

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

SINGLE BENCH : HON'BLE MR. JUSTICE N.K.GUPTA, J.

Criminal Appeal No.2067/1997

Jagdish @ Magna

VERSUS

State of Madhya Pradesh

Shri P.N.Das, counsel for the appellant.

Shri Ajay Tamrakar, Panel Lawyer for the State/
respondent.

J U D G M E N T

(Delivered on the 29th day of June, 2012)

The appellant has preferred this appeal against the judgment dated 26.9.1997 passed by Eighth Additional Sessions Judge, Jabalpur in S.T.No.286/1997, whereby the appellant was convicted for offence punishable under sections 448 and 324 of IPC and sentenced for 6 months rigorous imprisonment with fine of Rs.500/- and one year's rigorous imprisonment with fine of Rs.1,000/-. He was to undergo for additional period of one month and three months simple imprisonment respectively, in default of payment of fine.

2. Prosecution's case, in short, is that, on 9.5.1997, the victim Rajendra Patel (P.W.3) was inside his house

situated near Victoria hospital, Jabalpur. The appellant knocked the door of the victim Rajendra at about 10 p.m. in the night. When the victim Rajendra opened the door, the appellant came inside the house and started abusing him. Thereafter, he placed a knife on his chest and teared his skin from chest to abdomen. Savitri Bai (P.W.4), wife of Rajendra Patel and Kishan had saw the incident. The victim Rajendra immediately went to the Police station Omti, Jabalpur and lodged an FIR *Ex.P/4* at about 11 p.m. He had also mentioned that a quarrel took place between the appellant and Shivratan Patel and therefore the victim advised the appellant not to do such quarrel and therefore, the appellant assaulted the victim in such a manner. The victim Rajendra was sent to Victoria hospital for his examination and treatment. Duty doctor examined him and found a simple injury on his chest upto the abdomen caused by sharp cutting weapon. He was admitted in the hospital. He was discharged on 19.5.1997. Dr. Pandey (P.W.2) had given his report *Ex.P/3*. After due investigation, a charge-sheet was filed before CJM, Jabalpur and case was committed to the Sessions Court. Ultimately, it was transferred to learned Eight Additional Sessions Judge, Jabalpur.

3. The appellant abjured his guilt. He did not take any specific plea in the case but, he has stated that he was

falsely implicated. One Kishan (D.W.1), who was sweeper in the Victoria hospital was also examined as a defence witness.

4. Learned Additional Sessions Judge after considering the evidence adduced by the parties, convicted the appellant for offence punishable under sections 448 and 324 of IPC and sentenced as mentioned above.

5. Heard the learned counsel for the parties.

6. Learned counsel for the appellant submits that it is accepted by the complainant Rajendra that incident took place when he was at the door and the appellant did not enter in the house and therefore, it would be said that no offence punishable under section 448 of IPC is made out. Similarly, no MLC report is proved. The appellant is falsely implicated in the matter. Defence evidence was trustworthy. In alternate, it is submitted that the appellant was a young youth of 28 years of age at the time of incident and he did not assault the victim for more than once. A superficial injury was caused to the victim. Under such circumstances, sentence directed against the appellant appears to be harsh one. The appellant remained in custody for more than 5 months and therefore, he may not be sent to jail again.

7. On the other hand learned Panel Lawyer has submitted that the trial Court has convicted the appellant according to law and sentence appears to be appropriate.

8. Rajendra (P.W.3) and his wife Savitri (P.W.4) were examined as eye witnesses. They have stated in their examination-in-chief that when Rajendra opened the door, the appellant assaulted him. It means, the appellant did not enter in the house. In FIR, *Ex.P/4*, it was mentioned that the appellant went inside the house and thereafter, he assaulted the victim Rajendra. However, FIR is not a substantial piece of evidence and therefore, looking to the evidence given by Rajendra Patel and Savitri, it is apparent that the appellant did not enter in the house. Entire incident took place on the door of the house itself. For offence of house trespass, it is essential for a trespasser to enter in a house, as per the provisions of section 442 of IPC. In the present case, it is nowhere established that the appellant entered in the house of the victim and therefore, no offence of house trespass was committed. The appellant could not be convicted for offence punishable under section 448 of IPC. Learned Additional Sessions Judge has erred in convicting the appellant for offence punishable under section 448 of IPC.

9. Rajendra and Savitri have stated that the appellant kept a knife on the chest of victim Rajendra and teared the skin upto the abdomen. No contradiction arose in their cross-examination. No other eye witness was examined. By perusal of the FIR, it would be apparent that there was no eye witness at the time of incident. It was mentioned that sweeper Kishan saw the incident but, Kishan did not confirm the story in his statement under section 161 of Cr.P.C. as well as in his statement as a defence witness. However, evidence of the witness Rajendra Patel is duly confirmed by the FIR, *Ex.P/4*, which was lodged within an hour of the incident.

10. It is also true that MLC report in the present case could not be proved. However. Dr.Pandey (P.W.2) has proved his report, *Ex.P/3* that the victim was admitted in the Victoria hospital on 9.5.1997 and he was discharged on 19.5.1997. Defence witness Kishan who was sweeper in the hospital was examined to show that wound was not so deep. However, he has admitted in his cross-examination that there was a wound to Rajendra Patel from chest to abdomen. As per Bed Head Ticket, it appears that the victim remained in the hospital for 9 days. Under such circumstances, looking to the evidence of defence witness Kishan, it would be clear that a linear wound was found from the chest to

abdomen of the victim Rajendra, which confirms the testimony of eye witness and the victim.

11. The appellant could not prove any enmity with the victim Rajendra and therefore, it cannot be said that he was falsely implicated in the matter. The incident was begun due to activity of the appellant himself. He knocked the door and assaulted the victim and therefore, it cannot be said that he had any right of private defence or he assaulted the victim due to sudden or grave provocation received from the victim. He had a knife and he made a wound, tearing the skin of the victim from chest to abdomen. Under such circumstances, looking to the overt-act of the appellant, it would be apparent that he knew about his act and therefore, it may be said that he caused the injury to the victim voluntarily. Under such circumstances, the appellant is guilty of offence punishable under section 324 of IPC, therefore, the trial Court has rightly convicted the appellant for offence punishable under section 324 of IPC.

12. As far as the sentence is concerned, it is apparent that the appellant was 28 years old person. No criminal past has been shown against him but, looking to his act, it appears that he assaulted the victim to threaten him so that he would not indulge in his activities done with others and therefore, it is not a case in which benefit of probation can

be given to the appellant. Similarly, it is not a case, in which the appellant may be released by imposing fine only. However, it is informed that the appellant remained in custody from 10.5.1997 to 6.10.1997. He has faced the trial and this appeal for last 15 years. Under such circumstances, where the appellant remained in custody for approximately 5 months then, looking to the one injury caused by the appellant, his custody period appears to be sufficient sentence in the crime. Under such circumstances, jail sentence imposed upon the victim can be reduced to the period which he has already undergone in the custody.

13. On the basis of the aforesaid discussion, present appeal filed by the appellant is hereby partly allowed. He is acquitted from the charges of offence punishable under section 448 of IPC but, conviction for offence punishable under section 324 of IPC is hereby maintained. However, his sentence is reduced to the period, which he has already undergone in the custody. There is no change in fine imposed upon the appellant for offence punishable under section 324 of IPC. The appellant would be entitled to get a sum of Rs.500/- back from the trial Court if he has deposited that amount as a fine for offence punishable under section 448 of IPC. Out of fine amount of Rs.1,000/-, a sum of Rs.700/- be granted to the victim Rajendra Patel S/o Shri

Rohini Patel, R/o Ward boy quarter, Victoria Hospital, Police Station Omti, District Jabalpur by way of compensation.

14. Presence of the appellant is no more required before this Court, therefore, it is directed that his bail bonds shall stand discharged.

15. Copy of the judgment be sent to the trial Court with its case file for information and compliance.

(N.K.GUPTA)
JUDGE
29/6/2012

Pushpendra