

**SPECIAL LEAVE PETITIONS PREFERRED AGAINST THE JUDGMENT AND REGISTERED AS  
SLP(CRI.) NOs.3791-3792 OF 2011 HAVE BEEN DISMISSED BY THE APEX COURT 04.01.2012.**

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**Criminal Appeal No.385/1998.**

Devki Sahu, aged 37 years, son of Khemchand Sahu,  
Resident of Near Amar Talkies,  
Kotwali, District Sagar ... **Appellant**

**vs.**

State of Madhya Pradesh, through SHO  
Kotwali, District Sagar ... **Respondent**

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Shri L.N. Sakle, Advocate for the appellant.  
Shri P.K. Singh, Panel Lawyer, for the respondent/State.  
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and  
**Criminal Appeal No.1070/1998.**

Pappu alias Pratap Singh, son of Narendra Singh,  
aged 25 years, resident of near State Bank,  
Gujrati Bazar, Distt. Sagar ... **Appellant**

**vs.**

State of Madhya Pradesh, through SHO  
Kotwali, District Sagar ... **Respondent**

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Shri P.S. Das, Advocate for the appellant.  
Shri P.K. Singh, P.L. for the respondent/State.  
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Date of Hearing : **10.08.2010**

Date of Judgment : **11.10.2010**

**JUDGMENT**

These appeals are interlinked as preferred against a common judgment-dated 9/2/1998 passed by Fifth Additional Sessions Judge, Sagar in S.T. No.287/95, whereby the appellants were convicted and sentenced as under -

Name of the appellant	Convicted under Section	Sentenced to
Pappu @ Pratap (hereinafter referred to as 'A1')	307 of the IPC	undergo R.I. for 5 years and to pay a fine of Rs.2000/- & in default to suffer R.I. for 6 months.
Devki (hereinafter	307 read with	undergo R.I. for 5 years

referred to as 'A2'),	34 of the IPC	and to pay a fine of Rs.2000/- & in default to suffer R.I. for 6 months.
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2. For the reasons recorded in the judgment passed simultaneously in the connected case, registered as Sessions Trial No.231/1996, co-accused Ajay Chauhan and Vimal Jain were acquitted of the offence. Admittedly, no appeal has been preferred by the State against the order of acquittal.

3. The prosecution story, in short, may be narrated thus -

- (i) At the relevant point of time, A2 Devki, being involved in *Satta* Gambling as bookmaker, owed a sum of Rs.10,000/- to complainant Salim (PW14), who had bet on the winning number.
- (ii) On 6/5/1995 at about 10.30 in the night, behind the Amar Talkies, Sagar as Salim demanded the outstanding amount, A2 declined to pay. This led to an altercation in the course of which, A1 and co-accused Ajay and Vimal intervened and justified the stand taken by A2. While arguing, A1 suddenly drew a knife from the pocket of his trouser and pierced it into the abdomen of Salim. Sustaining injury, Salim started running towards nearby colony. He was chased and was apprehended by appellants and the co-accused. Vimal caught hold of his hands and A1 dealt a knife blow on the left side of his chest whereas A2 struck a knife blow on his left arm and Ajay caused another abdominal injury by stabbing. The incident was witnessed by Jamil Ren (PW4) and Anwar (PW6). After a while, Dhannalal (PW3) and

Manoj Kumar (PW2) had also arrived at the spot. The appellants then fled away.

- (iii) It was upon the FIR (Ex.P/21) lodged by Salim that a case under Section 307 read with 34 of the IPC was registered by ASI J.R. Ramtekar (PW16). He immediately sent Salim to District Hospital, Sagar. Noticing as many as 7 incised wounds including one on the chest and two on the abdomen, Dr. Anand Singhai (PW7) admitted Salim for further examination and treatment. Surgical Specialist Dr. Ajay Badonya (PW8) had to perform exploratory laporatomy to repair injuries to omentum and mesentery.
- (iv) During investigation, the appellants were apprehended and at their instances, the respective weapons of offence were recovered. The bloodstained clothes of Salim as preserved by Dr. Anand Singhai and seized knives were forwarded to FSL, Sagar for forensic examination. Corresponding report indicated presence of human blood on the clothes of Salim.
- (v) After due investigation, charge-sheet was submitted showing Ajay and Vimal as absconding in the Court of CJM, Sagar, who committed the case to the Court of Session for trial. However, even before framing of the charge, co-accused Ajay and Vimal were arrested and a supplementary charge-sheet filed against them was also submitted to the Court of Session. As such, all the four accused were tried together.

4. The appellants abjured the guilt and claimed to be tried. According to them, the complainant Salim himself is having criminal antecedents and used to refuse to pay after taking betel from the shop run by A2. The appellants further pleaded that being members of Shiv Sena, they were falsely implicated due to political rivalry by Salim, who happened to be a member of BSP.

5. Legality and propriety of the impugned convictions have been challenged on the following grounds -

- (i) Sole-testimony of Salim forming basis thereof, was found to be discrepant as against the co-accused.
- (ii) Probability of the defence was established from the evidence on record.

Learned counsel for the appellants have submitted that even if Salim's evidence is found to be worthy of credence, the offence of attempt to murder would not be made out. In response, learned Panel Lawyer, while making reference to the incriminating pieces of evidence, has submitted that the convictions are well merited.

6. Before entering into the merits of the rival contentions in a proper perspective, it is necessary to first advert to the medical evidence on record.

7. The injuries noticed by Dr. Anand Singhai (PW7) on the person of Salim and re-described by the Surgical Specialist Dr. Ajay Badonya (PW8) may be tabulated in the following manner -

As described by Dr. Anand Singhai (PW7)	As re-described by Surgical Specialist Dr. Ajay Badonya (PW8)
(i) Incised wound, left side chest 2.5 cm x 0.5 cm x 2 cm in area.	(i) Incised wound left side of chest, 2" away and above towards axilla left, size 2.5 c x 0.5 cm x 2 cm –

	repaired.
(ii) Incised wound left arm, medial aspect 2 cm x 1 cm x 1 cm, obliquely.	(ii) Another incised wound over left arm over medial aspect, size 2 cm x 1 cm x 1 cm – repaired
(iii) Incised wound over left arm, posterior aspect, 2 cm x 1 c x 1 cm.	(iii) Another incised wound over same left arm on posterior aspect 3” away from injury no.(ii), size – 2 cm x 1 cm x 1 cm – repaired
(iv) Incised wound left thumb, base on anterior aspect 2.5 cm x 0.5 cm x 0.5 cm.	(iv) Another incised wound over base of left thumb on anterior aspect, size 2.5 cm x 0.5 cm x 0.5 cm – repaired.
(v) Incised wound between left thumb + index finger 2 cm x 0.5 cm x 0.5 cm	(v) Another incised wound over web, between left thumb and index left finger and 1” away from injury no.(iv). Size – 2 cm x 0.5 cm x 0.5 cm, bleeding present.
(vi) Incised wound left flank, 2.5 cm x 1 cm x cavity deep.	(vi) Another incised wound over left scapular region, size – 3 cm x ½ cm x ½ cm, bleeding ligated and wound repaired.
(vii) Incised wound on left side below sternocostal on epigastrium 3 cm x 1 cm x parietal cavity deep, omentum present, protruding through abdomen.	<b>Abdomen</b>
	(i) There was an incised wound over left flank towards laterally, size – 2.5 cm x 1 cm x cavity deep. Later on exploration, the wound was found peritoneal cavity deep and in its vicinity there was a heamatoma in the mesentry of descending colon – wound repaired in layers. (ii) There was another incised wound over left side, just below the sterno-costal (lower most) region towards epigastrium through which omentum was peeping out. Size was 3 cm x 1 cm x peritoneal cavity deep.

According to Dr. Anand Singhai, all the injuries were caused by hard and sharp object and only injury nos.(i) to (v) were simple in nature. He corroborated the fact that he had referred the case to surgical specialist after admitting Salim to the hospital for further examination and treatment of abdominal injuries. The operative

finding as recorded by Dr. Ajay Badonya (PW8), in his report (Ex.P-13) may be reproduced as under -

On exploration of abdomen, peritoneal cavity was seen full of blood clots were also present. There was a huge clot within the layers of omentum just below the greater curvature of abdomen, bleeding present. Another vent (size 1 cm x 1 cm) was in the mesentery of splenic flexor (large gut) and another was corresponding to injury no.(i) of abdomen- through and through. Protruding omentum excised but and ligated. Clot from the layer of omentum removed and bleeding ligated. Peritoneal wound corresponding to injury no.(i) of abdomen also closed with catgut. There was a heamatoma in the vicinity of sigmoid colon overlying this wound. All viscus were found intact. Blood and clots removed from peritoneal cavity, washed with M/saline and abdomen closed in layers. Drain kept.

8. The Surgeon, therefore, rightly concluded that the injuries caused to Salim's omentum and mesentery were dangerous to life. No dispute was raised as to correctness of the expert opinion. Moreover, the fact as proved by Dr. Ajay Badonya that Salim was discharged from the hospital on 03.06.1995 only was not subjected to challenge. Thus, expert evidence on record was sufficient to prove that the injured might have died if medical care was not given to him.

9. Coming to the other evidence on record, it may be observed that complainant Salim (PW14) substantially reiterated the allegations against the appellants and co-accused as recorded in the FIR (Ex.P-21) by ASI G.R. Ramtekar (PW16) at his instance only. However, none of the eyewitnesses named in the FIR viz. Manoj (PW2) and Dhannalal (PW3) or cited in the charge sheet namely Anwar (PW6) and Jamil (PW4), came forward to support his version. In such a situation, testimony of Salim was required to be evaluated with care and circumspection.

10. As per Salim's statement, during the course of altercation that ensued upon A2's refusal to pay amount relating to *Satta* gambling, it was A1 who drew a knife and pierced into his abdomen. He further deposed that A1 had caused the first abdominal injury at the time when he was standing near a betel shop located in front of Amar Talkies and not behind it as mentioned in the FIR. According to him, after sustaining the injury, he had tried to save himself by running away through the adjacent lane leading to colony but was apprehended by co-accused Vimal at a place in the colony where A1 again stabbed him whereas A2 and co-accused Ajay inflicted injuries on his arm and abdomen respectively and, thereafter, all the four accused had jointly assaulted him. In the cross-examination, Salim explained omissions of names of Ajay and Vimal in the FIR by stating that not knowing names of assailants other than the appellants, he could not name Vimal and out of fear had named Vijay in place of Ajay. In the light of these as well as other infirmities relating to the respective roles attributed to both of them, learned trial Judge had proceeded to extend benefit of doubt to co-accused Ajay and Vimal and acquitted them of the charges. Nevertheless, statement of Salim as to the role played by the appellants in causing the injuries, was found to be clear, cogent and reliable.

11. It is well settled that enmity is a double-edged weapon that may provide a motive for crime and also for false implication. Taking into consideration the number, nature and *situs* of the injuries, even it was assumed that the appellants and the complainant were the members of rival political groups, the probability of defence would be completely ruled out.

12. Evidence of Sub-Inspector A.M. Goswami (PW15) related to investigation. According to him, he had recovered one of the weapons of offence *viz.* knife at the instance of A2 only. Contents of

corresponding memorandum (Ex.P-7) and seizure memo (Ex.P-8) drew support from the statement of Manish (PW5), one of the *panch* witnesses. Nothing contradictory with regard to recovery of knife from A2's house could be brought in their cross-examinations. As such, non-corroborative evidence of Mohd. Shaheed (PW10) did not assume any significance.

13. A.M. Goswami further proved recovery of another knife from A1. Although, Abbu Yadav (PW11) and Pappu alias Umesh (PW12), examined as *panch* witnesses did not substantiate the contents of relevant seizure memo (Ex.P-16) yet, nothing could be brought in cross-examination of the investigating officer so as to suggest that he was, in any way, interested in securing conviction of A1 on absolutely false grounds.

14. It also came in the statement of A.M. Goswami that he had forwarded the seized knives along with the bloodstained shirt, vest and trouser of the complainant, seized by way of *panchnama* (Ex.P-16) in the Hospital, to the FSL, Sagar. Corresponding report (Ex.P-24) reflected that the cut marks in the clothes could be caused by means of the knives referred to for forensic examination.

15. The Apex Court had the occasion to explain the difference between offences punishable under Sections 324 and 307 of the IPC in **Sarju Prasad v. State of Bihar AIR 1965 SC 843**. It was pointed out that if the vital part is cut, the offence would fall under Section 307 of the IPC and not within Section 324 thereof. Since the appellants had given repeated blows with knives, it is not possible to hold that they did not have any intention to kill.

16. To sum up, the impugned convictions are based on the evidence of injured-complainant who was not likely to spare the real assailants and implicate innocent persons unless he has a cogent



motive to do so. Credibility of his evidence as against the appellants was of intrinsic quality. His testimony coupled with corresponding medical evidence and a promptly lodged FIR was sufficient to bring home the complicity of both the appellants in the joint assault resulting into numerous stab injuries. As such, the mere fact that his evidence was found to be deficient against the co-accused did not afford any reasonable ground to reject the veracity of his accusations against the appellants as the maxim '*falsus in uno, falsus in omnibus*' is neither a sound rule of law nor a rule of practice (See. **Ugar Ahir v. State of Bihar AIR 1965 SC 277**).

17. For these reasons, none of the grounds raised against legality and propriety of the impugned convictions is sustainable. As such, the convictions under challenge deserve to be maintained as well merited.

18. This brings me to the question of sentence. The Supreme Court in **State of M.P. v. Salim (2005) 5 SCC 554** has emphasized the need for imposition of a just and appropriate sentence in a case of attempt to murder. It is true that a considerable period of more than 15 years has already elapsed after the incident in question yet, considering the social impact of the crime and other relevant circumstances of the case, I am of the view that interests of justice would be met if the period of custodial sentence is reduced to 4 years.

19. Consequently, the appeal is allowed in part. The impugned convictions and consequent sentences of fine are hereby affirmed. However, the term of corresponding sentence of imprisonment is reduced from 5 years to 4 years.

20. Appellants are on bail. They are directed to surrender to their bail bonds before the trial Court on or before 24.11.2010 for being

committed to the custody for undergoing remaining part of the sentence.

*Appeal partly allowed.*

**(R.C. Mishra)**  
**JUDGE**  
**11.10.2010**