

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(DIVISION BENCH: HON. MR. JUSTICE S.K. SETH &
HON. MR. JUSTICE PRAKASH SHRIVASTAVA)

Criminal Appeal No.33/2011

Mukesh S/O Ramprasad,
 Aged - 26 years, Caste - Bairagi,
 R/O - village Balchidhi, P.S. Biaora,
 District - Rajgarh (M.P.)

.... Appellant

Vs.

State of M.P.
 through P.S. Biaora,
 District - Rajgarh (Biaora) M.P.

.... Respondent

 Shri Rajesh Chourasia, learned counsel for the
 appellant.

Shri Girish Desai, learned Dy. A.G. for the
 respondent/State.

Whether approved for reporting:-

JUDGMENT

(Delivered on 7/5/2011)

Per Prakash Shrivastava, J :-

1/ Appellant has been convicted for offences
 under Section 307 IPC and sentenced for 7 years' RI with
 fine and default stipulation, under section 3(2)(V) of SCST

(Prevention of Atrocities) Act, 1989 (for short "SCST Act") and sentenced for life imprisonment with fine and default stipulation, and under Section 25(1-B)(b) of the Arms Act sentenced for one year's RI with fine and default stipulation, by the judgment dated 9.8.2010 passed by the Special Judge, SCST (Prevention of Atrocities) Act, 1989 Rajgarh (Biaora) in S.T. No.51/2009.

2/ The prosecution case in brief is that on 23.10.2008 when the complainant Prem and his friends Lakhan, Maniram and Bihari were going to their house at about 9:00 p.m., appellant Mukesh met them in front of the liquor shop and demanded Rs.100/- from Prem for having liquor, which was refused by Prem, therefore, appellant started hurling caste related abuses, took out a knife from his pocket and caused knife injury on the left side of the stomach of Prem. FIR (Ex.P/2) of the incident was lodged by injured Prem in the police station Biaora (Rajgarh) at 9:25 p.m. on the same day and at the Civil Hospital Biaora he was medically examined by PW-3 Dr. Sourin Dutta and was referred to the Hamidia Hospital, Bhopal where he

was examined and treated by PW-8 Dr. Hamidaddin Mansoori. After completing the investigation police had filed Challan and the appellant was charged for committing the offences under Section 327, 307 of the IPC, Section 3(1)(x), 3(2)(v) of the SCST Act and Section 25(1-B)(b) of the Arms Act. Appellant abjured the guilt and trial took place.

3/ Trial Court by the impugned judgment acquitted the appellant for offences under Section 327 IPC and Section 3(1)(x) of the SCST Act, but convicted and sentenced him for the offences mentioned in para-1 above.

4/ Learned counsel appearing for the appellant submitted that the appellant has wrongly been convicted for offence under Section 307 IPC and sentence awarded to him is on the higher side. He further submitted that the offence under the provisions of the SCST Act is not made out against the appellant.

5/ Learned counsel appearing for the respondent/State supporting the judgment submitted that the appellant has rightly been convicted for the different

offences by the trial Court and the conviction is supported by the evidence on record.

6/ We have heard the learned counsel for the parties and perused the record.

7/ So far as the offence under Section 307 IPC is concerned, there are as many as 3 eyewitnesses namely PW-1 Premnarayan, PW-2 Biharilal and PW-4 Lakhan. PW-1 Premnarayan is the injured witness to whom the knife injury was caused by the appellant. Premnarayan has stated that he along with PW-2 Biharilal and PW-4 Lakhan and one Maniram had stopped in front of the liquor shop to get the change of Rs.5,00/- note, when Mukesh had arrived and demanded Rs.1,00/- from Premnarayan. On refusal to give money Mukesh started abusing Premnarayan and had caused injury on the stomach of Premnarayan from a knife, as a result of which his intestine came out. FIR (Ex.P/3) of the incident was lodged by Premnarayan within half an hour of the incident, in which the name of the appellant was disclosed as assailant who had caused the knife injury. The statement of

Premnarayan is supported by the two other eyewitnesses PW-2 Biharilal and PW-4 Lakhan, who have also given the same version that the appellant had caused knife blow on the stomach of Premnarayan on his refusal to give money.

8/ The PW-3 Dr. Sourin Dutta, medical officer in Civil Hospital Biaora in the MLC (Ex.P/3) of Premnarayan had found incised penetrating (stab) wound elliptical in shape, which was bleeding and the intestine and descentry membrane had come out. He opined that the injury was caused by hard double edged object and the injury was deadly. He also stated that the general condition of the injured was not good, his blood pressure was low and there was no sound of movement of the intestine. PW-8 Dr. Hamidaddin Mansoori had conducted the operation of Premnarayan. He has stated that the wound was measuring 2 x 0.5 c.m. During the operation he had found the through and through cut marks at six places in the small intestine, and had to remove the injured portion of the intestine.

9/ Thus from the evidence of eyewitnesses it is

clearly established that the appellant had caused stab injury from the knife on the stomach of PW-1 Premnarayan and from the medical evidence it is established that the said injury was deadly in nature. Hence the appellant is guilty of offence punishable under Section 307 IPC.

10/ The evidence of PW-1 Premnarayan, PW-2 Biharilal and PW-4 Lakhan also establishes that the appellant was carrying knife and he had used the said weapon in causing injury to Premnarayan. The knife was seized (vide Ex.P/4) from the appellant on his memorandum (Ex.P/6). The statement of PW-6 Rambahadur Singh Bhadoria, the investigating officer, and the seizure memo (Ex.P/4) shows that the blade of the knife seized from the appellant was 16 finger long and its handle was 8 finger long. It was an iron knife with fish shape copper button. Thus the offence under Section 25(1-B)(b) of the Arms Act, 1959 is proved against the appellant.

11/ Coming to the offence under Section 3(2)(v) of the SCST Act, it is noticed that only PW-1 Premnarayan

has stated that the appellant had hurled caste related abuses to him but the PW-2 Biharilal and PW-4 Lakhan, who were present on the spot, have not supported PW-1 Premnarayan on this aspect. They have not stated that the appellant had given any caste related abuse. The appellant has been convicted for offence under Section 3(2)(v) of the SCST Act but there is no evidence on record to show that the appellant had caused injury to Premnarayan on the ground that he was a member of scheduled caste or scheduled tribe. Even PW-1 Premnarayan has not stated before the Court that the injury was caused to him because he was a member of scheduled tribe. As per the statement of eyewitnesses the injury was caused to Premnarayan by the appellant since he had refused to give money to the appellant. Thus the necessary ingredients of Section 3(2)(v) of the SCST Act are not established, therefore, conviction of the appellant for this offence cannot be sustained and the same is accordingly set aside by acquitting the appellant of the said offence.

12/ Learned counsel for the appellant has also raised the argument that the sentence which has been awarded to the appellant for offence under Section 307 IPC is on the higher side, which should be reduced to the period of 5 years but such an argument of the counsel for the appellant cannot be accepted in view of the fact that the appellant had caused deadly injury, which had resulted into removal of part of the small intestine of Premnarayan. Looking to the weapon used, the part of the body where the injury was caused, the nature of the injury and the condition of Premnarayan at the time of his admission in the hospital, it is not found to be a fit case to reduce the sentence awarded under Section 307 IPC.

13/ The appeal is partly allowed by maintaining the conviction and sentence under Section 307 IPC and 25(1-B)(b) of Arms Act and acquitting him of the offence under Section 3(2)(v) of SCST Act.

(S.K. SETH)
J u d g e

(PRAKASH SHRIVASTAVA)
J u d g e