel for the appellant has submitted that the sentence awarded to appellant is disproportionate and prays that it may be reduced to the period of custody already undergone by him.

31. In this case accused has undergone jail sentence for a period of one year and 345 days but looking to the injury caused to the complainant which was on the vital part of body and also if he was not treated well in time he would have died of wounds. However, the fact that only single injury was caused to the injured and appellant did not attempt further to hurt him. Taking this fact into consideration and the fact that sentence of 5 years R.I. awarded to appellant is likely on the higher side and therefore it is reduced to 4 years imprisonment in place of 5 years R.I.

32. Accordingly, this appeal is partly allowed. The sentence awarded to the appellant is modified as above. With aforesaid modification, the appeal stands disposed of.

33. The appellant is on bail. His bail bonds shall stand discharged. The trial Court record along with copy of the appellate judgment be sent down to the concerned Court. Appellant Lokman Yadav shall surrender, before the trial Court on or before 29.04.2022. In case he fails to surrender, the trial Court shall take all steps to commit him to jail for undergoing remaining part of sentence.

(DINESH KUMAR PALIWAL)
JUDGE

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