

A.F.R.

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.232/1999

Chinga alias Gyarsi and Others

Vs.

State of Madhya Pradesh

Present : **Hon. Shri Justice Anurag Shrivastava**

Shri Rudra Dev Singh, learned counsel for the appellant.

Ms.Shobhna Sharma, Panel Lawyer for the respondent/State.

J U D G M E N T
(23.05.2017)

This appeal is preferred by the appellants/accused under Section 374(2) of Cr.P.C. against the judgment dated 11.01.1999, passed by First Additional Sessions Judge, Raisen, in ST No.22/1997, whereby the appellant No.1 has been convicted for commission of offence under Section 307 of IPC and sentenced to undergo R.I for three years and fine of Rs.1,000/- and appellants No.2 and 3 have been convicted for commission of offence under Sections 307 r/w 34 of IPC and sentenced to undergo RI for three years, with fine of Rs.1,000/- each with default stipulations respectively.

2. The case of prosecution in brief is that on 19.10.1996 at about 6 O' clock in the evening in village Jamgarh the complainant Jugraj was going to the house of Shiv Narayan

Patel, when he came in front of house of Halke Rai, the appellants/accused Brij Lal and Bhav Singh obstructed and caught hold of him and appellant Chhinga assaulted him by inflicting several injuries on his back by knife in order to kill him. Appellant Brij Lal had also assaulted him by lathi on his head. Witness Halke came there and saved the complainant from the appellant and brought him to the house of Shiv Narayan Patel. Thereafter complainant was brought to Police Station Bareli where he lodged FIR (Ex.P/1). Police registered the offence and send him for medical examination to Community Health Centre, Bareli. Complainant remained admitted for one day and thereafter referred to Medical College, Bhopal. During investigation police prepared spot map and seized the lathi and knife on memorandum of accused Brij Lal and Chhinga respectively. The statement of witnesses were recorded and after due investigation the charge-sheet has been filed in the Court.

3. The trial Court has framed the charges of the offences punishable under Sections 307 of IPC on appellant Chhinga and under Section 307/34 of IPC on appellants Brij Lal and Bhav Singh. Accused persons abjured guilt. During trial, prosecution adduced nine witnesses in its support whereas appellant and other co-accused persons did not give any evidence in defence.

4. The trial Court considering the evidence on record found the appellants guilty for commission of offence punishable under Section 307 and 307/34 of IPC and sentenced as mentioned hereinabove. Against this conviction and sentence, appellants preferred the present appeal.

5. It is argued by the learned counsel for the appellants that from the medical report it is not found that at the time of incident the complainant had sustained grievous injuries. The doctor who had conducted medical examination of complainant did not depose that the injuries of complainant were grievous in nature or sufficient to cause death. The trial Court has wrongly held the appellants guilty for commission of offence under Section 307 of IPC, at the most the offence under Section 324 of IPC will be made out. It is further argued that the appellants Brij Lal and Bhav Singh were not present on the spot at the time of incident. They have been falsely implicated in this offence. There are material omissions and contradiction occurred in the testimony of complainant. Other prosecution witnesses have not supported his testimony. The trial Court, on erroneous appreciation of evidence has wrongly held the appellants guilty for commission of alleged offence. It is further submitted by the learned counsel that the complainant and appellants had also filed a compromise before the trial Court and sought for permission to compound the offence. This fact has not been noticed by the trial Court at the time of awarding sentence. The trial is pending since 1996, therefore, after lapse of 21 years appellants may not be sent to jail and they may be released on probation.

6. Learned Panel Lawyer for the State has supported the judgment and findings recorded by learned trial Court.

7. Considering the rival submissions of the learned counsel for the parties, and on perusal of record, it appears that at the time of incident the complainant Jugraj has sustained multiple injuries on his back caused by hard and

sharp object. After recording FIR (Ex.P/1) he was sent for medical examination to Community Health Centre, Bareilly by the police. Dr. B.D. Khare (PW-6) deposed that he had medically examined the complainant on 19.10.1996 at about 10:15 P.M and found following injuries:-

- i. Incised wound on scalp 2 ½ X ½" X scalp deep on middle of the head.
- ii. Incised wound 2" X 1" X cavity deep on back left side of head.
- iii. Incised wound 1 ½" X ¾" X cavity deep on lumbar region.
- iv. Incised wound 1 ¼" X ½" X cavity deep on the back left side below scapula.
- v. Incised wound 1" X ¾" X cavity deep on right left side of back.
- vi. Incised wound 1" X ½" X muscle deep on left side of back on scapular region.
- vii. Incised wound ½" X ½" X muscle deep on left side of scapular region.
- viii. Incised wound ½" X ¾" X muscle deep on left shoulder.
- ix. Incised wound ¾" X ½" X muscle deep on right scapular region.
- x. Incised wound ¼" X ¼" skin deep on upper side of right scapular region.
- xi. Abrasion 2" X 1" on left side of scapular region.
- xii. Contusion 3" X ¾" on left scapular region.
- xiii. Contusion and abrasion 3" X 2" on left arm.

It is further deposed by the doctor that the injuries No.1 to 10 have been caused by hard and sharp object. The patient was referred to Hamidia Hospital, Bhopal for further

treatment. The statement of Dr. B.D. Khare is duly corroborated by MLC report (Ex.P/15-A). It is further stated by the doctor that the nature of injuries of complainant can be ascertained only after getting the report of treatment of complainant from Hamidia Hospital, Bhopal.

8. Complainant Jugraj (PW-1) deposed that at the time of incident he was going to the house of Shiv Narayan. When he reached in front of the house of Halke Rai, the appellants came there and restrained him on the way. There was a scuffle between the complainant and appellant Chhinga. Appellants Brij Lal and Bhav Singh assaulted him by lathi and Chhinga assaulted him by giving multiple blows of knife on his back. The complainant sustained injuries, he fell down and became unconscious. The witness Halke Rai reached on the spot and intervened. Thereafter he had taken the injured complainant to the house of Shiv Narayan. Complainant went to Police Station with Shiv Narayan on his motorcycle and lodged the report of incident (Ex.P/1). Police sent him to hospital for medical examination and treatment. In his cross-examination it has been suggested by the defense counsel that at the time of incident the complainant had quarrel only with accused Chhinga, other accused persons were not present on the spot. Although this suggestion has been denied by the complainant, but considering the statement of other eye witnesses the above suggestion of defense appears to be probable and acceptable.

9. The prosecution has examined Halke Rai (PW-2) as eye witness. It is not disputed that incident took place in front of house of Halke Rai and it is stated by complainant that during the quarrel the witness Halke Rai came on the spot

and intervened to save him. Halke Rai (PW-2) in his statement deposed that at the time of incident he has only seen the accused Chhinga grappling with the complainant. After incident he had taken the complainant to the house of Shiv Narayan. Shiv Narayan (PW-3) deposed that after the incident Halke Rai brought the complainant to his house and the complainant had told him that he had a quarrel with accused Chhinga.

10. In FIR, which has been lodged soon after the incident the complainant had mentioned that Halke Rai came on the spot during the incident and took him to Shiv Narayan's house. Since incident took place in front of house of Halke Rai, therefore, the presence of Halke Rai at the scene of occurrence is natural and reliable. Halke Rai and Shiv Narayan have no enmity with appellant Chhinga and they cannot be termed as interested witnesses. Although, the prosecution has declared Halke and Shiv Narayan hostile, but their evidence against appellant Chhinga can be believed. It is settled law that the evidence of a hostile witness in all eventualities ought not stand effaced altogether. The same can be accepted to the extent found dependable on a careful scrutiny. The evidence of hostile witness remain admissible and is open for a Court to rely on the dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record. See ***Raja Vs. State of Karnataka (2016) 10 SCC 506.***

11. Therefore, as far as involvement of appellant Chhinga in commission of crime is concerned, the statement of complainant is duly corroborated by FIR (Ex.P/1) and the statement of witness Halke Rai (PW-2), Shiv Narayan (PW-3)

to whom the complainant had told about the incident. Therefore, learned trial Court relying upon statements of Halke Rai and Shiv Narayan, has rightly arrived at the conclusion that at the time of incident appellant Chhinga has assaulted the complainant.

12. In respect of other appellants Brij Lal and Bhav Singh, no one has corroborated the statement of complainant that these appellants were present on the spot and they had assaulted him or caught hold of him. Halke (PW-2) did not say that at the time of incident these appellants were present and they have assaulted the complainant. Shiv Narayan (PW-3) also stated that the complainant had not informed him that these appellants had assaulted him. In FIR (Ex.P/1), it is mentioned that appellant Brij Lal had dealt two blows of lathi on his head, but in MLC report no injury of hard and blunt object was found on the head of the complainant. Therefore, the evidence of complainant against Brij Lal is not corroborated by medical evidence. In FIR complainant has not mentioned that other appellant Bhav Singh had assaulted him. Therefore, in view of above contradiction and discrepancies in statement of complainant with FIR and medical evidence, his statement against Brij Lal and Bhav Singh cannot be relied upon. Therefore, it is not proved beyond reasonable doubt Brij Lal and Bhav Singh had restrained the complainant and assaulted him. It is also not proved that they had a common intention with main accused Chhinga. The trial Court on wrong appreciation of evidence erroneously held appellants guilty for commission of offence under Section 307 of IPC with the aid of Section 34 of IPC. Thus the conviction for appellants Brij Lal and Bhav Singh is liable to be set-aside.

13. It is argued by the learned counsel for the appellants that the prosecution has not filed the report of medical examination of complainant from Hamidia Hospital and no doctor has been examined who has treated the complainant in the hospital. Dr. B.D. Khare does not say that the injuries of complainant were grievous in nature or dangerous to life. Therefore, the injuries of complainant may be treated as simple injuries and appellant cannot be held guilty for attempt to murder of complainant.

14. The argument of learned counsel for the appellant cannot be accepted. It is settled law that in case of attempt to murder, the intention or knowledge of the accused and not nature of injuries is determinative factor. The Court has to see whether the act, in respect of its result, was done with the intention or knowledge and under circumstances mentioned in the Section 307 of IPC. Hon'ble Apex Court in case law **R. Prakash Vs. State of Karnataka (2004) (9) SCC 27** has observed as under:-

"It is sufficient to justify a conviction under Section 307 of IPC. If there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused. Such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result. If any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC. Merely because

the injuries inflicted on the victim were in the nature of a simple hurt."

15. In the present case there are more than ten injuries caused on the back of the complainant by knife. The injuries has been caused without any provocation. Multiple injuries caused on vital part of person of complainant shows the intention of the accused Chhinga. It is not essential that bodily injury capable of causing death should have been inflicted. Therefore, learned trial Court has rightly recorded the findings that the appellant Chhinga has inflicted injuries to complainant with intention or knowledge to cause his death. Thus, Chhinga is rightly held guilty and convicted by the trial Court for commission of offence punishable under Section 307 of IPC. Thus conviction of Chhinga is hereby maintained.

16. It is argued by the learned counsel for the appellants that the incident occurred in the year 1996. The parties have settled their dispute and they had filed a compromise before the trial Court. This is appellant Chhinga's first offence he has clean antecedent and no previous conviction has been proved against him. The appellant has undergone the agony of protracted trial the appeal since 21 years. He had already undergone 5 ½ months in custody, therefore, he may not be sent to jail.

17. In present facts and circumstances of the case, it is found proved that the appellant Chhinga has attempted to commit murder of complainant, which is punishable under Section 307 of IPC. The offence is serious in nature, therefore, relying upon case law Mohar Singh Vs. State of Rajasthan (2015) 11 SCC 226 the sentence of R.I for three

years awarded by learned trial Court appears to be proper. Therefore, this Court is not inclined to interfere with the conviction recorded by the trial Court.

18. Thus, the appeal preferred by the appellants Brij Lal and Bhav Singh is allowed. Their conviction and sentence recorded by the trial Court under Section 307/34 of IPC is set-aside and they are acquitted of the charge of aforesaid offence. Their bail bonds stands discharged.

19. The appeal preferred by the appellant Chhinga is dismissed and sentence and conviction recorded by the trial Court is affirmed. His bail bond stands cancelled and he is directed to surrender before the trial Court for undergoing the remaining part of sentence as awarded by the trial Court.

20. The appeal is hereby partly allowed.

(Anurag Shrivastava)
Judge

Vin**