IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 11TH OF APRIL, 2023

CRIMINAL APPEAL NO. 5697 OF 2019

BETWEEN:-

HARENDRAJEET SINGH, S/O LATE SHRI SADHU SINGH, AGED ABOUT 60 YEARS, OCCUPATION- EX-MINISTER, R/O ASHOKA APARTMENT, GUPTESHWAR ROAD, GARHA, DISTRICT JABALPUR (M.P.).

.....APPELLANT

(BY SHRI SANKALP KOCHAR - ADVOCATE)

AND

STATE OF MADHYA PRADESH, THROUGH POLICE STATION AJAAK, DISTRICT JABALPUR (M.P.).

.....RESPONDENTS

(BY SHRI ALOK AGNIHOTRI – DEPUTY GOVERNMENT ADVOCATE)

.....

Reserved on : 19.01.2023

Pronounced on : 11.04.2023

This appeal having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

JUDGMENT

This appeal is under Section 374(2) of the Code of Criminal Procedure against the judgment dated 20.06.2019 passed by 21st

Additional Sessions Judge and Special Judge (M.P. & M.L.A.), Bhopal in Special Case (P.P.M.) No. 41/2018 convicting the appellant under Section 353 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for one year with fine of Rs. 2000/- and in default of payment of fine, additional rigorous imprisonment for one month.

2. As per the facts of the case, the controversy arose on the basis of an incident which took place on 24.06.2000 at around 7.30 p.m. wherein the appellant and his brother i.e. Paramjeet Singh went to the Police Station Gohalpur for lodging a report regarding the fact that the truck of one Indu Tiwari bearing Registration No. CIJ 8427 willfully crushed into the car of the appellant bearing Registration No. M.P. 20-5300 with intention of causing grievous hurt to him. As a result, FIR bearing Crime No. 345/2000 was registered against Indu Tiwari and offence under Section 307 of the Indian Penal Code was registered against him at Police Station Gohalpur, District Jabalpur.

3. The investigation got done under the supervision of Sub Inspector Ram Swaroop Pandre (PW-1) and Indu Tiwari was thereafter arrested by the police but he was released on bail on 27.06.2000 i.e. just after two days from the date of incident.

4. In addition to the above, as per the prosecution, the police received a tip on 27.06.2000 at around 6.00 in the evening that a car bearing Registration No. M.P. 09 N 1113 is parked in front of a warehouse located nearby Krishi Upaj Mandi. The police reached the spot and searched the area and found six persons sitting inside the aforesaid car and after searching the said car, arms were seized from the car and offence under Section 25 of the Arms Act was registered against the persons sitting in the car. The car was also seized by the police,

which belonged to brother of the appellant.

5. Thereafter, appellant alongwith other persons went to Police Station, Gohalpur to enquire about the incident and registration of offence under Section 25 of the Arms Act.

6. As per the prosecution, the appellant got into a heated argument with police officials and alleged that the police are registering a false case at the instance of local MLA just to malign the reputation of the appellant by keeping the weapons in the car and arresting the innocent persons. In the police station, the appellant abused Ram Swaroop Pandre, who is the complainant and lodged the FIR against the appellant, saying that he had given undue favour to Indu Tiwari and as such despite registration of offence under Section 307 of IPC against him, he was granted bail only within two days as Shri Pandre after investigation had prepared a very weak case against Indu Tiwari. As per the prosecution, the appellant picked up a stool and tried to assault the complainant (Ram Swaroop Pandre) and also abused him and then FIR got registered against the appellant and offences under Sections 294, 448, 506 of IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 registered against him.

7. The police after completing necessary formalities, completed the investigation and submitted the charge sheet in the Court of Judicial Magistrate First Class Jabalpur where the Court framed the charges against the appellant. Thereafter, the case was committed for trial to the Court of XXI Additional Sessions Judge and Special Judgek (M.P. & M.L.A.).

8. The appellant abjured his guilt and pleaded not guilty. He did not produced any evidence in his defence and stated that he has been falsely

implicated in the case on account of political rivalry.

9. The prosecution examined as many as 11 witnesses to prove the guilt of appellant.

10. After conducting trial, the trial court vide impugned judgment dated 20th June, 2019 recorded finding that the prosecution established its case that the at the time of incident the complainant (PW-1) was discharging his official duty and at that time the appellant assaulted him by means of a stool, but the trial court found that the prosecution failed to prove unlawful assembly or any abuse to complainant by the appellant beyond reasonable doubt. Accordingly, the trial court acquitted the appellant of the charge under Sections 294, 448, 506 of IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, however convicted him for the offence under Section 353 of IPC and sentenced him to undergo rigorous imprisonment for one year with fine of Rs. 2000/- with default stipulation.

11. Shri Kochar appearing for the appellant has assailed the judgment and finding recorded by the trial court mainly on two grounds; firstly that the trial court failed to establish a case under Section 353 of the Indian Penal Code against the appellant because from the statement of complainant Ram Swaroop Pandre (PW-1) and all other witnesses it is clear that the offence under Section 353 of IPC is not made out against the appellant and secondly that the incident occurred on 28.06.2000 but the FIR was lodged on 18.03.2002 and as such there is a delay of almost two years but there is no explanation by the prosecution for such delay. He has submitted that in absence of any plausible explanation or justification for not lodging the FIR in time, the incident appears to be suspicious and the sentence can be set aside on this count alone. He also

submits that the statements of witnesses were recorded after lapse of almost 3-4 years and therefore it can be said that the aforesaid witnesses are planted witnesses and they had nothing to do with the alleged incident. He further submits that no independent witnesses were examined by the prosecution and only departmental and interested witnesses were produced and examined and as such their testimony cannot be said to be trustworthy and cannot be relied upon. Counsel submits that the trial court failed to appreciate that the complainant himself has very categorically admitted in his statement that while incident occurred he was not performing any official duty and further admitted that the appellant had not created any hurdle in his official work and he failed to explain as to what influence was used by the appellant because there were so many persons present in the police station. He submits that the statement of complainant only is enough to establish that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and as such the trial court erred in convicting the appellant and awarding him sentence under Section 353 of IPC.

12. On the other hand, learned counsel for the respondent/State has opposed the submission made by the learned counsel for the appellant and supported the finding recorded by the trial court. He has submitted that although the complainant was not consistent with his statement in some places but in some of the occasions he had supported the case of the prosecution saying that the appellant created hurdle in discharging his official duties and at the relevant point of time he was discharging his official duties. He further submits that there is sufficient explanation available about delay in lodging the FIR and only on that count the finding given by the court below convicting the appellant cannot be said

to be illegal and cannot be set aside. He submits that the prosecution has successfully proved its case against the present appellant and he has rightly been convicted.

13. Shri Kochar, to buttress his submission, placed reliance upon the judgments rendered by the Supreme Court and the High Courts of other States in the cases of ***Manik Taneja and another vs. State of Karnataka and another*** reported in ***(2015) 7 SCC 423***, ***Harbeer Singh vs. Sheeshpal and others*** reported in ***(2016) 16 SCC 418, Jaswinder Singh vs. State of Punjab*** reported in ***1995 SCC OnLine P & H 157***, ***Ramesh Kumar vs. Smt. Sushila Shrivastava*** reported in ***1996 SCC OnLine Raj 153*** and a judgment pronounced by the Kerala High Court in the case of ***P.V. Mathai vs. The State of Kerala & Another-CRL.MC No. 4477 of 2019***.

14. Shri Kochar has drawn attention of this Court towards the statement of Ram Swaroop Pandre (PW-1), who in para-9 of his statement has stated as under:-

> "9. यह सही है कि घटना के समय मैं कोई सरकारी काम नहीं कर रहा था और न ही आरोपी ने मेरे किसी सरकारी काम में व्यवधान डाला था। यह सही है कि घटना के समय बहुत से लोग थे और मैं नही बता सकता कि किसने कौन सी गाली दी थी। यह कहना सही है कि मैने एफ.आई.आर. में तारीख गलत दर्ज होने की कोई कार्यवाही नहीं की थी और न ही उच्चाधिकारियों को कोई शिकायत की और न ही विवेचक को इस संबंध में संशोधन हेतु कोई आवेदन दिया। यह बात सही है कि हरेंद्रजीत सिंह बब्बू नाम के और भी व्यक्ति हो तो मैं नहीं जानता।"

15. As per Shri Kochar, statement of complainant itself makes it clear that at the time of incident he was not performing any official duty and the appellant had not created any hurdle to prevent or deter him from discharging his official duty and as such the offence under Section 353

of IPC is not made out against the appellant because the required ingredients of such offence are missing in the present case. He further submits that there is no plausible explanation or justification with the prosecution for lodging the FIR and recording statements of witnesses after an inordinate delay. The trial Court has also not considered this aspect and also not given any specific finding that there was sufficient explanation given by the prosecution for registration of offence belatedly.

16. Considering the rival contention of the learned counsel for the parties, it is clear that the basic contention has been put forth before this Court that in view of the statement of Ram Swaroop Pandre (PW-1) (Complainant), as has been quoted hereinabove, the offence under Section 353 of IPC is not made out against the appellant. Therefore, to reach to a logical conclusion whether the appellant is guilty of offence under Section 353 of IPC or not, it is apt to consider and analyze the necessary ingredients of Section 353 of IPC, which deals with an offence of assault or use of criminal force to deter a public servant from discharging his official duties. Section 353 of IPC reads as under:-

> "***353. Assault or criminal force to deter public servant from discharge of his duty***.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

17. The above Section very categorically provides that in order to attract the offence it is the duty of the prosecution to prove that there

was assault or use of criminal force restraining public servant from performing his official duties or causing any act with intent to prevent or deter him from discharging his duty. Therefore, it is evident that to make out a case under Section 353 of IPC, the prosecution must meet essential requirements that a public servant must be assaulted or subjected to criminal force when he was carrying out his responsibilities; or with the goal of preventing or discouraging him from doing his duties.

18. To establish as to whether the appellant has assaulted the complainant or used any criminal force upon him, it is necessary to examine the definition of 'force', 'criminal force' and 'assault', which are defined in Sections 349, 350 and 351 of IPC, which are as under:-

> **Section 349: Force**— A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:
> **First**.—By his own bodily power.
>
> **Secondly**.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.
> **Thirdly**.—By inducing any animal to move, to change its motion, or to cease to move.

19. A reading of above Section makes it clear that a person is said to use force in any of the three methods mentioned above. The exertion of energy or power that causes a movement or change in the external

environment is known as force. The term "force" as defined in this Section refers to force exerted by a person on another human.

> **Section 350: Criminal force**—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

20. From perusal of the above section, it is clear that the force that has been specified in Section 349 changes into a criminal force when the essential of Section 350 are satisfied. The essentials of Section 350 are intentional/deliberate use of force against any one; without consent, when the claimed assault involves illegal conduct and the force has to be utilized in order to conduct an offence or to cause hurt or fear to another person.

> **Section 351: Assault**— Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
> ***Explanation***.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

21. In the present case, complainant Ram Swaroop Pandre (PW-1) although indisputably is a public servant but he himself in his statement recorded before the court admitted that at the time of incident he was not performing any official duty and appellant had not created any hurdle or deter him from performing official duty, therefore it is distinctly clear that the required ingredients of Section 353 of IPC are not available in the present case and the prosecution in fact has failed to establish the

material ingredients of Section 353 of IPC.

22. In this regard, the Supreme Court in the case of ***Manik Taneja (supra)*** in para10 has observed as under:-

> "**10.** So far as the issue regarding the registration of FIR under Section 353 IPC is concerned, it has to be seen whether by posting a comment on the Facebook page of the traffic police, the conviction under that section could be maintainable. Before considering the materials on record, we may usefully refer to Section 353 IPC which reads as follows:
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> "***353. Assault or criminal force to deter public servant from discharge of his duty***.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."
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> A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, the ingredients of the offence under Section 353 IPC are not made out."

Further, in the case of ***P.V. Mathai (supra)***, the Kerala High Court has also considered this aspect and dealing with material ingredients of

Section 353 has also observed as under:-

> "**7.** Section 353 of IPC deals with an offence of assault or criminal force to deter a public servant from discharge of his official duty, which reads as follows:-
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> > "Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."
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> **8.** A reading of the above provision would make it clear that in order to attract the offence, the prosecution is required to establish that there was assault or use of criminal force and such assault or use of criminal force was made on a public servant while he was acting in the execution of his duty or with intent to prevent or deter him from discharging his duty or in consequence of anything done or attempted to be done by him in the discharge of his duty. There is no doubt that the second respondent is a public servant and at the time of the alleged incident, she was discharging her official duty. But the crucial question is whether the petitioner has assaulted the second respondent or used any criminal force and whether the alleged act was done by the petitioner with intent to prevent or deter the second respondent from discharging her official duty.
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> **9.** The word 'assault' has been defined under Section 351 of IPC as follows:- "Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. " The explanation says that mere words do not amount to an assault.
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> **10.** A reading of Section 351 of IPC would show that the victim must apprehend that he who makes that gesture or preparation was about to use criminal force

to the victim.

11. The word 'criminal force' has been defined under Section 350 of IPC as follows:-

> "Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."

12. The word 'force' has been defined under Section 349 of IPC as follows:-

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

13. In the case on hand, the prosecution has no case that the petitioner has used any force on the 2nd respondent. On the other hand, the case of the prosecution in short is that, after entering into the office room of the petitioner, the accused asked as follows:- "Who asked you to enter into my property, who is your authorized officer, who gave you the authority to enter into my land." Apart from uttering these words, there was absolutely no use of force or even an attempt to use force. Apart from the vague allegation that the official time of the 2nd respondent was lost on account of the alleged acts of the petitioner, there is no specific allegation that the above mentioned words were uttered by the petitioner with the intent to deter the 2nd respondent from discharging her duty.

In case of ***Jaswinder Singh (supra)*** Punjab and Haryana High

Court while dealing with Section 353 of IPC has observed as under:-

> "**4.** The learned counsel for the petitioners contended that offences under Sections 333, 332 and 353 I.P.C. have not been made out on a reading of the complaint. It is not the case of the prosecution that the police constable Davinder Singh was attacked while discharging his duties as a public servant or with any intent to prevent or deter the constable from discharging his duties as such public servant and, therefore, the offences under Sections 333, 332 and 353 I.P.C. are not attracted in this case. According to him, the averments in the complaint may amount to commission of offences under Sections 323 or 324 or under any other Section, which are not exclusively triable by the Court of Sessions. According to learned counsel, the offences under Sections 332, 333 and 353 I.P.C. came into play only when a public servant is discharging his duties as such and that if any injury is caused to him while discharging his duties in official capacity. According to him, it is not the case of the prosecution that at the time of the commission of the offence, the constable Davinder Singh was discharging any official duty because after performing his official duties, he had been simply returning to the police station in the bus during which time the alleged incident was said to have taken place.
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> **5.** It is to be seen whether the learned Additional Sessions Judge is correct in framing charges for the offences under Sections 332, 333 and 353 I.P.C. read with Section 34 I.P.C.
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> **6.** Sections 332, 333 and 353 I.P.C. read as follows:
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> "Section 332. Voluntarily causing hurt to deter public servant from his duty. - Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
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> Section 333. Voluntarily causing grievous hurt to deter public servant from his duty. - Whoever

voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Section 353. Assault or criminal force to deter public servant from discharge of his duty. - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

7. A reading of the above Sections clearly shows that if a public servant while discharging his duties is attacked or any injury caused to public servant in the discharge of his duties or when any public servant prevented or deterred from performing his duties or when any public servant assaulted or any criminal force used against the public servant while he is executing his duties as such public servant, then only the above offences would attract. It is not the case of the prosecution that the accused caused hurt or assaulted the constable Davinder Singh while he was performing his duties as such public servant, or with intent to prevent him or deter him from discharging his duties. I am, therefore, of the opinion that the necessary ingredients to attract Sections 332, 333 and 353 I.P.C. are not present in the present case. The learned Additional Sessions Judge has not considered this aspect of the matter. The learned Additional Sessions Judge referred to a Supreme Court judgment in *Manumiya v. State of Gujarat,* reported in (1979) 4 SCC 717 : AIR 1979 SC 1706, but that decision is not applicable in this case as in that case the driver of the bus was prevented from entering into the bus to drive the bus, which is his duty, therefore, on the facts of

that case, it has been held that the public servant was prevented from discharging his duty, namely, plying the vehicle, but such is not the case in the present one. There is no allegation anywhere in the complaint that the police constable was prevented or deterred from performing his duty. There is also no allegation that he was hurt while performing his duty. Performance of duty had already been done by him by delivering dak at various places. He was coming back to the police station after performing his duties. Simply because the police constable happens to be a public servant, it cannot be said that he has been discharging his duties. It depends on the facts of each case whether a public servant can be said to be discharging his duties and whether the offences have been committed when the public servant has been discharging his duties. It is not even the case of the prosecution that the accused had knowledge that the constable was performing his duty. Therefore, it cannot be said that the accused with an intent to prevent or deter the complainant from discharging his duties, caused injuries to him. It cannot also be said that the accused caused hurt to the constable while he was discharging his duties. I am, therefore, of the opinion that Sections 332, 333 and 353 I.P.C. are not attracted in this case but the fact remains that it is the case of the prosecution that the accused beat the constable Davinder Singh on the date of the incident. It is also mentioned that his teeth were broken. It is also in the complaint that an iron rod has been used by the accused while attacking the constable. Therefore, it is for the Additional Sessions Judge to consider under what Sections the accused has to be charged with. I, therefore, feel that it is just and proper to set aside the impugned order of the learned Additional Sessions Judge and remand the matter back to him for reconsideration on the question of charges to be framed against the accused on the basis of the averments in the complaint and if he feels that any offence exclusively triable by a Court of Sessions is made out, he may try and proceed with the trial of the case after framing appropriate charges. If, he is of the opinion that the offences said to have been committed by the accused are not exclusively triable by the Court of Sessions, he may frame appropriate charges against the accused for these offences and send the matter to Chief Judicial Magistrate for trial as provided under

Section 228 clause (1) of the Code of Criminal Procedure.

23. Considering the statement of complainant and the finding given by the trial court, this Court has no hesitation to say that the trial court failed to consider the statement of the complainant admitting that at the time of incident he was not performing any official duty and this material aspect has been over-looked by the court. From the statement of the complainant (PW-1) it is also clear that his statement is varied from time to time as at some places he has alleged against the appellant and at some places he has admitted that appellant did nothing and also not created any hurdle in performing the official duty. To make it clear that the statement of complainant Ramswaroop Pandre (PW-1) varied at various place, it is pertinent to reproduce the relevant paragraphs of his statement which are as under:-

"**2.** "चेम्बर के अंदर हरेन्द्रजीत सिंह बब्बू द्वारा सीएसपी0 आहिरे एवं टी.आई. बोहरे को उपरोक्त विषयों को लेकर चर्चा कर रहे थे, सीएसपी0 आहिरे साहब द्वारा स्पष्ट उनके सामने बोल दिया था कि 6 लड़के जो गिरफ्तार हुए हैउनके पास हथियार प्राप्त हुआ है जप्त किया गया है जो कार्यवाही की गई है वह वाजिब की गई तो हरेन्द्रजीत सिंह बब्बू गुस्से से चेम्बर के बाहर निकल आए, मै अपने साथी थानेदारों के साथ पोर्च के नीचे बैठा था, मुझे देखते ही आरोपी हरोन्द्रजीत सिंह बब्बू गुस्से में आकर बोलने लगे तुम हो मादरचोद पन्र्दे तुमने हमारे भाई के मामले में सख्ती से कार्यवाही नहीं करने के कारण आरोपी इन्दु तिवारी की तुरंत न्यायालय से जमानत हो गई थी तुमने मेरे भाई की एनी कार में बैठे हुए हमारे लड़कों को भी हथियार सहित गिरफ्तार किया है जबकि उनके पास हथियार नहीं था, मॉ बहिन की गाली गलौंच देते हुए तुम मादरचोद गुडवॉ मादरचोद गोली मरवा दूँगा। मुझे गाली सुनने में बहुत खराब लगी। हरेन्द्रजीत सिंह बब्बू गुस्से में ही थे। पास मे लकड़ी का स्टूल पड़ा था उस स्टूल को अपने हाथों में उठाया और मुझे मारने को दौड़ा अगर उसी समय टीआई0 बोहरे आवाज सुनकर बाहर नहीं निकलते और हरेन्द्रजीत सिंह बब्बू को पकड़ते नही तो एक अप्रिय घटना हो जाती, मेरी हत्या भी हो सकती थी।

टीआई0 श्री बोहरे एवं सीएसपी0 आहिरे और स्टाफ नहीं दौड़ा होता और उनको पकड़कर चेम्बर तरफ नहीं ले जाया गया होता तो एक निश्चित अप्रिय घटना हो जाती।

5. घटना दिनांक 28.06.2000 की है, दिन मुझे याद नहीं है। घटना रात के 12.30 बजे या 1 बजे की है। घटना की दिनांक एवं समय का मेरा डयूटी प्रमाण पत्र प्रकरण में संलग्न है या नहीं, वह विवेचक बतायेंगे, आज मैं अपने साथ नहीं लाया हूं। घटना के समय मैं कोई कार्यवाही नहीं कर रहा था। घटना दिनांक को मैं अपने साथियों के साथ थाने के बाहर बैठा था। थाने में टी.आई. साहब अपने चेम्बर में उपस्थित थे। यह कहना सही है कि आरोपी सीधे आकर टी.आई. साहब के पास गये और बातचीत की। क्या बातचीत हुई मुझे जानकारी नहीं है। आरोपी के साथ कौन–कौन व्यक्ति थे, मैं नाम से नहीं जानता, स्वतः कहा कि 10–15 लोग थे। यह कहना गलत है कि घटना दिनांक 28.06.2000 की नहीं है।''

9. यह सही है कि घटना के समय मैं कोई सरकारी काम नहीं कर रहा था और न ही आरोपी ने मेरे किसी सरकारी काम में व्यवधान डाला था। यह सही है कि घटना के समय बहुत से लोग थे और मैं नही बता सकता कि किसने कौन सी गाली दी थी। यह कहना सही है कि मैने एफ.आई.आर. में तारीख गलत दर्ज होने की कोई कार्यवाही नहीं की थी और न ही उच्चाधिकारियों को कोई शिकायत की और न ही विवेचक को इस संबंध में संशोधन हेतु कोई आवेदन दिया। यह बात सही है कि हरेंद्रजीत सिंह बब्बू नाम के और भी व्यक्ति हो तो मैं नहीं जानता।''

24. Likewise, I have also examined the testimony of other witnesses. Out of them, Govind Prasad Dubey, Head Constable (PW-3) and Naresh Chandra, Constable (PW-4) have not supported the case of the prosecution and declared hostile. Rest of the witnesses i.e. PW-4 to PW-11 have not supported the case of the prosecution as a whole and have also not supported the version of the complainant fully. At some places testimony of witnesses is contradictory to each other as some of them stated that they had given the statements reading their 161 statement since the incident occurred a long time back and they did not remember the same. Similarly, about the assault and abuse by the appellant to

complainant (PW-1), there is variation in the statements of the witnesses as some of the witnesses stated that when appellant was trying to assault complainant, T.I., Girish Bohre (PW-9) and CSP Shri Ahire stopped the appellant and some of the witnesses stated that the staff members stopped the appellant. However, the testimony of most of the witnesses including complainant (PW-1) is intact with regard to the fact that at the time incident they were sitting outside the police station in the porch area and not performing any official duty. About abuse, the complainant has stated in his statement that he cannot say as to who abused him as there were several persons present in the police station. Thus, in my opinion, it is clear that the offence under Section 353 of IPC is not made out against the appellant.

25. So far as delay in lodging the FIR is concerned, after examining the record and perusal of the finding given by the trial court, I find that there is no plausible explanation about lodging of the alleged report after a delay of two years except the fact that the incident was recorded in Rojnamcha Sanha or conveyed to superior officer but that is not sufficient explanation to establish as to why the report was not lodged immediately after the incident. In this regard, the Supreme Court in the case of ***Harbeer Singh (supra)*** has considered the impact of recording of the statement of witnesses belatedly and observed as under:-

> "**15**. We have given careful consideration to the submissions made by the parties and we are inclined to agree with the observations of the High Court that PW 3 and PW 9 were not witnesses to the alleged conspiracy between the accused persons since not only the details of the conversation given by these two prosecution witnesses were different but also their presence at the alleged spot at the relevant time seems unnatural in view of the physical condition of PW 9 and the distance of Sheeshpal's Dhani from Sikar Road. Besides, it appears that there have been improvements

in the statements of PW 3. The Explanation to Section 162 CrPC provides that an omission to state a fact or circumstance in the statement recorded by a police officer under Section 161 CrPC, may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, while it is true that every improvement is not fatal to the prosecution case, in cases where an improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same. (See *Ashok Vishnu Davare v. State of Maharashtra*, (2004) 9 SCC 431 : 2004 SCC (Cri) 1468 ; *Radha Kumar v. State of Bihar*, (2005) 10 SCC 216 : 2005 SCC (Cri) 1507; *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra*, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375 and *Baldev Singh v. State of Punjab*, (2014) 12 SCC 473 : (2014) 6 SCC (Cri) 810). In our view, the High Court had rightly considered these omissions as material omissions amounting to contradictions covered by the Explanation to Section 162 CrPC. Moreover, it has also come in evidence that there was a delay of 15-16 days from the date of the incident in recording the statements of PW 3 and PW 9 and the same was sought to be unconvincingly explained by reference to the fact that the family had to sit for condolence (2016) 16 SCC 418_1.png) meetings for 12 to 13 days. Needless to say, we are not impressed by this explanation and feel that the High Court was right in entertaining doubt in this regard.

16. As regards the incident of murder of the deceased, the prosecution has produced six eyewitnesses to the same. The argument raised against the reliance upon the testimony of these witnesses pertains to the delay in the recording of their statements by the police under Section 161 CrPC. In the present case, the date of occurrence was 21-12-1993 but the statements of PW 1 and PW 5 were recorded after two days of incident i.e. on 23-12-1993. The evidence of PW 6 was recorded on 26-12-1993 while the evidence of PW 11 was recorded after 10 days of incident i.e. on 31-12-1993. Further, it is well-settled law that delay in recording the statement of the witnesses does not necessarily discredit their testimony. The court may rely on such testimony if they

> are cogent and credible and the delay is explained to the satisfaction of the court. *[See Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106 : 1993 SCC (Cri) 435; Mohd. Khalid v. State of W.B., (2002) 7 SCC 334 : 2002 SCC (Cri) 1734 ; Prithvi v. Mam Raj, (2004) 13 SCC 279 : 2005 SCC (Cri) 198 and Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385]*.
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> **17.** However, *Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371 : 1979 SCC (Cri) 1]*, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under Section 161 CrPC, although those witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. (See also *Balakrushna Swain v. State of Orissa*, (1971) 3 SCC 192 : 1971 SCC (Cri) 313; *Maruti Rama Naik v. State of Maharashtra*, (2003) 10 SCC 670 : 2004 SCC (Cri) 958 and *Jagjit Singh v. State of Punjab*, (2005) 3 SCC 689 : 2005 SCC (Cri) 893]. Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case.

26. Thus, if there is a delay in lodging the FIR and the same is not properly explained during the course of the trial by the witnesses produced by the prosecution then the credibility of the witnesses can be considered to be doubtful otherwise if by cogent explanation the delay is explained then the reliability of witnesses cannot be doubted. However, in the present case there is a delay in lodging the FIR that too almost two years but no sufficient explanation is given during the course of the trial by the witnesses of the prosecution. In such a circumstance, the credibility of the witnesses can be doubted and on the basis of delay the story of the prosecution becomes doubtful. Accordingly, the conviction of the appellant in the present case can also be set aside on the ground of delay, in addition to the reasons assigned for setting aside the conviction

as the offence under Section 353 of IPC is not made out against the appellant in view of the discussion made hereinabove by this Court.

27. In view of the aforesaid and the law laid down by the Supreme Court in the cases cited above and after examining the definition of "assault" and "criminal force" as has been mentioned above and also the statements of the complainant and other witnesses produced, I am of the considered view that the prosecution failed to establish that there was assault or use of criminal force by the appellant and such assault or use of criminal force made on the complainant while he was acting in execution of his official duty. The prosecution also failed to give any reasonable explanation or justification with regard to registering the FIR after a delay of two years and also recording the evidence of witnesses after 3-4 years of the incident. The trial court has also failed to appreciate this aspect of the matter and failed to record any finding in this regard. At the cost of repetition, it is to be reiterated here that the witnesses produced by the prosecution were all interested witnesses and not the independent witnesses and hence their testimony is doubtful and cannot be relied upon. The statement of complainant-Ram Swaroop Pandre (PW-1) itself reveals that at the time of incident he was not performing any official duty and nobody restrained him from discharging his official duty or assaulted him however if the statement of any of the witnesses records after two years of the incident and he states contrary to the statement of complainant, he cannot be said to be a trustworthy witness and his testimony is doubtful and cannot be relied upon. The prosecution has committed a grave mistake in recording the statements of witnesses after a long delay of 3-4 years and on the basis of such statements, which are not corroborated with the statement of complainant, the finding of conviction and sentence recorded by the trial

court cannot be appreciated and approved and hence this Court allows the appeal mainly on the ground that the prosecution failed to establish the material ingredients of Section 353 of IPC and the trial court also failed to appreciate the aforesaid aspect and recorded the finding of conviction erroneously.

28. Accordingly, this **appeal is allowed**. The impugned judgment dated 20.06.2019 passed by 21st Additional Sessions Judge and Special Judge (M.P. & M.L.A.), Bhopal in Special Case (P.P.M.) No. 41/2018 is hereby set aside. The appellant is acquitted from the alleged charge. Since the appellant is on bail, his bail bond and surety bond stand discharged.

(SANJAY DWIVEDI)
JUDGE

Raghvendra