



1 CRA-7728-2023
IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 7728 of 2023

KARUNESH @ GOLU
Versus
THE STATE OF MADHYA PRADESH

Appearance:

SHRI RAJEEV BHATJIWALE, COUNSEL FOR APPELLANT.

MS. URMILA MALVIYA, PL FOR STATE

HEARD ON : 8.7.2024

PRONOUNCED ON : 21.08.2024

ORDER

This criminal appeal under Section 374(2) of Cr.P.C. has been filed by the appellants being aggrieved by the judgment dated 25.5.2023, passed by the learned Sessions Judge, Ujjain, District Ujjain in Sessions Trial No.81/2021, whereby the appellant has been convicted for offence under Sections 304-I, 450, 323 of IPC for 10 years RI, 4 years R.I., 3 months R.I. with fine of Rs.5000/-, 2000/- , nil with default stipulations.

02. The prosecution story, in a nutshell is that on 8.12.2020, the complainant Navneet had lodged an FIR at police Station Neelganga by submitting that his marriage was solemnized on 7.12.2020 and on the said date, his neighbour Ashu has took his Car and reached in wedding ceremony. On this,



his brother Ashu got angry and came to the house of the complainant and said in aggression why his car had been used in the wedding and started scuffling with him. The complainant said to take money of used petrol. This incident has seen by the father of the complainant and he went to the house of the appellant for compromising, Golu slapped his father and his father fell down. Thereafter, Golu took an iron rod and caused injuries. When his father ran away from the spot, the appellant Golu also ran his behind and took a Danda and caused injury on head and leg of his father with intention to kill. His father got unconscious and after some time his father died.

03. The police after following the due procedure, prepared the spot map, taken the statements of the witnesses, seized the articles, prepared the medical documents, arrested the accused persons and after due investigation filed the charge-sheet under Section 452, 323, 307,302 of IPC. The matter was committed to the Court of JMFC and made over to the learned Trial Court where upon the charges are framed under Sections 449, 302,323 of IPC. The appellant abjured his guilt and took a plea that he had been falsely implicated and prayed for trial.

04.The prosecution on its behalf has examined as many as seven 19 witnesses namely Niharika Bhatnagar (PW-1), Navneet Bhatnagar(PW-2), Rahul Bhatnagar (PW-3), Deependra Bhatnagar (PW-4), Piyush Upadhyay (PW-5), Ashabai (PW-6), Vikram Raghuvanshi (PW-7), Shailendrasingh Chouhan (PW-8), Mahndra Chouhan (PW-9), Vijay Naagar (PW-10), Dinesh Badkare (PW-11). Mangesh Mujade (PW-12), Siddhu Saini (PW-13),,Jeevan Bhidore(PW-14), Dr. Yogesh Saraf (PW-15), Piyush Mishra (PW-16), Dr. Sahaj Palod (PW-17), Ravindra Yadav (PW-18), Babulal Mehata (PW-19). No witness has been adduced in defence by the appellant.

5. Learned trial Court, on appreciation of the evidence and argument adduced



by the parties, pronounced the impugned judgment on 25.5.2023 and finally concluded the case and convicted the appellant as mentioned in para No. 1.

6. The appellant has preferred this criminal appeal on several grounds and submitted that the order of learned Sessions Court is against law and facts, hence deserves to be set aside. Witnesses are related to each other. There is serious contradictions in the statements of prosecution witnesses. As per medical report, reason of death is not clarified. The said incident happened on 8.12.2020 but the FIR was lodged on 10.12.2020. Niharika (PW-1) has clearly stated that after primary medical treatment at Gurunanak Hospital, deceased was discharged in normal condition. The incident was happened on 8.12.2019 and the death was occurred after two days of the incident i.e. on 10.12.2019. The learned Trial Court has framed charges under Section 302 of IPC but later on it has converted the Section as Section 304-I of IPC. In this way the finding of learned Trial Court is not in accordance with law and facts. Further, the appellant has also alternatively prayed that the appellant has already suffered more than three and half month's custody hence, his sentence should be reduced to the period already undergone by enhancing the fine amount.

7. Learned counsel for the State on the other hand supports the impugned judgment and prays for dismissal of this appeal. It is further submitted that the learned trial Court has passed the impugned judgement after considering each and every circumstances of the case and convicted the appellant rightly.

8. In backdrop of the arguments advanced by both the parties, the point for determination is as to whether the finding of learned Trial Court regarding conviction and punishment is incorrect in the eyes of law and facts?



9. At the outset, the nature of death is required to be considered in this regard. The first question is that as to whether the death of deceased Mukesh comes in the purview of culpable homicide not amounting to murder as the learned Trial Court has adjudicated. In this regard, the testimony of Niharika (PW-1), is significant in the paragraph No.4 of her examination- in-chief she has stated that her father has gone to the appellant Golu for making conversation regarding the fact that as to why he has slapped her brother Navneet but at the same time the accused has slapped her father and caused injury with the help of wooden stick and her father has received main injuries on his head, stomach and leg. Later on, primary treatment was given to the deceased in Gurunanak Hospital. Thereafter, the deceased got discharged and came to his house. However, in the night, her father again started blood vomiting and he was hospitalized at J.K. hospital in the ICU. In Sonography report, it is revealed that there was whole in his intestine. The testimony of this witness regarding injury has not been rebutted in her cross-examination.

10. Further, Navneet (PW-2) has narrated the fact that the accused came into his home and took a stick from his home and beaten his father due to that, his father fell down. Testimony of this witness has also not been rebutted in his cross-examination. The said wooden stick and iron pipe has been seized from the accused on his memorandum statement (Ex.P-6) . In this regard, Rahul (PW-3) has supported the memorandum statement of accused whereas Mahndra Chouhan (PW-9) has not supported the case and declared hostile. However, the said memorandum statement and seizure were well supported by Investigating Officer Piyush Mishra (PW-16). In this regard, the statement of Doctor is also significant. Sahaj Palod (PW-17) is the Doctor who has conducted the initial



MLC and has stated in his examination-in-chief that when the deceased was admitted, he was in serious condition. At initial stage, there was a contusion and swelling on his leg and contusion on his right cheek and redness in the left eye.. The report is annexed as Ex.P-18. Certainly, initial MLC does not show any grievousness but in query report, the Doctor has clearly mentioned that the said injury can be caused only by a stick and iron rod. The witness Dr. Yogesh Saraf (Pw-15) has found that there was a whole in the intestine of the injured and there was pain on the abdomen of the injured. The deceased came to him was in serious condition. Now coming to the statement of Vikram, who has conducted postmortem. In his report, he has opined that the death is occurred due to cardiac failure as a result of septic shock multiple injuries sustained to skull and intestine.

11. Leaned counsel for the appellant has expostulated that all witnesses are related and interested witnesses, thus on the basis of their testimonies, the appellant can not be convicted. Certainly, the witnesses are related to each other. On this aspect in the case of *“Dilip Singh vs. State of Punjab” reported as AIR 1953SC364* the full Bench of Hon’ble Supreme Court observed in para 26 as under:

“26. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”

12. Further in the case of *Masalti vs. State of Uttar Pradesh reported in*



[AIR 1965 SC 202] wherein it has been held in para 14 as under:

“14. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.”

13. Endorsing the aforesaid citations, Hon’ble Apex Court in the recent judgment rendered in **Kurshid Ahmed vs. State of Jammu and Kahsmir** reported as [AIR 2018 SC 2497] has reiterated as under:

“26. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.”

14. Virtually, on this aspect, the law laid down by Hon’ble Supreme Court in **M.D. Roza Ali & Ors. vs. State of Assam, Ministry of Home Affairs, through Secretary** reported in (2019)19 SCC 567 wherein Hon’ble Apex Court endorsing



its own other judgment has contended as hereunder:

“10 As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now wellsettled that a related witness cannot be said to be an ‘interested’ witness merely by virtue of being a relative of the victim. 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.”

15.Hence this Court is of the view that only on the basis that eye witnesses are close relatives of deceased, their statements cannot be over boarded and their testimony cannot be regarded as tempted testimony, specially, when some of the witnesses had received injuries in the said incident, therefore, the stand of learned counsel regarding relativeness of witnesses of deceased appears to be without legs.

16.In view of the statement of eye-witness Navneet (Pw-2) and other witness Niharika (PW-1), Rahul (PW-3) and Piyush(PW-5) and aforesaid medical witnesses, it can be visualized by an open eye. that the death of deceased was occurred due to injury caused by appellant. Hence, the nature of death will be culpable homicide not to amounting murder. Now, coming to the fact as to whether offence comes in the purview of Section 304-I of IPC or not? Certainly, as per the testimony of witnesses it is revealed that the appellant has caused simple injuries with iron rod and wooden stick but looking to the initial MLC it cannot be assumed that he has intention to cause such bodily injuries as is likely to cause death. However, it can safely be assumed that the appellant has knowledge that the



such bodily injuries are sufficient to cause death in ordinary course of nature and therefore, the appellant can only be convicted under Section 304-II of IPC rather in section 304-I of IPC.

17.Hence, in view of the aforesaid analyses, the conviction under Section 304-I of IPC is liable to be and is hereby set aside and instead of that the appellant is liable to be convicted under Section 304-II of IPC. Accordingly, this appeal is partly allowed with regard to the fact that the appellant is convicted under Section 304-II of IPC instead of the offence under Section 304-I of IPC. In so far as the conviction under Sections 450 and 323 of IPC are concerned, after entering into the house, appellant committed offence and also caused simple injury to Navneet Bhatnagar (PW-2). These facts have not been rebutted in the cross-examination of prosecution witnesses, therefore, the offence under Sections 450 and 323 of IPC are well established, hence, does not warrant any interference.

18.Now turning to the part of sentence, the learned counsel has vehemently submitted that the punishment of 10 years R.I. is maximum punishment hence prayed that the same be reduced to the period already undergone by the appellant. In this regard it is to be kept in mind that due to the assault of appellant an innocent person has lost his life; therefore, the appellant should be sentenced appropriately. Nevertheless, there are some mitigating circumstances also available in this case. The appellant is facing trial from nearly 4 years, he has also suffered the incarceration period more than three and half years. That apart, the offence was committed without premeditation, preplanning and only on spur of movement. On this aspect, the following excerpt of the judgment of Hon'ble Apex Court rendered in the case of **Bhagwan Narayan Gaikwad vs. State of Maharashtra**; [2021 (4) Crimes 42 (SC)] is worth mentioning here:-



"28. Giving punishment to the wrongdoer is the heart of the criminal delivery system, but we do not find any legislative or judicially laid down guidelines to assist the trial Court in meeting out the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation, etc."

19. On this facet, the law laid down by Hon'ble the Apex Court in **Jaswinder Singh (Dead) through Lrs Vs. Navjot Singh Sidhu and others** reported in AIR 2022 SC 2441 is also condign to quote here as under :-

26. An important aspect to be kept in mind is that any undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society can not long endure under serious threats and if the courts do not protect the injured, the injured would then resort to private vengeance and, therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed....."

20. Looking to the facts and circumstances of the case and also the fact that the appellant is not having any criminal past and they are facing the criminal case since 2020, in order to meet the ends of justice, it would be condign to award the sentence of five years RI along with fine of Rs. 50,000/- for the offence under 304-II of IPC. So far as the sentence and punishment under Section 450 and 323 of IPC are concerned, the same shall be maintained.

21 In view of aforesaid discussion, partly allowing this appeal, appellant is convicted for Section 304-II for five years RI with fine of Rs. 50,000/- to be



paid by the appellant before releasing from the jail. If the appellant fails to deposit the fine amount, he will suffer three months RI in default.

22. The fine amount, if already deposited, if any shall be adjusted.

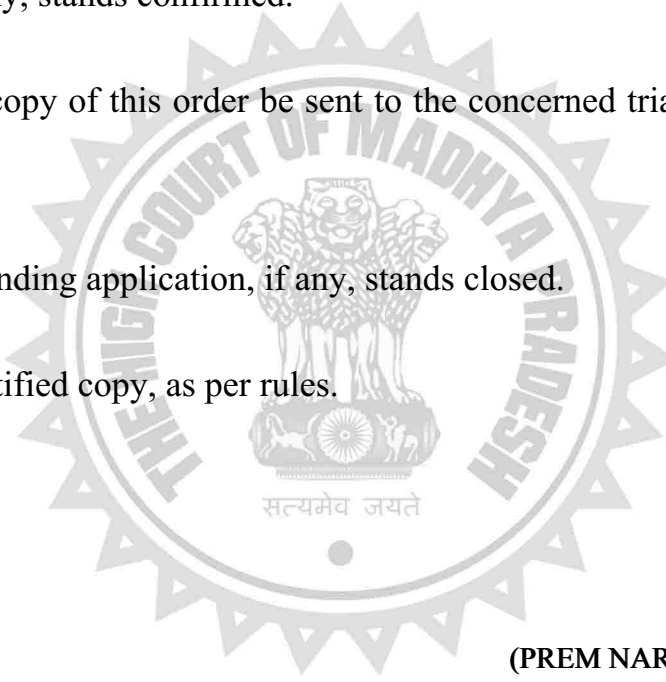
23. The appellant is in jail. The bail bond of the appellant shall be discharged after completing the sentence of imprisonment and after depositing the fine amount.

24. The order of learned trial Court regarding disposal of the seized property, if any, stands confirmed.

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

. 26. Pending application, if any, stands closed.

Certified copy, as per rules.



(PREM NARAYAN SINGH)
JUDGE