



CF0000060715

(2)

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPURCR. APPEAL NO. 2278 OF 1996.APPELLANTS :  
(In Jail)

- B 1. Rajesh Patwa, aged about 22 years, S/o. Shivram, Caste: Patwa, r/o. Ameenpara, Purani-Basti, Behind Thana, DISTRICT: RAIPUR (M.P.).
- R 2. Sada Shiv Rao, alias, Guddu, aged about 22 years, S/o. Jagdish, r/o. Sankra, P.S.: Garia-band, At present: Santosi Nagar, Ring Road, Purani-Basti, Raipur, DISTRICT: RAIPUR (M.P.).
- B 3. Vijay Kumar Shukla, alias, Sukhai, aged about 23 years, S/o. Shitla Charan, Caste: Brahman, r/o. Dani Para, Durga Chawk, Raipur, DISTRICT: RAIPUR (M.P.).

- versus -

RESPONDENT :

State of Madhya Pradesh.

CONVICTION U/S. 302  
OF THE I.P.C. :SENTENCE: R.I. FOR 7 YEARS  
EACH AND FINE OF Rs. 1000/-  
EACH, IN DEFAULT, R.I. FOR  
1 YEAR EACH.MEMO OF APPEAL UNDER SECTION-374(2)  
OF THE CODE OF CRIMINAL PROCEDURE:

17504

El. 1081236

by Shri. V. G. Gokhale

Advocate

A.S. 643

Rto. A. R.

1812/2001

V. P. Singh

P. B. Singh

(18)

HIGH COURT OF CHHATTISGARH AT BILASPUR.

CRIMINAL APPEAL No. 2278/1996.

Rajesh Patwa and ors. V. State of Chhattisgarh.

Shri Prabhakar Singh Chandel  
for the appellants.

Shri Ranveersingh Government Advocate  
for Respondent/State.

" J U D G M E N T "

By Hon'ble Ag. Chief Justice

The appellants being aggrieved by the judgment dt. 9.12.1996 delivered in Session Trial No. 133/1991 by learned IInd Additional Sessions Judge, Raipur convicting each of the appellant under section 307 of the Indian Penal Code and sentencing each of them to undergo rigorous imprisonment for 7 years and to pay fine of Rs.1,000/- each and in default of payment of fine to undergo one year's rigorous imprisonment, the appellants have filed this appeal.

2. The prosecution case in brief is, that on the fateful day when P.W.3 Durgaprasad was standing in a cement shop and was talking to one Ravindra Kumar Asharya, the appellants Rajesh and Sadashiv came to him and invited him to go for a Betel. The complainant relying upon them went to a ~~xxxx~~ little distance, but, all of a sudden these two persons with three unknown persons apprehended him and started causing injuries to him by means of Knife/sharp cutting weapon. When the complainant Durgaprasad raised

alarm, all the accused boarded in a White Car and fled away from the spot. The report (Ex.P.12) was registered on the basis of Dehati Nalish. The victim was referred to the hospital, where, he was examined, his injuries were repaired and he was provided proper medical assistance. After making further investigation and after recording the statements of the witnesses and after obtaining the medical report/opinion, on completion of the investigation, the Police Agency filed the challan.

3. As the accused persons abjured the guilt and took <sup>R.I</sup> the plea of false implication, they were put to trial. The prosecution in support of its case examined as many as 14 witnesses. The defence was given proper opportunity, but, they did not choose to examine any defence witness. After hearing the parties, the learned trial Court convicted and sentenced the accused as detailed above.

4. Learned counsel for the appellants submitted that the independent witnesses of the prosecution did not support the version of P.W.3- Durgaprasad and <sup>nobody</sup> ~~nothing~~ said that the injuries were dangerous to life and in all probabilities were likely to lead to death, <sup>the</sup> ~~The~~ Trial Court was unjustified in convicting the appellants and in any case, the appellants could not be convicted for commission of the offence under S.307 of the Indian Penal Code.

5. On the other hand, learned counsel for the State submits that the complainant Durgaprasad (PW.3) has suffered as many as 22 injuries which would clearly show the intention of the accused persons. According to him the injuries are not on the vital part of the body, but, 22 cut injuries to a person would certainly project the intention of the accused persons.

6. I have heard the parties and have gone through the records. The prosecution in support of its case regarding the incident, had examined P.W.5 Ravindra Acharya and P.W.6-Ramkashyap as the eye-witnesses. Unfortunately these two witnesses did not support the prosecution and were declared hostile. The prosecution to prove the circumstances and immediate conduct of the complainant had examined P.W.4-Purushottam Sonkar. From the statement of P.W.4-Purushottam Sonkar it simply appears that he reached the spot after hearing the alarm, raised by Durgaprasad. This witness supports the statement of P.W.3 Durgaprasad only to the extent that immediately after the said incident he was informed by the said Durgaprasad that the present appellants had caused these injuries. As the eye-witnesses have been turned hostile, we are left with the statement of complainant alone.

7. According to the complainant he was invited by Rajesh and Sadashiv. He further says that they were also accompanied by accused Vijay Kumar. These three and other three who could not be identified by him, apprehended him and caused

him injuries by means of Knife. In his examination-in-chief but for a general statement against the appellant Rajesh and Vijay Kumar he did not say anything but against accused Sadashiv, he clearly mentioned that Sadashiv caused him injuries by means of Knife. However, in para-5 of his statement, he stated that the first injury was caused to him by Sadashiv and immediately thereafter he suffered depression and, thereafter, he was attacked by other persons. From his statement, it does not appear that he is not a truthful witness. He has suffered as many as 22 injuries and it is not expected by a victim of such an assault that he would not make the real miscreants answerable to the charges, but, would falsely implicate some other persons. His statement coupled with the statements of P.W.13 Dr. Rekha Gupta would clearly show that he had suffered as many as 22 injuries. The medical report/ ~~is~~ Ex.P.13, the correctness of which has not been challenged. Her cross-examination also shows that the victim had suffered number of injuries on his thighs, buttocks, left wrist and such other lower limbs of the body.

8. Dr. Rekha Agrawal did not say that the injuries were dangerous to life and were likely to cause death or were simple in nature. She simply stated that for further verification she had referred the injured to the surgical expert. Unfortunately in place of examining the Surgeon who had repaired the injuries, the prosecution Agency examined P.W.9 S.C.Bisnoi, Radiologist. The said Radiologist simply proved the X-ray plate and said that Dr. Bainerjee

gave the report at Ex.P.10. The report (Ex.P.10) and Ex.P.10-A show that the abdominal cavity was normal and both the kidneys were functioning properly. Ex.P.10A says that the patient did not suffer any ~~internal~~ internal injuries.

9. <sup>After</sup>~~From~~ the appreciation<sup>of</sup> of records I am unable to hold that the appellants have been falsely implicated. P.W.3-Durgaprasad is a truthful witness. The findings recorded by the court below that the appellants were involved in ~~the~~ commission of offence, cannot be faulted with. The conviction of each of the appellant for commission of the offence under S.307 IPC, does not appear to be bad.

10. Shri Prabhakar Singh Chandel, learned counsel for the appellants submits that the court below was unjustified in awarding 7 years rigorous imprisonment and the sentence deserves to be reduced to the period already undergone by each of the appellant. According to him the appellant No.2-Sadashiv has already undergone the entire sentence; Vijay Kumar has undergone more than 6 years, while the appellant Rajesh has undergone almost 4½ yrs..

11. Learned counsel for the State submits that the learned Trial Court was justified in awarding the said sentence, but, if this court wants to interfere on the question of sentence, then, he would leave the matter to the discretion of the Court.

12. Though, different sentences for commission of the same offence are not required to be awarded but present is a case where one of the appellants

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has undergone the entire sentence, while the other two have undergone the substantial substantive jail sentence.

13. The appeal on the question of sentence is allowed. The <sup>Jail</sup> sentences awarded to each of the appellant are reduced to the period already undergone. However, the imposition of fine and the default sentences are maintained. If the said amount is recovered, the entire amount be paid to the complainant after due verification.

14. The appeal to the extent indicated above, is, allowed, and Inform the learned trial Court immediately so that the release warrants are prepared and the accused persons who are in jail may be released, if, they have already deposited the amount of fine.

Certified copy in 3 days

Sd/-  
Acting Chief Justice

20-11-2000.