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**(2009) 10 MP CK 0040**  
**In the Madhya Pradesh High Court**

Balvinder

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 26-10-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 374  
Penal Code, 1860 (IPC) — Section 302, 304, 307, 324, 326

**Citation :** (2009) 10 MP CK 0040

**Hon'ble Judges :** U.C Maheshwari, J

**Bench :** Single Bench

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## Judgement

U.C. Maheshwari, J.—The appellant/ accused has preferred this appeal u/s 374(2) of Cr. P. C. being aggrieved by the judgment dated 29.10.2004 passed by the Seventh Additional Sessions Judge, Bhopal in S. T. No. 175/1990 convicting and sentencing him u/s 326 and 324 of I. P. C. with a direction to undergo RI for two year with fine of Rs. 1,000/-, in default of it further two months RI in the earlier section while RI for one year with fine of Rs. 500/-, in default of it further one month RI in later.

2. The facts giving rise to this appeal in short are that the deceased Jeevan Lal accompanied with Radheshyam (P.W.8), Jagdish (P.W.9), Ramdas (P.W.10), Subhash (P.W.11) and Banne Singh came to Bhopal from Delhi to carry out the work of false ceiling and decoration in the shop of one Gulshan Chhawda situated at Hamidia Road Bhopal. During that period they were residing in a tenanted premises situated at 184-C, Sector Indrapuri, Bhopal. On 6.1.1990 at about 11.00 O" Clock in the night the deceased Jeevan accompanied with above mentioned persons and one Girish (P.W.7) sitting in a room were taking their foods, at the same time appellant Balvinder knocked the door and asked them not to smoke Bidi and do not discuss any thing loudly, on which Jeevanlal reacted and asked him to say him whatever he wants. In such altercation some exchange of abuses took place between them, on which after giving a threat to see him the appellant went away. After near about 20 minutes he accompanied with Ranjit Singh, Shaktidhar Pandey and Pradeep Kumar Agrawal the acquitted accused

came there and by knocking the door called Jeevanlal out side. On his coming they caused injury on his stomach by means of sword and also beaten him by kicks and fists. At the same time the appellant caused the injury on right thigh of Radheshyam (P.W.8) by means of sword and also beaten him by kicks and fists. The persons present in the room rescued them and brought to Hamidia hospital where on medical examination their MLC reports were prepared. On receiving the information of the incident the police also came to hospital and recorded Dehati Nalisi (Ex.P.12) at the instance of Radhe Shyam (P.W.8), on which first information report (Ex.P.18) was registered at police station Piplani against the appellant and other accused for the offence u/s 324 r/w Section 34 of IPC. Looking to the serious condition of Jeevanlal he was referred to senior doctor, who also examined and carried out his surgery. According to MLC report and surgical notes Jeevanlal sustained step wound with bleeding on the right side below the ribs on the stomach and one abrasion along with one lacerated wound on the head. Radheshyam also sustained incise wound on his thigh. The victim Jeevanlal was discharged from such hospital on 31.1.1990 and was taken to Delhi by his father Motilal (P.W.1), where on 23.3.1990 in Ram Manohar Lohiya hospital Jeevanlal died, on which his father Motial gave a report (Ex.P.1) in writing to the Police Station Piplani, on which in the aforesaid registered offence, Section 304 and 307 r/w Section 34 of IPC were also inserted. After holding investigation the appellant along with other co-accused was charge sheeted for the aforesaid offence.

3. After committing the case to the Sessions Court, on framing the charges of Section 302 and 324 of IPC against the appellant and the charges u/s 302 & 324 r/w Section 34 of IPC against the other acquitted accused they abjured the same, on which the trial was held. On appreciation it was held that Jeevanlal died due to the disease of hepatitis (jaundice) and not to the injury sustained in the alleged incident. On further appreciation by acquitting the other accused from all the charges and also the appellant from the charge of Section 302 IPC held him guilty u/s 326 and 324 of IPC for causing the injuries to deceased Jeevanlal and Radheshyam (P.W.8) respectively and punished him as mentioned above. Being dissatisfied with the same the appellant has come forward to this Court with this appeal.

4. Shri Surendra Singh, Senior Advocate after taking me through evidence led by the prosecution and exhibited documents available in the record, said that the impugned conviction of the appellant being contrary to the record and the settled legal proposition is not sustainable. He further said that except Radheshyam (P.W.8) injured, Jagdish (P.W.9) and Ramdas (P.W.10) the other alleged eyewitnesses have not supported the case of prosecution with respect of causing the alleged injury to the deceased Jeevanlal and victim Radheshyam by the appellant. The deposition of victim Radheshyam and above mentioned two witnesses being omnibus do not give any circumstance to draw the inference that the alleged fatal injury was caused to the deceased by the appellant. He further said, on such set of evidence on giving acquittal to other accused, the appellant

could not have been convicted by the trial Court. He also said that in the Dehati Nalishi neither the name of the appellant as assailant nor any description of him was mentioned, mere the word Sardar is not sufficient to draw the inference against the appellant specially when the acquitted accused No. 2 Ranjeet Singh is also Sardar in the matter. By referring the deposition of Radheshyam (P.W.8) he said that the appellant was not known by any of the the witnesses prior to the incident, hence in the absence of any test identification parade the testimony of the witnesses identifying the appellant in the Court is not reliable. On appreciating the evidence of Radheshyam with this approach noting remains in the case against the appellant as Jagdish (P.W.9) and Ramdas (P.W.10) have not stated specifically against him for causing the alleged injury to the deceased Jeevanlal. In such premises the testimony of Radheshyam about causing the injury to him by the appellant is also not reliable. In alternative, it was argued that on dismissing his appeal on any count he being first offender the benefit of probation of Offenders Act be extended to him or in any case considering the long pendency of the case since 1990, by adopting some lenient view his jail sentence be reduced up to the period for which he has already undergone, in judicial custody in the trial Court by enhancing the fine amount under the discretion of the Court and prayed to allow the appeal accordingly.

5. On the other hand while responding the aforesaid argument Smt. Chanchal Sharma, learned Government Advocate by justifying the impugned conviction and sentence of the appellant said that the same is based on proper appreciation of the evidence and in conformity with law, it does not require any interference at this stage either for acquittal or modification of the sentence in any manner and prayed for dismissal of this appeal.

6. Having heard the counsel at length I have examined the record and also perused the impugned judgment. I have not been apprised by the State counsel about pendency of any appeal or revision against the acquittal of the co-accused namely Ranjeet Singh Sardar, Shaktidhar Pandey and Pradeep Agrawal. In such premises, this Court has to consider only the sustainability of the impugned conviction of the appellant u/s 326 and 324 of IPC.

7. Before considering the merits of the matter, I would like to mention here that the nature of the injury sustained by the deceased Jeevanlal on his stomach as dangerous to life and the injury sustained by the victim Radheshyam as grievous in nature are not disputed by the appellant's counsel. He only argued that the appellant was not the author of such injury and in such premises, the prayer for acquittal is made, so this appeal does not require any consideration or re-appreciation of the evidence regarding nature of the injuries sustained by the deceased.

8. True, it is from the record that except the victim Radheshyam (P.W.8), alleged eyewitnesses namely Jagdish (P.W.9) and Ramdas (P.W.10), no other alleged eyewitnesses have supported the prosecution case. On the contrary while recording their depositions some of them turned hostile. In such premises this

Court has to consider the sustainability of conviction by re-appreciation of evidence of aforesaid three witnesses.

9. Jagdish (P.W.9), on recording his deposition stated that on the aforesaid date he along with Radheshyam and some other persons was present in the alleged room. The door of such room was knocked by Sardar, (though the name of Sardar was not mentioned, however the appellant was identified in the Court), on opening the same some exchange of abuses took place between Radheshyam and Sardar, on which Jeevanlal went towards that side then some exchange of abuses also took place between Sardar and Jeevanlal, thereafter, Sardar went away by his scooter. Subsequent to that after half an hour along with four five persons he again came there on which he went in side the bathroom. Thereafter Jeevanlal and Radheshyam was beaten by 4-5 person lashed with knives and hockeys. He also stated that Sardar was residing in the said building. In his entire deposition he has not made any specific allegation against the appellant for causing the injury of knife on the stomach of the deceased Jeevanlal. Ramdas (P.W.10) also recorded his deposition on the same line. He stated that after the earlier incident of altercation and abuses Sardar went away and came back after half an hour with 2 4 persons but what was in the hands of Sardar he did not notice. He further stated that he saw the sticks in the hands of other accused, they took away Jeevanlal and Radheshyam outside the room and carried out their beating. They did not permit the witness to come out from the room. Subsequent to the incident he saw the injury on the stomach of deceased Jeevanlal and in the leg of victim Radheshyam till then the accused had gone away from the place of the incident. He stated that Sardar present in the court was residing in upper floor of the same building while he could not identify the other accused. In paragraph 4 of his cross- examination he stated that after taking out the deceased Jeevanlal and victim Radheshyam by Sardar, he did not go outside of such room, hence he and his other companion could not see the real incident of beating and therefore, he cannot say specifically who caused to whom the alleged injury in such incident. Accordingly this witness has not alleged any specific allegation against the appellant for causing the injury to the deceased Jeevanlal. Both the witnesses had given omnibus statement against all the accused including the appellant, therefore, on acquitting the other accused on such same set of evidence the appellant alone could not be held guilty for such act.

10. The victim Radheshyam (P.W.8) while lodging Dehati Nalisi (Ex.P.12), stated that some sardar caused them injuries by means of sward in the alleged incident but the name of such Sardar was not mentioned in it. On recording his deposition he categorically stated that on the aforesaid date he accompanied with Ramdas, Jagdish, Banne Singh, Subhash and Jeevanlal while sitting in the alleged room was smoking Bidi, on knocking the door he went to see who knocked the door, on opening he found the appellant Balvinder Singh there who asked him that he did not know what is he and you are smoking the Bidi in his presence and thereafter he went away, on which by bolting the door witness came in the room. Even the

outside shutter was also closed by the landlord. By indicating the other accused present in the Court he said that they came there with Balvinder Singh and after got opened the shutter started his beating and also beaten to Ramdas, Jeevanlal and Banne Singh, resultantly, he sustained the injuries on his right thigh by means of knife. He specifically stated that such injury was caused to him by appellant Balvinder Singh. So far Jeevanlal is concerned, he said that Jeevanlal was beaten by all the accused. Jeevanlal also sustained the injury on his stomach. In last paragraph, he categorically stated that the accused were lashed with knives and hockeys. He specifically said that Balvinder Singh was lashed with knife. According to such statement there are more than one accused were lashed with knives. It is noted that no direct allegation against the appellant for causing the injury to Jeevanlal on his stomach was stated by this witness. Even in paragraph 10 of his cross-examination he categorically stated that he does not know that in which manner their beating was carried out, he also accepted that he could not say who caused the injuries to whom. In such premises, it is apparent that this witness has also not stated specifically that the appellant caused the alleged injury on the stomach of Jeevanlal by the alleged weapon. In such premises the deposition of this witness about causing injury to the deceased Jeevanlal being omnibus with the deposition of Jagdish (P.W.9) and Ramdas (P.W.10) stating against all the accused do not give the circumstance to draw inference only against the appellant. In the lack of any specific evidence against the appellant with respect of causing injury to deceased Jeevanlal his conviction in that regard u/s 326 of IPC cannot be sustained.

11. It is settled proposition of law that mere on the averments of Dehati Nalishi or FIR a person like appellant could not be convicted unless such stated facts are proved beyond reasonable doubt by admissible evidence. In such premises the appellant is also entitled to extend the benefit of acquittal as extended by the trial Court to other accused. Even otherwise in view of the available evidence, it could not be said that the alleged injury in the stomach of deceased Jeevanlal was caused exclusively by the appellant and in such premises also he is entitled for extending the benefit of doubt.

12. In view of of the aforesaid discussion by extending the benefit of doubt the conviction and sentence of the appellant u/s 326 of IPC for causing injury to deceased Jeevanlal is hereby set aside and he is acquitted from such charge.

13. Coming to consider the sustainability of the conviction and sentence of the appellant u/s 324 of IPC for causing the injury to victim Radheshyam (P.W.8) is concerned, it is settled proposition of law that conviction of the accused in a criminal case can be based on sole testimony of victim if the same appears to be reliable in the available facts and circumstance of the case. It is true that the name of the accused Balvinder Singh is not mentioned in the Dehati Nalisi (Ex.P.12) lodged by the victim Radheshyam himself and identification parade of the appellant was also not held. But according to deposition of Radheshyam, he was subjected to blow of knife on his thigh from front side by the appellant,

although other alleged eyewitness have not stated such thing but the deposition of victim appears to be supported by medical evidence. Besides this, the deposition of Radheshyam with respect of his injury against the appellant has not been destroyed in any manner even in his cross- examination. In such premises, the conviction of the appellant u/s 324 of IPC does not require any interference at this stage. Hence, the same is hereby affirmed.

14. Coming to consider the submission of the counsel for extending the benefit of Probation of Offenders Act is concerned, in the available set of evidence and looking to the nature of the offence and the act attributed by the appellant in it, he does not deserve for extending such benefit. Hence, such prayer of the appellant is hereby failed. So far reducing the jail sentence of the appellant u/s 324 of IPC is concerned, I have found some substance in it. It is true that the alleged incident took place in the year 1990 and thereafter between last 19 years as per record no criminal antecedent has been reported against the appellant and I have also not been apprised by the State counsel in this regard. In such premises, he being first offender, I deem fit to reduce his jail sentence from RI for one year to the period, for which he has already suffered the jail during trial between 23.3.1990 to 26.5.1990 by enhancing the amount of fine from Rs. 500/- to Rs. 5000/-. Accordingly, the sentence awarded to appellant by the trial Court u/s 324 of IPC is modified.

15. In view of the aforesaid discussion, by allowing this appeal in part the conviction and sentence of the appellant u/s 326 of IPC is set aside and he is acquitted from such charge whereby by maintaining his conviction u/s 324 of IPC, in view of aforesaid discussion his jail sentence is reduced from RI for one year upto the period suffered by him in the jail during trial, as stated above, by enhancing the amount of fine from Rs. 500/- to 15,000/-. In default of payment of such fine amount within 30 days, the appellant has to suffer further six months RI. The amount of fine deposited by the appellant in compliance of the judgment of the trial Court shall be adjusted in the aforesaid enhanced fine amount. On depositing the fine amount out of enhanced sum Rs. 10,000/- shall be given to the complainant Radheshyam (P.W.8) by calling him through summons in the trial Court.

16. The appeal is allowed in part as indicated above.