



माननीय उच्च न्यायालय म० प्र० जबलपुर, छण्डपीठ रखालियर

प्रकरण क्रमांक २५७ / २००३ अपील फौजदारी

- १- कन्हैयालाल पुत्र श्री खेमचंद माली आयु
४९ वर्ष, ठायवस्ताय बृहि
२- दौलतबाई पत्नी कन्हैयालाल माली,
आयु ३७ वर्ष, ठायवस्ताय बृहि, निवासीग्राम
खेड़ी टांक, थाना लुम्भराज, जिला
गुना म०प्र० -- अपीलार्थीग्राम/अधिकृतग्राम

बनाम

म०प्र० रासन हारा पुलिस आरोपी केन्द्र
कुम्भराज, जिला गुना म०प्र०

-- रेपोर्ट / अधिकोगी

अपील अन्तर्गत धारा ३७४ दृष्टिकोण स्वर्ण क्वांट्रो क्रमांक २९/०४/२००३, न्यायालय अपर
सत्र न्यायाधीश वाहोडा, जिला गुना ४ श्री आर० के०
किंवद्दं सत्र प्र०५० १५/२००१ म०प्र० रासन बनाम
कन्हैयालाल व अन्य ५ स्वर्ण अपीलार्थी क्रमांक १ के
विषद् धारा ३०७ आ० द० वि० के अन्तर्गत दोषतिद्वि
प्रमाणित मानते हुये ५ वर्ष के सम्राम कारबास स्वर्ण
१, ०००/- रुपये अर्काड आरोपित करने पर स्वर्ण
अपीलार्थी क्रमांक २ को धारा ३२३ आ० द० वि० के
अन्तर्गत दोषतिद्वि प्रमाणित मानते हुये १, ०००/- रुपये
के अर्काड से दण्डित करने पर, अर्काड जमा करा
दिया गया है।

अपीलार्थीग्राम की ओर से अपील निम्न प्रकार प्रस्तुत है :-

यह कि फीरयादी जगदीश माली हारा पुलिस थाना लुम्भराज
जिला गुना मे दिनांक ७-२-२००१ को इस आशय की रिपोर्ट

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

CRIMINAL APPEAL NO. 259 OF 2003

Kanhaiyalal & Anr.

-Vs-

State of Madhya Pradesh



For the appellants: Shri J.P. Mishra and Shri Rishikesh Bohare, counsel.

For the State: Shri B.P.S. Chauhan, Public Prosecutor

PRESENT: HON'BLE MR. JUSTICE N.K. GUPTA, J.

JUDGMENT

(11/01/2016)

The appellants have preferred this appeal being aggrieved with the judgment dated 29-04-2003 passed by learned Additional Sessions Judge, Chachoda District Guna in S.T.No.150/2001 whereby appellant No.1 has been convicted of the offence under Section 307 of IPC and sentenced to 5 years RI with fine of Rs.1,000/- whereas appellant No.2 has been convicted of the offence under Section 323 of IPC and sentenced to fine of Rs.1,000/-.

2- The prosecution story in short is that on 07-02-2001 the victim Jagdish (PW-1) was working in his field at village Khedli (Police Station Kumbhraj). At about 6:00 am in the morning, appellant No.1 -Kanhaiyalal and appellant No.2 -Daulat Bai came to the spot and objected that the well from which he

was irrigating his crops was joint and therefore, he could not irrigate his crops without permission of the appellants. Thereafter, appellant No.1 assaulted the victim Jagdish on his head with *Farsa* and Daulat Bai gave blow of stick on his forehead. FIR Ex-P/1 was lodged by the victim Jagdish at police station Kumbhraj in which he had mentioned that the incident was caused by stick. He was sent for his medico legal examination to the Community Health Centre, Kumbhraj. Dr. Sudeep Arora (PW-5) examined the victim Jagdish and gave his report Ex-P/5. He found two incised wounds to the victim Jagdish, out of them one was on the right side and another was in the middle of his head whereas two wounds were also found to the victim Jagdish those could be caused by hard and blunt object; one was on the middle of head and another was on right scapular region. The victim Jagdish was referred for radiological examination and Dr. R.K. Jain (PW-3) gave his report Ex-P/2 and he found that there was a linear fracture on parietal bone. After due investigation, the charge-sheet was filed before the JMFC, Chachoda who committed the case to the Court of Sessions and ultimately it was transferred to the Additional Sessions Judge, Chachoda District Guna.

3- Appellants abjured their guilt, they took the plea that they were falsely implicated due to enmity. However, the medical report of Daulat Bai Ex-D/2 was proved by Dr. Sudhir Arora (DW-1) and the reports Ex-D/3 and D/4 were also recorded with the help of constable Manoj Kumar Raghuvanshi (DW-2).

4- The trial Court after considering the evidence adduced

by the parties, convicted and sentenced the appellants as mentioned above.

- 5- I have heard learned counsel for the parties at length.
- 6- In the present case, the victim Jagdish (PW-1), Ratanlal (PW-2) and Ramcharan (PW-6) were examined as eye-witnesses out of them Ramcharan has partly turned hostile. He denied to see the incident but he said that after the incident, the blood was oozing from the head of victim Jagdish. However, the victim Jagdish and Ratanlal have stated about the incident caused by the appellants. Learned counsel for the appellants has submitted that there was material contradiction between the statement of victim Jagdish and the FIR Ex-P/1. In the FIR he did not mention that he was being assaulted by *Farsa*, however, before the Court he had stated that he was assaulted by *Farsa*. However, such contention cannot give any advantage to appellant No.1 because Jagdish and Ratanlal in their case-diary statements have specifically stated that the assault was done in a very small period of time and therefore, Jagdish could not ascertain about weapon and therefore, he could not inform in the FIR that *Farsa* was used by appellant No.1. No cross-examination of these witnesses was done on this count, therefore, their explanation given in the case-diary statement was not challenged by the appellants. Therefore, at this stage, it cannot be said that there was material contradiction in the statement of witnesses along with FIR. The testimony of Jagdish and Ratanlal is duly corroborated by the witness Ramcharan who found the victim Jagdish to be injured. Their testimony is duly corroborated by timely lodged FIR Ex-P/1 and medical report Ex-P/5 proved by

Dr. Sudeep Arora (PW-5) and x-ray report Ex-P/3 proved by Dr. R.K. Jain (PW-3), hence it is proved that appellant No.1 had caused grave injury to the victim Jagdish whereas appellant No.2 gave a single blow of stick to victim Jagdish.

7- It was for the prosecution to prove that the injury was fatal in nature or there was intention of appellant No.1 to kill the victim Jagdish. Neither Dr. Sudeep Arora (PW-5) has stated that the injury was fatal in nature nor such statement was given by Dr.R.K. Jain (PW-3). It is true that the fracture was found on the head of the victim Jagdish but it was not mentioned by Dr. Sudeep Arora (PW-5) that there was symptom of brain haemorrhage etc. hence the prosecution has failed to prove that grievous injury caused to the victim Jagdish was fatal in nature.

8- So far as the intention of appellant No.1 is concerned, it appears that he gave 2-3 blows on the head of the victim Jagdish , however, it appears that the each blow was not given from the sharp side of the weapon or with force otherwise bone would have found cut or brain haemorrhage would have been caused. The incident took place in the spur of moment and appellant No.1 wanted to stop the victim Jagdish to irrigate from his well and therefore, if he gave 2-3 blows without any sufficient force then his intention to kill victim cannot be presumed. No fatal injury was found to the victim Jagdish, hence the appellant No.1 did not intend to kill him. *Prima facie* no offence under Section 307 of IPC is made out against appellant No.1.

9- In this context, the judgment passed by the single Bench of this Court in the case of "**Gokulsingh Vs. State of M.P.**"

{2005 (5) MPHT 59}. may be perused in which it was held that if the accused is acquitted from the charge of Section 307 of IPC he may be convicted of offence under Section 326 of IPC or Section 325 of IPC as the case may be.

10- There were three injuries on the head of the victim Jagdish and since no bone was found cut and Dr. R.K. Jain (PW-3) did not mention that the fracture was found on which side of parietal bone whether it was on left side or right side, hence it cannot be said that the fracture was corresponding to the injury caused from the sharp side of the weapon, therefore, appellant No.1 cannot be convicted for the offence under Section 326 of IPC. He had caused grave injury with hard and blunt object, therefore, he had committed the offence under Section 325 of IPC.

11- It would be apparent that the appellants have tried to prove the FIR lodged by them and medical report of appellant No.2, however, they could not prove that quarrel was started by the victim Jagdish or his father hence no right of private defence accrues to the appellants. Appellant No.1 gave 2-3 blows whereas he could inform the Court his overt act that one blow was given hence he assaulted the victim Jagdish voluntarily. Consequently, appellant No.1 has to be convicted of offence under Section 325 of IPC. Appellant No.2 had also given a blow of stick on the forehead of the victim Jagdish, therefore, the trial Court has rightly convicted appellant No.2 of offence under Section 323 of IPC.

12- So far as the sentence is concerned, the trial Court has imposed the simple fine upon appellant No.2 and therefore, there

is no need to further dilute the sentence imposed on appellant No.2. However, it is on record that appellant No.1 remained in custody for 122 days during trial and 48 days during the appeal. He has faced trial and appeal for 14 years. It was not preplanned crime and appellant No.1 was first offender. Under these circumstances, if his custody period is considered then it would be appropriate to reduce the sentence of appellant No.1 for the offence under Section 325 of IPC to the period for which he remained in the custody.

13- On the basis of aforesaid discussions, the present appeal filed by appellant No.2 is hereby dismissed maintaining the conviction and sentence imposed upon her. However, the appeal filed by appellant No.1 is hereby partly allowed. He is acquitted of the charge under Section 307 of IPC, however, he is convicted of offence under Section 325 of IPC under the same head of charge and sentenced to the period for which he remained in custody with fine of Rs.1,000/-. Since the fine has been deposited by appellant No.1 before the trial Court, therefore, there is no need to make provision of default sentence.

14- The appellants are on bail, their presence is no more required before this Court, therefore, it is directed that their bail bonds shall stand discharged.

15- Copy of the judgment be sent to the trial Court along with its record for information and compliance, if any.

(N.K. Gupta)
Judge
~~11/01/2016~~

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Section Officer
Madhya Pradesh High Court
Gwalior Bench, Gwalior
Certified u/s 76 of the Evidence Act

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