

**(2002) 07 MP CK 0053**  
**In the Madhya Pradesh High Court**  
**Case No : Criminal Appeal No. 299/97**

Hajrat Singh and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision :** 31-07-2002

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 320  
Penal Code, 1860 (IPC) — Section 307, 324, 34, 452

**Citation :** (2003) 1 MPHT 319

**Hon'ble Judges :** P.C. Agarwal, J

**Bench :** Single Bench

**Advocate :** A.K. Shrivastava, for the Appellant; A.K. Ahirwar, Additional Government Advocate, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

P.C. Agarwal, J.—A.S.J., Basoda in S.T. No. 149/90 (State of M.P. v. Chatro Bai and two others) on 16-7-97 found both the appellants guilty under Sections 307/34 and 452/34 of the Indian Penal Code ("Code" for short) and sentenced them to undergo R.I. for 4 years on both counts. Parvat Singh (A-2) was further held guilty u/s 324 of the Code and sentenced to undergo R.I. for 3 years. Sentences were ordered to run concurrently. Period of detention was set off in such sentences.

2. Admittedly Amol Singh (P.W. 2) was real brother of Kadori (since deceased). Chatro Bai (acquitted co-accused) was wife of Karodi while both appellants are sons of Kadori. Between brothers there was enmity due to dispute of possession of land. On 7-6-89 at 5 A.M., late Kadori with both the appellants, his sons and wife Smt. Chatro Bai ascended in first floor of Amol Singh (P.W. 2), broke open the door and Hajrat Singh (A-1) with Farsa and Parvat Singh (A-2) with Axe badly belabored Amol Singh (P.W. 2) and his sons Jugraj, Dayaram and wife Smt. Tulsa Bai. On their shouting, Durga Soni and others rushed to save them. Amol Singh (P.W. 2) lodged FIR (Ex. P-6), the same day at P.S. Tyonda at about 10.40

A.M. On medical examination of Smt. Tulsa Bai, one incised wound and one contusion was found on her person. On person of Dayaram, one incised wound was seen. On person of Jugraj, one lacerated wound, one incised wound and tenderness with swelling was noted. On person of Amol Singh (P.W. 2), seven incised wounds with compound fractures of left humerus and fractures of 2nd and 3rd metacarpal were noted. Radiologist noted fracture of metacarpal. Soft humerus parietal bone and fibula of Amol Singh. Doctor opined that injuries of Amol Singh (P.W. 2) could be dangerous to life due to excessive bleeding. As it is 13 injuries caused by hard and blunt object though of simple nature were found on person of deceased Kadori also vide Ex. P-7. Blood was noted on Farsa seized from Hajrat Singh (A-1).

3. Appellants pleaded not guilty and claimed that they have been falsely implicated due to dispute of possession of land. Two witnesses in defence were examined to prove quarrel between the parties due to such dispute.

4. Trial Court believed the prosecution and convicted and sentenced the appellants as aforesaid, though, co-accused Chatro Bai, the mother of appellants was acquitted.

5. Amol Singh (P.W. 2) alone has been examined to prove the occurrence. His wife Tulsa Bai and Dayaram who were injured in the same occurrence have not been examined. The other son Jugraj Singh who was injured is reported to be dead. Kallu (P.W. 5) who happens to be the son-in-law of Amol Singh (P.W. 2) has claimed that in the way to police station Amol Singh (P.W. 2) had referred the story and named the appellants and their parents as aggressors. However, such story was not told by him in his statement Ex. D-2, before the Investigating Officer. Thus, his statement is clear improvement and cannot be relied upon.

6. Prosecution story of course is supported by FIR (Ex. P-4) lodged the same day by Amol Singh (P.W. 2). Dr. A.D. Bhatnagar (P.W. 3) has noted 9 injuries on person of Amol Singh (P.W. 2). He has noted injuries on person of Tulsa Bai wife of Amol Singh (P.W. 2), Dayaram and Jugraj Singh sons of Amol Singh (P.W. 2) also. Such injuries were fresh, caused within 2 to 4 hours before their medical examination in the noon of 7-6-89. Of course, statements of Dr. A.P. Khilwani (P.W. 4) and Dr. Vinay Pandey (P.W. 6) further prove fractures on the person of Amol Singh (P.W. 2). Besides X-ray reports, X-ray plates are also there on record. Of course, Kadori, father of these appellants also had 13 injuries on his person, as deposed by Dr. A.D. Bhatnagar (P.W. 3) vide Ex. P-7. He was examined on 9 P.M. and duration of injuries was 12 to 36 hours. There has been over-writing in medical report about duration. Anyhow, it can reasonably be assumed that such injuries were caused in the same incident which occurred at 5 A.M. i.e.t about 16 hrs. before this medical examination. Learned Advocate for appellants has drawn my attention to Smt. Rukma and others Vs. Jala and others, ; Shiv Karan v. State of Rajasthan [(1998) SCC (Cr.) 712]; Vanrawan Anandji v. Koli Vashram Punja [(2001) 1 MPWN 139 (SC)]; Narendra Singh v. State of M.P. [(2001) 2 MPWN 70] and Kanchedi v. State of M.P. (1991 JLJ 6) and claimed that non-

explanation of injuries entitles the appellants to benefit of doubt as the prosecution has suppressed the genesis and the origin of the occurrence and thus not presented the true version and further Amol Singh (P.W. 2) has suppressed a very important factum from the Court. He has further argued that Amol Singh (P.W. 2) is not a wholly reliable witness. He has indulged not only in suppression of the occurrence but in improving his story in Court as according to him is clear from Paragraphs 7 to 9, 13 and 14 of his statement. It is also argued that Durga Soni who was independent witness named in FIR has not been examined. Investigating Officer who visited the spot and prepared the spot map (Ex. P-1) seized blood stained and simple earth from spot, vide Ex. P-2, seized Farsa from Hajrat Singh (A-1), vide Ex. P-4 and Ex. P-5 a waist from Jugraj Singh and had sent the articles seized to F.S.L. has not been examined. Thus, the prosecution story is not well proved. Further, the appellants have prejudiced in their defence as they are deprived of cross-examining this I.O. Anyhow, the learned Trial Judge who has seen the witnesses deposing has believed the prosecution version which is well supported by other evidence on record. As it is, Dr. A.D. Bhatnagar (P.W. 3) has clearly opined that the injuries on Amol Singh (P.W. 2) can be fatal due to excessive bleeding. The appellants have merely denied their guilt. They have not put any counter version how Kadori, their father got injured. Kaluram (D.W. 1) and Hukumchand Jain (D.W. 2) merely claim that there was a quarrel between the parties yet they do not allege that the complainant party was aggressor.

7. In these facts and circumstances of the case, conviction of the appellants under Sections 307/34 and 452/34 and conviction of Parvat Singh (A-2) u/s 324 of the Code can be maintained.

8. However, both the parties have compounded and have filed composition petition which was dismissed on 27-8-97. More than 13 years have elapsed. As the offences charged were not compoundable, yet, it is well settled that fact of compromise between the parties can well be taken into account in determining the quantum of sentence even if offence is non-compoundable. Ram Pujan and Others Vs. State of Uttar Pradesh, ), Malkiat Singh v. State of Punjab [(1983) SCC (Cr.) 52 (2)].

9. In the present case Hajrat Singh (A-1) has been in custody for 361 days while Parvat Singh (A-2) has been in custody for more than 8 months. In all these facts and circumstances of the case, the sentence awarded by the Trial Court is reduced to that already undergone by the appellants. Thus, appeal is partly allowed and sentences of the appellants are reduced to that already undergo under all the counts.

10. Appeal allowed in part. Conviction maintained. Sentences modified.