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IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE  
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 10<sup>th</sup> OF MAY, 2022

**CRIMINAL APPEAL No. 458 of 1998**

**Between:-**

**RAJENDRA PRASAD , AGED ABOUT 27 YEARS,  
(MADHYA PRADESH)**

**.....APPELLANT**

**(BY SHRI MANISH KHOLIA, AMICUS CURIAE)**

**AND**

**THE STATE OF M.P. (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI DINESH PRASAD PATEL, PANEL LAWYER )**

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

**ORDER**

The appellant has preferred this appeal under Section 374(2) of Cr.P.C against the judgment of conviction and order of sentence dated 19.01.1998 passed by ASJ/Special Judge SC/ST (Prevention of Atrocities) Act in S.C.No.58/1997 (State of M.P Vs. Rajendra Prasad) whereby appellant has been convicted for commission of offence under Section 325 of IPC and has been sentenced to 1 year R.I and fine of Rs.1,000/- in default of payment of fine he shall further undergo R.I for 6 months.

2. The prosecution case is that on 22.01.1996, at around 11:45 AM, Biharilal Kol, resident of village Bhadra, Pipariya appeared at Police Station AJK, Jabalpur and lodged FIR stating that he is resident of village Bhadra, Pipariya and is an agriculturist. On 21.01.1996 at around 6 PM, his neighbour

Rajendra Yadav abused him and asked as to why you have cast wire from his garden (Baadi). At this, he asked him not to abuse, he will remove his wire. When he was removing his wire, Rajendra Yadav again abused him and told that he will not understand and started to beat him by means of lathi causing injuries on his right cheek, left hand wrist, finger, chest, stomach, in the back of neck and in the teeth. At this, when he shouted "save save" Rajendra Yadav is killing him, Shukla ji of Dasraman, his brother Fugga and sister Sukko Bai reached there and pacified the matter. If they would have not reached there, Rajendra Yadav had certainly killed him. Rajendra Yadav threatened him if he approached police station, he will eliminate him. Due to fear, he did not come to police station in the night.

3. On the basis of above narration given by Biharilal P.W-1, an FIR was registered at FIR No.04/1996 of AJK Police Station, Jabalpur for commission of offence under Sections 294, 506, 323 of IPC and 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989. Injured Bihari was sent to hospital for examination and thereafter for x-ray. There were fractures in his left ulna, proximal phalanx of ring and little fingers.

4. After investigation, Police filed charge-sheet against appellant accused before ASJ/Special Judge, SC/ST (Prevention of Atrocities) Act, Jabalpur for commission of offence under Sections 294, 506, 323 of IPC and section 3(1)(x) of SC/ST (Prevention of Atrocities) Act.

5. The accused pleaded not guilty. His defence is that he had asked Biharilal not to cast wire through his garden. Bihari had beaten him. Bihari has lodged false report against him.

6. In this appeal it is argued by the learned counsel for appellant that

learned trial Court has not properly appreciated the evidence of prosecution and defence witnesses. Incident took place almost 26 years back, therefore, if conviction is confirmed, appellant be released after imposing heavy fine.

7. It would be proper to deal with the medical evidence first. Dr. B.S.Chouhan, P.W-4 and Dr. M.M.Agrawal, P.W-6 have been examined. From their evidence, it is proved that injuries found on the person of complainant/injured Bihari are as under:

- (i) Lacerated wound  $3/4$  inch x  $1/2$  inch, muscle deep right upper elbow.
- (ii) Contusion 2 inch x  $3/4$  inch, diffused swelling around interior post right mid cheek.
- (iii) Contusion dark, diffused swelling 3 inch x  $3/4$  inch interior post about  $1/2$  inch below injury no.2.
- (iv) Deformity in left ring finger.
- (v) Multiple dark brown contusion 1 inch x  $1/2$  inch 2 x 3 inch in zigzag ranging from left forearm to back.
- (vi) Multiple contusion dark in zigzag pattern ranging from 3 inch x 1 inch x  $1/2$  inch on abdomen.
- (vii) Contusion multi coloured 2 inch x 8 inch over left scapular region.
- (viii) Contusion multi coloured 4 inch x 1 inch over right scapular region.

8. X-ray was advised for injury no.2, 3, 4 and 5. Except injury no.2, 3, 4 and 5, rest other injuries were simple in nature. Injuries were caused within 24 hours of the examination. Dr. B.S.Chouhan, P.W-4 has proved MLC report Exhibit-P/3 dated 22.01.1996.

9. M.M.Agrawal, P.W-6 has deposed that on 27.01.1996, he was posted in X-ray Department of Victoria Hospital. He had taken x-ray of left hand and left forearm of injured Bihari, who was admitted in ward no.4 of the Hospital. In

x-ray, he had found fracture of left ulna and proximal phalanx of ring and little fingers. According to him, his x-ray report is exhibit-P/4 and x-ray plate is exhibit-P/5. Medical evidence shows that injured complainant had sustained 8 injuries and fractures in the incident.

10. Now evidence of injured and other witnesses have to be analysed.

11. Biharilal, P.W-1 has deposed that he knew Rajendra Yadav. One year ago, in the month of Paush at around 6 PM he was standing in front of his home. Accused Rajendra came and asked him that he cannot cast wire in his garden and asked him to remove the wire. When he was collecting wire for removing, Rajendra came from the behind and gave lathi blows causing multiple injuries over his person. Rajendra gave repeated lathi blows due to which he fell down and became unconscious. He had sustained fractures in his fingers and wrist. Rajendra had inflicted injuries by means of lathi in his back, abdomen and other parts of the body. He remained hospitalised for 8 days. He had lodged FIR exhibit-P/1. Bihari P.W-1 has been firm and consistent in his cross-examination. The evidence of Bihari P.W-1 finds corroboration from the evidence of eye witnesses Kailash Chand P.W-2 and Fugga P.W-3.

12. Kailash Chand, P.W-2 in his evidence has deposed that on the day of incident at around 3 PM he had gone to village Pipariya to bring the woods. The electric wire of service line was lying in the road. Accused had asked Bihari as to why he cast wire in his garden. At this, said that he was taking measurement of the distance and when Bihari went to collect wire lying in the courtyard of accused Rajendra, some quarrel took place between them. Accused Rajendra gave 4 *danda* blows on the person of Bihari. He had pacified the matter. Same is the evidence of Fugga P.W-3 brother of Bihari P.W-1. Thus, the evidence of

Bihari, P.W-1 that accused had beaten him up by means of lathi causing multiple injuries, stand corroborated from the ocular evidence of Kailash Chand P.W-2 and Fugga, P.W-3.

13. Sukko Bai, P.W-5 is the real sister of Bihari. She has deposed that Rajendra had caused injuries to her father by means of wood. She had rescued her father. She further deposed that accused Rajendra had beaten her brother and father both.

14. On examining the evidence of eye witnesses and injured Bihari it is apparent that accused Rajendra over the issue of wire cast, had beaten Bihari by giving a number of lathi blows on his person.

15. The evidence of Bihari, P.W-1 stand corroborated from the oral evidence of Kailash Chand P.W-2, Fugga P.W-3 and medical evidence of Dr. B.S.Chouhan P.W-4 and Dr. M.M.Agrawal, P.W-6.

16. On a careful scrutiny of the evidence of Bihari P.W-1 and other witnesses, it is found that the incident of *maarpeet* took place over the issue of electric wire cast in the garden of accused Bihari. The evidence of Bihari P.W-1 stand corroborated not only from the evidence of eye witnesses Kailash Chand and Fugga but also stand corroborated from the evidence of medical witnesses and promptly lodged FIR.

17. Undoubtedly, there is a contradiction in the evidence of Bihari, P.W-1, Kailash Chand P.W-2 and Fugga, P.W-3 about the time of the incident because as per Bihari, P.W-1 incident took place at around 6 PM whereas Kailash Chand, P.W-2 has stated that it was 3 PM and Fugga stated that it was 4 PM but difference over exact time of incident appears immaterial as Bihari, P.W-1 is an illiterate villager and other witnesses are also illiterate persons and belong to village. Therefore, discrepancy about the time of incident which

ranges from 3 PM to 6 PM cannot said to be material affecting the truthfulness of prosecution story.

18. In this case, it is apparent that incident took place in front of the house of injured Bihari and appellant/ accused Rajendra Prasad over the petty issue of electric wire cast as their houses are adjoining. Appellant Rajendra armed with lathi came and attacked Bihari causing multiple injuries to him. Out of the eight injuries found on the person of Bihari, three are grievous in nature. A close scrutiny of the injury report exhibit-P/3, x-ray report P/4 and x-ray plate, exhibit-P/5 of Bihari shows that there was fracture of proximal phalanx of ring finger and little finger and fracture on the left ulna which were caused by hard and blunt object. Bihari remained in the hospital for a number of days. Rajendra intentionally gave multiple lathi blows on the person of Bihari.

19. Learned trial Court after appreciating the evidence available on record has not committed any error in concluding that appellant accused had voluntarily caused grievous injuries to injured Bihari. Learned trial Court has rightly believed the evidence of injured complainant Bihari which stand corroborated by the testimony of eye witnesses Kailash Chand P.W-2, Fugga P.W-3 and evidence of medical witnesses.

20. In this case, it cannot be overlooked that defence witness Ram Kumar D.W-1 too in his defence has deposed that some quarrel had taken place between Rajendra and Bihari over the issue of wire cast. Thus, there are no reasons to disbelieve the truthful evidence of injured Bihari and other prosecution witnesses. Thus, I fully agree with learned trial Court opinion that where there is overwhelmed, clear and cogent evidence regarding the criminal act committed by an accused, it cannot be discarded merely because of some

minor discrepancies like time of incident, where witnesses are illiterate or semi illiterate villagers.

21. Consequently, the finding recorded by learned trial Court holding accused/ appellant Rajendra, guilty of committing offence punishable under Section 325 of the IPC are here by confirmed.

22. Learned counsel for the appellant has submitted that in this case, incident took place 26 years back. Appellant/accused has settled in life. Therefore, the sentence of one year R.I awarded by the learned trial Court be modified by awarding sentence till rising Court with enhanced fine.

23. The offence under Section 325 of IPC is punishable for 7 years and fine. Hon'ble Supreme Court in the case of State of Andhra Pradesh Vs. Polamala Raju @ Rajarao AIR 2000 SC 2854 has dealt with the matter regarding imposition of sentence. The Court while upholding that there is no reason to go against the legislative mandate and award any lesser sentence, observed that it is an obligation of the sentencing Court to consider all relevant facts and circumstances appearing on the question of sentence and imposing the sentence commensurate with the gravity of the offence. It is the sentencing Court where there is the loud cry for justice by the society. Here in the instant case, complainant Bihari has been beaten mercilessly by his neighbour, appellant/ accused Rajendra over the petty issue of electric wire casting. Therefore, in the opinion of this Court, he does not deserve any leniency. He deserve exemplary punishment. In any case, it cannot be overlooked that sentence awarded is only one year with fine of Rs.1,000/- (one thousand) which is on lower side. Therefore, no case for interference or reduction of sentence is made out.

24. Consequently. this appeal fails and dismissed.

25. Appellant Rajendra Prasad is directed to surrender before the Court of ASJ/Special Judge of SC/ST (Prevention of Atrocities) Act, 1989, Jabalpur within a period of 15 days from today. In case he fails to surrender before the trial Court for undergoing sentence, learned trial Court shall take necessary steps to commit him to jail for serving out the sentence. Trial Court record along with a copy of judgment be sent down immediately to trial Court through Sessions Judge, Jabalpur

**(DINESH KUMAR PALIWAL)**  
**JUDGE**

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