



**HIGH COURT OF MADHYA PRADESH**  
**PRINCIPAL SEAT AT JABALPUR**

Criminal Appeal No.2008/1998

- 1, Bhaiyaram
2. Ghanshyam
3. Mukund Singh alias Mukul Singh Thakur
4. Bhuri ..Appellants/accused

Vs.

State of M.P. ....Respondent

Shri Rajesh Maindirectta, learned counsel for the appellants.

Smt. Shobhana Sharma, learned Panel Lawyer for the respondent/State.

Whether approved for reporting: Yes/No

**J U D G M E N T**

(Pronounced on 23/11/2016)

Challenge under this appeal is made against the conviction and sentence recorded on 16.7.1998 by the Special Judge (S.C. and S.T. Act), Tikamgarh in Special Case No.239/1997 whereby each of the appellants has been convicted and sentenced under Section 452 of the IPC for 2 years R.I. and fine of Rs.1000/-, under Section 325/34 of the IPC for two years R.I. and fine of Rs.1000/- for causing grievous injuries to Umesh Devi and under Section 323 of the IPC for 3 months R.I. for causing injury to Shanta Bai and all the jail sentences have been directed to run concurrently. In lieu of the above mentioned fine, the appellants have been directed to undergo additional imprisonment for 3 months.

2. Undisputedly, all the appellants and complainant Umesh Devi

are residents of Gram Dantgora and well acquainted with each other. Complainant Umesh Devi is a member of Scheduled Tribe, and appellant Bhuri belonged to Scheduled Tribe and all other three appellants are not of the class Scheduled Caste or Scheduled Tribe.

3. As per prosecution story, on 25.7.1997 in the village Dantgora at 10.30 a.m., when complainant Umesh Devi (P.W.2) was returning from the house of the Sarpanch to her house, in the way, all the appellants met her and appellant Mukund alias Mukul Singh, after seeing the complainant told that he has to commit a murder, then the complainant objected that he should disclose the name. Previously, the complainant had reported against appellants Bhaiyaram and Mukund alias Mukul Singh in reference to a previous incident. Thereafter, on the date of incident when Umesh Devi was brushing her teeth at 10.30 a.m. in her house, then all the four appellants entered into her house. Appellant Bhaiyaram was having an axe and appellant Mukund alias Mukul Singh was having a stick and after entering into the house, Bhaiyaram and Ghanshyam gave beating to the complainant by their weapons and the appellant Ghanshyam and Bhoori Bai assaulted the complainant with fists and legs. When mother of complainant, Shanta Bai (P.W.3) tried to save her daughter, then appellant Bhaiyaram and Mukund alias Mukul Singh gave beating to her mother. Umesh Devi sustained injuries on her left elbow, backbone, both shoulders and on left thigh. Her

mother received injuries on her left wrist and Chhandilal (P.W.4) and Gyasi (P.W.5) also witnessed the incident. After giving beating, the appellants fled away. On the date of incident, the complainant was having much pain in her left thigh. Thus on the next date i.e. on 26.7.1997, she lodged FIR (Ex.P.3) at police station Palera which was recorded by R.K.Bundela (P.W.7).

4. Both the injured Umesh Devi and Shanta Bai were sent to P.H.C. Palera where Dr. C.V.Arya (P.W.1) recorded MLC (Ex.P.1) for Umesh Devi and MLC (Ex.P.2) for Shanta Bai and he recommended for X-ray examination of the left arm of Umesh Devi. In X-ray examination, Dr.M.K.Chouasia (P.W.6) in Rajendra hospital, Tikamgarh found fracture of left ulna bone of Umesh Devi and recorded X-ray report (Ex.P.7). The investigation was conducted by the then SDO, Palera Kamal Singh (P.W.8).

5. After completing the investigation, a charge-sheet was filed in the Court of concerned J.M.F.C. who committed the case to the Court of Special Judge (S.C. and S.T. Act), Tikamgarh. Each appellant denied the charges framed by the Special Judge for the offence punishable under Sections 452, 323/34 and 325/34 of the IPC and Section 3(1)(ten) of the S.C. and S.T. (Prevention of Atrocities) Act. It was the defence of the appellants before the trial Court that being Aanganwadi Karyakarta, complainant Umesh Devi was not properly distributing the mid-day meal to the children and was not performing her other duties. Thus, many persons of the village including some appellants have complained to the Collector. Thus, they have been falsely implicated. Defence witnesses Gyad

(D.W.1) and Munnilal (D.W.2) were examined by the appellants. The trial Court by the challenged judgment acquitted each of the appellants from the charge of section 3(1)(ten) of the S.C. and S.T. (Prevention of Atrocities) Act but found each appellant guilty for the charged offences under the IPC. and has sentenced as hereinabove stated.

6. According to the evidence of Dr.C.V.Arya (P.W.1) and his MLC (Ex.P.1), on 26.7.1997, he found laceration with swelling and tenderness in lower part of left arm of Umesh Devi and a contusion of size 5 x 2 c.m. on her left thigh and both of her injuries were appearing to be caused by hard and blunt object within 12 hours from the medical examination and she was also complaining of pain in both of her shoulders. He has deposed that in x-ray examination of Umesh Devi, injury was found on her left hand. According to the evidence of Dr.N.K.Chourasia (P.W.6) and his x-ray report (Ex.P.7), on 26.7.1997, in x-ray examination of Umesh Devi's left hand, fracture of her ulna bone was found. Thus, it appears from the medical evidence that by hard and blunt object, grievous injury of fracture was caused. A simple injury was also caused to complainant Umesh Devi.

7. According to the evidence of Dr.C.V.Arya (P.W.1) and his MLC (Ex.P.2), on the date 26.7.1997, he examined injured Shanta Bai and he also found two contusions on her right buttock and left forearm, both caused by hard and blunt object and the aforesaid injuries were found to be simple in nature.

8. Complainant Umesh Devi (P.W.2) deposed that on the date 25.7.1997, when she was returning from the house of Sarpanch to her house, in the way, she found all the appellants sitting in front

of bada of Gorelal and there, appellants Bhaiyaram and Mukund alias Mukul Singh had threatened her and had given abuses to her and thereafter she had reached to her house. Umesh Devi (P.W.2) and her mother Shanta Bai (P.W.3) have deposed that on the date of incident, all the four appellants entered into their house and at that time, Bhaiyaram was having an axe and appellant Mukund alias Mukul Singh was having a stick and two other appellants were not having any weapon. Complainant Umesh Devi (P.W.1) and her mother Shanta (P.W.3) have deposed that both of them were injured thereafter, but there is much contradictions in their evidence about role of the each appellant. The alleged other two eye witnesses mentioned in the FIR, Chhandilal (P.W.4) and Gyasi (P.W.5) have shown their total ignorance about incident in their depositions. Thus both of them were declared hostile by the prosecution and suggestions about contradictory portions of their police statements were given by the prosecutor to them, but it could not gain any help for the prosecution.

9. In reference to the role of appellant No.4 Bhoori, Umesh Devi (P.W.2) and her mother Shanta Bai (P.W.3) have deposed that at the time of incident, she was not having any weapon, but Umesh Devi (P.W.2) in her examination-in-chief has deposed that appellant Bhoori gave beating to her and her mother by a stick but in cross-examination (Para 10), she has deposed that Bhuri has assaulted her only by fists and legs. Her mother Shanta Bai (P.W.3) has deposed that her daughter was assaulted by two appellants Bhaiyaram and Mukund alias Mukul Singh by axe and stick respectively and two other appellants gave beating to her daughter only by legs and fists, but these two other appellants i.e.

Ghanshyam and Bhoori did not beat her. It is important to mention here that the evidence given by Shanta Bai was not challenged by the prosecution. Thus it is binding on the prosecution and thus conviction under section 323 of the IPC for appellant No.2 Ghanshyam and appellant No.4 Bhuri for voluntarily causing injury to Shanta Bai (P.W.3) appears to be defective.

10. For offence punishable under section 452 of the IPC, it is necessary that the accused concerned has committed house trespass after making preparation for causing injury to the complainant. It is clear from the evidence of both of the injured witnesses that appellant No.2 Ghanshyam and appellant No.4 Bhuri were with vacant hands. Thus, conviction of both of them under section 452 of the IPC also appears to be faulty.

11. It was contended by the appellants' counsel that both injured witnesses have deposed that each of them was assaulted by the appellant No.1 Bhaiyaram by an axe, but no any incised wound was found by the doctor on their bodies and on person of each of the injured witnesses, the only two injuries were found caused by hard and blunt object. Thus, there appears contradiction between ocular and medical evidence. According to evidence of investigator (P.W.7), an axe was seized from the appellant Bhaiyaram and a stick (lathi) was seized from the appellant Mukund alias Mukul Singh, but these articles were not sent for examination to FSL, Sagar. Thus, the evidence about seizure of these articles seized is not much important or helpful to the prosecution. The appellants have taken the specific defence in their examination under Section 313 of the Cr.P.C. that the complainant Umesh Devi actually had fallen from the roof to the

ground at the time of arranging the cavelus (tiles) on the roof and thus got injured. In this regard, reliance has been placed on the evidence of defence witness Gyad (D.W.1) and Munnilal (D.W2) that they had heard that complainant Umesh Devi had received injuries due to falling from the roof and Umesh Devi is habitual of making false reports against persons of the village as she was not properly distributing mid-day meal to the concerned children and in this regard many complaints were filed against her by the residents of the village. Complainant Umesh Devi (P.W.2) had denied suggestion given by the defence that she was in the habit of making false reports and cases against different persons, but it is important to note that no suggestion was given to complainant Umesh Devi (D.W.2) and her mother Shanta Bai (P.W.3) in their cross-examination that actually complainant had got injuries due to falling from the roof to the ground. Thus the above mentioned defence and evidence of the defence witnesses prima facie appear to be afterthought and imaginary. It is not possible to receive only two injuries on falling from the roof to the ground.

12. It has also been contended by the appellants' counsel that both alleged independent eye witnesses Chhandilal (P.W.4) and Gyasi (P.W.5) have not supported the injured witnesses and case of the prosecution and there is only evidence of interested and relative witnesses of daughter and mother against the appellants. Umesh Devi (P.W.2) has deposed in her cross-examination (Para 15) that at the time of the incident, witness Chandia (Chhandilal) and Gyasi were looking from distance, but they even did not try to save her and they were saying that they will not give evidence. It is not an abnormal and wonderful fact that in almost every criminal case,



some prosecution witnesses turn hostile and its real reason could not be brought on record despite after declaring them hostile, leading questions were asked to them by the prosecutor. The incident is said to be happened in the house of the complainant. Thus, the presence of mother of the complainant in her house could not be doubted. Shanta Bai (P.W.3) was also having injuries. Thus in totality of the circumstances of the case, her total evidence could not be discarded. It cannot be believed that any lady would receive a grievous injury of fracture in her left hand only to procure prosecution of her enemies. The reason for delayed FIR is clearly explained in the FIR itself. It appears that Umesh Devi (P.W.2) had exaggerated the version at the time of Court's deposition but only because of this improvement, her total evidence could not be ignored.

13. It was contended by the appellant's counsel that the complainant Umesh Devi (P.W.2) had deposed that the appellant Bhaiyaram assaulted her by his axe but no any incised wound was found on her body according to medical evidence. Umesh Devi (P.W.2) has deposed in her examination-in-chief that the axe which was in the hand of the appellant Bhaiyaram was having rust. She had stated at the time of FIR that she was having injuries on back, loin and both shoulders and on left thigh and there was an injury near the left elbow, from which blood was oozing. In report, she had not mentioned that the injury of her left hand was caused by axe. Thus, it appears that she had made some exaggeration in her deposition as she has also deposed that appellant Bhaiyaram had tried to assault her by his axe on three times, but on two times, that weapon had fallen on the wall and utensils. A grievous injury

like fracture of hand could not be self inflicted or could be invited by a friendly hand.

14. Umesh Devi (P.W.2) had deposed in her evidence and it is also mentioned in the FIR that only before one day to the incident, she had made another report against the appellants and in the background of the previous report, the appellant Bhaiyaram and others were threatening and abusing her just before the beating on the date of incident.

15. Umesh Devi (P.W.2) has deposed in cross-examination that from the year 1992, she was not taking material for distributing in the village because the villagers were forcefully taking material from her house. Thus she had informed to the superior officer that she would not receive any material for distribution in the village and she was not teaching the children of the village Dantgora from 1984 and she has also deposed that she was living alone with her mother and a child and there was no any male member in her family, thus she was being harassed by the villagers. The testimony of complainant Umesh Devi (P.W.2) is supported by F.I.R. (Ex.P.3), medical evidence and the evidence of other injured Shantabai (P.W.3) and thus inspires confidence.

16. As earlier discussed, conviction recorded by the learned trial Court of appellant No.2 Ghanshyam and appellant No.4 Bhuri under Section 323 of the IPC in relation to injured Shantabai is defective, thus the conviction of appellant No. 2 Ghanshyam and appellant No.4 Bhuri under Section 323 of the IPC in relation to injured Shantabai could not be upheld. Similarly, it has been established from the evidence that appellant No. 2

Ghanshyam and appellant No.4 Bhuri had entered into house of complainant with empty hands, thus conviction of each of the appellant No.2 Ghanshyam and appellant No.4 Bhuri under Section 452 of the IPC appears not to be justified, but each of them appears to be guilty of a lesser offence punishable under Section 451 of the IPC. The conviction of each appellant under Section 325/34 of the IPC and conviction of appellants No.1 Bhaiyaram and appellant No.3 Mukund Singh alias Mukul Singh Thakur under Sections 452 and 323 of the IPC appears to be totally justified and based on proper appreciation of evidence available on record.

17. The next question arises for consideration in reference to the adequacy of the punishment. Each appellant has been sentenced for two years R.I. with fine of Rs.1000/- by the trial Court in relation to each of the offences punishable under Sections 452 and 325/34 of the IPC. It appears that ends of justice would be achieved, if the appellant No.1 Bhaiyaram and appellant No.3 Mukund Singh alias Mukul Singh is sentenced with one year R.I. and fine of Rs.1000/- in reference to the offence punishable under Section 452 of the IPC and each of the appellants is sentenced to ten months R.I. with fine of Rs.1000/- in relation to charged offence under Section 325/34 of the IPC and appellant No.2 Ghanshyam and appellant No.4 Bhuri are sentenced to six months R.I. with fine of Rs.1000/- for offence punishable under Section 451 of the IPC, as all the appellants have faced the trial and appeal for such a long period. The sentence recorded against the appellant No.1 Bhaiyaram and appellant No.3 Mukund Singh

alias Mukul Singh under Section 323 of the IPC for three months R.I. in relation to causing injuries to Shantabai appears to be justified. With above mentioned modifications in conviction and sentence, this appeal is liable to be partially acceptable.

18. In the result, the conviction recorded by the trial Court of each appellant in relation to offence punishable under Section 325/34 of the IPC in relation to injured complainant Umesh Devi (P.W.2) is maintained and conviction of appellant No.1 Bhaiyaram and appellant No. 3 Mukund Singh alias Mukul Singh under Section 452 of the IPC is also maintained., but the conviction and sentence of appellant No.2 Ghanshyam and appellant No.4 Bhuri under Section 452 of the IPC is set aside and appellant No.2 Ghanshyam and appellant No.4 Bhuri are convicted under Section 451 of the IPC and each of them is sentenced to **six months R.I. with fine of Rs.1000/-**. The conviction and sentence of appellant No.1 Bhaiyaram and appellant No. 3 Mukund Singh alias Mukul Singh under Section 323 of the IPC for causing injuries to Shantabai is maintained, but appellant No.2 Ghanshyam and appellant No.4 Bhuri are acquitted from the charge of Section 323 of the IPC in relation to causing injuries to Shantabai (P.W.3). The sentence of each appellant under Section 325/34 of the IPC is modified to **R.I. for ten months with fine of Rs.1000/-**. The sentence of appellant No.1 Bhaiyaram and appellant No.3 Mukund Singh alias Mukul Singh under Section 452 of the IPC is modified to **R.I. for one year with a fine of Rs.1000/-**. If the above mentioned fine is not paid, then each

appellant shall suffer additional two months' R.I. The appellants were released on bail after suspending their jail sentences. Their bail bonds are discharged. The appellants are directed to immediately surrender before the trial Court to undergo the remaining jail sentences as ordered hereinabove. The jail sentences of each appellant shall run concurrently. The order about disposal of the property of the case passed by the trial Court is maintained. This appeal is disposed of accordingly.

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(Ashok Kumar Joshi)  
Judge

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