

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 1440 of 2024

BETWEEN:-

NITIN MEWATE S/O SHRI PREMLAL MEWATE, AGED
ABOUT 35 YEARS, OCCUPATION: NA R/O 5 GOV.
QUARTER MALHAR ASHRAM INDORE (MADHYA
PRADESH)

.....APPELLANT

(BY SHRI AMIT YADAV, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION SADAR BAZAR
DISTT. INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI G. RAWAT, GA FOR THE STAE)

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Heard on :13.04.2024
Delivered on: 28.05.2024
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This appeal was heard and this Court passed the following:

JUDGMENT

With the consent of the parties heard finally.

1.This criminal appeal has been filed on behalf of the appellant under Section 374(2) of Cr.P.C. being aggrieved by the judgment dated 22.12.2023, delivered by learned 14th Additional Session Judge, Indore in Sessions Court No.577/2022, wherein learned Judge has convicted the appellant for the offence under Section 326 of the Indian Penal Code, 1860 and sentenced to undergo 05 year S.I. with fine of Rs.1000/-.

2 . As per prosecution case, on 08.04.2022, at about 10PM, the

complainant Rahul was walking in front of his house, wife of Rahul told him that his brother and wife of his brother were quarreling with each other. When the complainant entered in the room of accused Nitin, Nitin was assaulting his daughter Preksha with knife and when the complainant tried to intervene, the accused has also assaulted on him with the knife and caused injuries on the head, hands and thigh of the complainant also. The complainant lodged the complainant at police Station Sadar Bazar, Indore the police registered the Kaymi and investigated the matter.

3. The injured Preksha and complainant were sent for medical treatment. During investigation, statements of the witnesses were recorded, spot map was prepared, seizure memos were prepared. After completion of *prima facie* investigation the offense was registered under Section 307 and 506 of IPC against the accused, charge-sheet was filed before the trial Court and later on, the matter committed to the Court of Sessions on 08.07.202 and the Court has framed charges against the *appellant* under Section 307 and 506 of IPC, accordingly.

4. The prosecution has examined total 13 witnesses namely the Priyanka Mewate, (PW-1), Rajesh Gaud (PW-2), Preksha (PW-3), Sarita (PW-4), Golu Khode (PW-5) Rahul Mewate (PW-6), Jayshree Mewate (PW-7), Dr. Sanjay Kucheriya (PW-8), Dr. Ruvendra Bansode (PW-9), Yashwant (PW-10), Dr. Durgesh Parmar (PW-11), Madan Singh Barde (PW-12) and Bharat Lal Medla (PW-13). No witness has been examined in support of the defence by the appellant. The appellant abjured his guilt and he took a plea that he is innocent.

5. The appellant was tried and charged under Section 307 and 506 of IPC. The learned Court below, after considering the evidence and material available on record has convicted the appellant under Section 326 of IPC by

acquitting him from the charges under Sections 307 and 506 of IPC vide the impugned order.

6. At the very outset, counsel for the appellant submits that there was a dispute in the family and the complainant and appellant both are real brothers. Hence, learned counsel for the appellant expressly gave up his challenge to the findings of the Court below so far as the conviction of the appellant is concerned under Section 326 of IPC, 1860. In other words, the learned counsel for the appellant accepted the finding of conviction on merits, however, he challenged the quantum of punishment (05 year S.I) awarded to the appellant under Sections 326 of IPC, 1860.

7. He confines his argument on the point of sentence only and prays that since the appellant has already undergone *approximately two years* in jail incarceration, his sentence be reduced to the period already undergone. It is further submitted that this appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone by enhancing the fine amount or as the Court deems fit. जयते

8. In alternate also, learned counsel for the appellant submits that the learned trial Court has convicted the appellant under Section 326 of IPC and sentenced for 05 years R.I., but looking to the factum that the injuries caused to the injured which were not dangerous to life, the case of the prosecution should not travel more than the offence under Section 324 of IPC. Hence, prays for reduction of the sentence to the period already undergone or as the Court may deem fit in the interest of justice.

9. Learned counsel for the State on the other hand supports the impugned judgment and prays for dismissal of this appeal. It is submitted that

the learned trial court has passed the impugned order after considering each and every aspect of the case and convicted the appellant rightly.

10. Considering the rival submissions and on perusal of the record, the point for determination of this appeal is as to whether the finding of learned trial court regarding conviction and sentence under section 326 of IPC is correct in the eyes of law and facts or not.

11. In this regard, the statements of Priyanka Mewate, (PW-1) wife of the accused, injured Preksha (PW-3) daughter of the accused, Sarita (PW-4), Golu Khode (PW-5), they all have supported the case of the prosecution and the injuries so caused to injured person are well supported the the testimonies of Dr. Ruvendra Bansode (PW-9), Dr. Durgesh Parmar (PW-11). Although, the complainant Rahul Mewati (PW6) who is brother of accused and his wife Jayshree Mewate (PW-7) have not supported the prosecution case with regard to name of the appellant. They have stated that an unknown person has caused injuries, but at the submissions of these witnesses corroborates the injuries caused on the person Preksha (PW-3).

12. On this aspect, the law is well settled that the testimony of hostile witnesses are also having the importance if they are supporting the prosecution case to some extent. The Full Bench of Hon'ble Apex Court while adjudicating this issue in the case of **Bhagwan Singh vs. State of Haryana [AIR 1976 SC 202]** observed as under:

"8....But the fact that the Court gave permission to the Prosecutor to cross-examine his own witness, thus, characterizing him as, wheat is described as a hostile witness, does not completely efface his evidence. The evidence remains

admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence....."

13. In the case of **Radha Mohan singh alias Lal Saheb and Others vs. State of U.P.[2006 (2) SCC 450]**, another full Bench of Hon'ble Apex Court has further ordained as under:-

".....It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on careful scrutiny thereof...."

14. In the light of the aforesaid pronouncements, it is evident that the evidence of a person does not become wiped out from the record merely because he has taken U-turn in the Court and resiled from his original statements. As such, the injured Preksha PW-3 find support from the testimony of these hostile witnesses i.e. Rahul Mewati and his wife Jaishree. That apart, the statements of both the witnesses also find support from the medical testimony of doctors i.e. Dr. Ruwendra Bansode (PW-9), Dr. Durgesh Parmar (PW-11).

15. The statements of both witnesses finds support from medical testimony regarding the injured Preksha (PW-3), is having its importance. The testimonies of Priyanka (PW-1) and Preksha (PW-3) Sarita (PW-4) and Golu Khode (PW-5) Dr. Ruwendra Bansode (PW-9), Dr. Durgesh Parmar (PW-11)

have also not been rebutted in their cross-examination.

16. On this point, counsel for the appellant contended that the aforesaid witnesses are relatives and due to their relatedness they should not be relied upon. Here, it is worth to mention that Preksha (PW-3) is the daughter of the accused while Priyanka (PW-1) is wife of the accused. However, inspite of that, they are supporting the prosecution case. Hence, their testimonies cannot be discarded.

17. So far as relatedness and interstedness of the witnesses is concerned, the decision laid down by Hon'ble Apex Court in the case of *Laltu Ghosh vs. State of West Bengal AIR 2019 SC 1058* is relevant to be referred here:

"This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused".

18. As per the human tendency, a close relative would put forth the actual story of incident rather than hide the actual culprit and foist an innocent person. Virtually, in many of the criminal cases, it is often seen that the offence is witnessed by close relatives of the victim, whose presence on the spot of incident would be natural and the evidence of such witness cannot automatically be discarded by leveling them as interested witness.

19. Since the injuries caused to injured Preksha (PW-3) are grievous in nature and the same has been caused by heard and sharp object knife, therefore, the conviction under Section 326 of IPC is found immaculate and infallible. Further, it is found that the prosecution case has been well supported by the testimony of injured and other witnesses as well as medical and documentary evidence. The learned trial Court has well considered the material available on record, hence, no infirmity is found in the impugned order of conviction passed by the learned trial Court, accordingly, the same is upheld.

20. Now, coming to the part of sentence, certainly, appellant is father of injured Preksha PW-3, however, only on being father, he could not be released from the incarceration period of already undergone. Since, he is not a pre-convict and is having no criminal record, some leniency can be considered in his favour. The appellant is facing the trial since 2022 as well as looking to the prayer of counsel for the appellant coupled with the fact that the appellant is in jail and completed approximately two years of his jail sentence, this Court finds that it would be appropriate to accept the prayer of the appellant regarding reduction of the sentence sentence and thus, the sentence of five year may be reduced to three years by enhancing the fine to Rs.10000/-

21. Accordingly, this criminal appeal is partly allowed and the sentence awarded to the appellant is set aside and the appellant shall undergo the sentence under Sections 326 of IPC for three years R.I. with fine of Rs.10000/-. In case of failure to deposit the fine amount, the appellant shall further undergo 02 month S.I..

22. The appellant shall be released after completing the aforesaid sentence subject to depositing the fine amount. His bail bonds, if any, shall be discharged accordingly.

23.The order of learned trial court regarding disposal of the seized property stands confirmed.

24. A copy of this order be sent to the concerned trial Court for necessary compliance.

Certified copy, as per Rules.

(PREM NARAYAN SINGH)
JUDGE

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