

Guddu @ Sameer Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-26-2012

Appellant : Guddu @ Sameer

Respondent : The State of M.P.

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR Single Bench:
Hon'ble Mr. Justice N.K.Gupta,J.CRIMINAL APPEAL NO.907 OF 199.Guddu alias
Sameer. Vs. State of Madhya Pradesh.

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H.S.Dubey, Advocate for the appellant. Shri S.K.Kashyap, Govt. Advocate for the
respondent/ State.

JUDGMENT

(Delivered on the 26th day of June, 2012) This criminal appeal is preferred by the appellant being aggrieved by the judgment dated 9/5/1996 passed by the Sessions Judge, Betul in ST No.81/1995, whereby the appellant was convicted for commission of offence punishable under Section 307 of IPC and sentenced for five years' rigorous imprisonment with fine of Rs.100/-. In default of payment of fine amount, an additional RI for three months was directed.

2. Prosecution case, in short, is that on 22/1/1995 the victim Mohd. Anees (PW-1) was working on his paan thaila situated at Tikari Road, Betul. At about 8:00 PM

the victim Mohd. Anees went to Lalli Chowk after closure of his paan thaila. After sometime he came back to his paan thaila, then he found that the appellant and other co-accused 2 Criminal Appeal No.907/1996 persons were standing near his thaila. A sum of Rs.15/- was due towards the appellant Guddu and therefore victim Mohd. Anees demanded that sum from appellant Guddu. The appellant with the help of other co-accused persons viz. Sallu @ Salim and Abid assaulted the victim Mohd. Anees by a knife. He assaulted the victim on his abdomen and left thigh for 2-3 times. Mohd. Shafi (PW-2), brother of the victim after getting news of the incident rushed to the spot. He tried to engage an auto-riksaw but in the meantime witness Moin Khan (PW-10) and Tanvir (PW-4) took the victim to the District Hospital, Betul and thereafter to the Padhar Hospital in a jeep. Mohd. Shafi went to the hospital and asked his brother about the incident. On the information received from his brother, he gave Dehati nalishi (FIR) Ex.P-3 to the concerned police officers, who came to the hospital. Victim Mohd. Anees was referred to the doctors for his examination and treatment. In district hospital Betul Dr. M.L.Rathore (PW-5) examined the victim Mohd. Anees and found two stab wounds. One on the left abdomen and another on the left thigh. One side of each wound was clean cut whereas second side of wound was irregular. The wound caused in abdomen was deep to peritoneal cavity. In Padhar Hospital Dr. Anil Alikatti (PW-7) treated the victim Mohd. Anees. Victim was vomiting blood at that time. A surgery was done in Padhar Hospital by this witness and he found that some portion of intestine was cut 3 Criminal Appeal No.907/1996 due to that wound caused in abdomen of victim Mohd. Anees. Bladder was also found cut in length of 1.5 cm. Blood was oozing from the mesentery and bladder. As per his opinion, death of the victim could be caused in ordinary course of the nature due to that injury if surgery was not done upon him. After due investigation, a challan was filed by the police before the Chief Judicial Magistrate, Betul and thereafter case was committed to the Sessions Judge, Betul.

3. The appellant-accused abjured his guilt. He did not take any specific plea in defence but simply stated that he was falsely implicated in the matter. No defence evidence was adduced.

4. After considering the prosecution, the learned Sessions Judge, Betul convicted the appellant for commission of offence punishable under Section 307 of IPC and inflicted the sentence as mentioned above, but acquitted the other co-accused persons namely Abid and Sallu @ Salim.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the appellant-accused has submitted that there was no enmity between the appellant and the victim, on the contrary they were friends. Omnibus allegations were made against three persons but a compromise took place out the Court between the victim and other co-accused persons, therefore the present appellant was falsely implicated in the matter by saving the 4 Criminal Appeal No.907/1996 others. Incident took place in a spur of moment. The injuries were not fatal in nature. No offence under Section 307 of IPC is made out against the present appellant. In support of his contention, learned counsel for the appellant has placed his reliance on the judgment of the Hon'ble Division Bench of this Court in the case of Kanhaiyalal Vs. State of Madhya Pradesh., (1985 WN Note 336). It is also submitted that the present case is much old and the appellant is suffering custody and attending the proceeding since long. He has suffered for 17 years due to this case and appeal. Under such circumstances, where his age was only 18 years at the time of incident, jail sentence of the appellant may be reduced to the period which he has already undergone in the custody.

7. On the contrary, learned counsel for the State has supported the impugned judgment mainly on the ground that the offence under Section 307 of IPC is very well constituted against the present appellant and looking to the gravity of offence, the instant appeal filed by the appellant may be dismissed.

8. In the present case only three questions are to be considered. Firstly, that the appellant assaulted the victim by a knife, secondly as to whether offence under Section 307 of IPC is constituted against the present appellant or not and thirdly as to whether any interference can be done in the sentence inflicted by the trial Court. 5 Criminal Appeal No.907/1996 9. It is submitted by learned counsel for the appellant that in the FIR Ex.P-3 omnibus allegations were made that the victim Mohd. Anees was assaulted by three accused persons with the help of a knife. But

during the trial a compromise took place between the remaining accused persons and the victim. All the witnesses were saving those two accused persons and shifted their guilt upon the present appellant.

10. Contention of learned counsel for the appellant cannot be accepted in the light of the statement given by the victim Mohd. Anees (PW-1). He has specifically mentioned that it was the appellant Guddu, who assaulted him on his abdomen and left thigh by a knife. He did not allege anything against co-accused Abid and Sallu @ Salim that they assaulted him by any weapon. Under such circumstances, it would be apparent that original version of the victim was that the appellant assaulted him by a knife on his abdomen and thigh. The FIR was lodged by witness Mohd. Shafi (PW-2), brother of the victim, who was not the eye-witness in the case. He took the information from the victim when victim was admitted to the Padhar Hospital in a serious condition. Under such circumstances, the complainant could lodge the FIR in an omnibus manner on the basis of information given by the victim in such a critical condition. But when the victim was examined by the police under Section 161 of Cr.P.C. only then he has 6 Criminal Appeal No.907/1996 categorically mentioned that it was the appellant Guddu who assaulted him in his abdomen and thigh by a knife. Under such circumstances, it cannot be said that omnibus allegations were made against all the three persons and thereafter the present appellant was chosen as a main culprit. On the contrary, it is apparent from the statement of the victim that the appellant was the culprit who assaulted him by a knife.

11. The evidence given by the victim Mohd. Anees is duly supported by the statement of witness Mohd. Shafi (PW-2) that the victim informed him about the incident soon after the incident. However, witness Jamal (PW-3), Tanvir (PW-4) and Moin Khan (PW-10) have turned hostile. They did not support the fact that they saw the incident. Moin Khan (PW-10) and his companions have stated before the trial Court that they took the victim to the hospital only in an injured condition, but the victim did not say anything about the name of the culprit etc. However, no enmity is established against the present appellant so that victim could allege the ground of enmity against the appellant. On the contrary, it is established that prior to this incident, the victim and present appellant were friends. Under such

circumstances, the evidence given by the victim Mohd. Anees is duly supported by the FIR and medical evidence.

12. Learned counsel for the appellant has invited attention of this Court that there is a lot of contradiction 7 Criminal Appeal No.907/1996 between the number of injuries as stated by the victim and those that were found by the doctor. It is true that number of injuries are different on these two ends, but a person who was assaulted in such a manner that his bladder and mesentery were cut. Some portion of the intestine was also cut. Victim was vomiting blood, hence it was not possible for him to remember number of strokes given by the appellant. Therefore by such contradictions, the testimony of the victim Mohd. Anees cannot be disbelieved. Under such circumstances, learned Sessions Judge has rightly held that it was the present appellant Guddu who assaulted the victim Mohd. Anees by a knife.

13. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Division Bench of this Court in the case of Kanhaiyalal (supra) to show that since nature of the injury was not fatal, the alleged offence falls under Section 324 of IPC. Actually, looking to the factual aspects of the case, the judgment passed by the Hon'ble Division Bench of this Court in the case of Kanhaiyalal (supra) is not applicable in the present case. In this connection, the relevant portion of the judgment of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Balram Bama Patil & others., (1983 CRI.L.J.331) may be referred in which it is held as under: To justify a conviction under this section it is not essential that bodily injury capable of causing death should 8 Criminal Appeal No.907/1996 have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deducted from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds..... It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need

not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

14. In the light of the aforesaid judgment of the Hon'ble Apex Court, it is to be considered that what was the intention or knowledge of the appellant. It is true that the incident was not pre-planned. A quarrel took place between the parties in a sudden manner. It is also true that the appellant and the victim were friends in the past. But it is observed by Dr. Anil Alikatti (PW-7) that the victim was vomiting blood. His mesentery, intestine and some portion of the bladder were found cut and if surgery was not performed upon him, then injuries were sufficient to cause his death in ordinary course. Under such circumstances, it is apparent that the present appellant assaulted the victim in his abdomen with a force so that knife pierced the abdomen of the victim as well as other portion of the 9 Criminal Appeal No.907/1996 abdomen. Looking to the opinion of the Dr. Anil Alikatti (PW-7), the injuries caused in abdomen of the victim were fatal in nature and if surgery was not performed, then certainly the victim would have died because the vital organs of the victim were found cut in his abdomen. Secondly, it is alleged that the appellant assaulted the victim for at least two times. First in his abdomen and second on his thigh, and therefore his intention is visible. If he had not intended to kill the victim, then there was no need to give another assault to the victim by a knife. In such circumstances, in the light of the judgment of the Hon'ble Apex Court in the case of Balram Bama Patil (supra), it would be apparent that the appellant was intended to kill the victim, and therefore offence under Section 307 of IPC is made out against the present appellant. The learned Sessions Judge has rightly convicted the appellant for commission of offence punishable under Section 307 of IPC.

15. It is true that the present appellant and the victim were friends prior to the incident. The quarrel started due to payment of very small amount of Rs.15/- and during the quarrel the appellant lost his temper and assaulted the victim in such a manner. The appellant is facing the trial and appeal since the year 1995 i.e. for last 17 years. He remained in custody for 40 days. It is also admitted that the appellant was 18 years old at the time of incident. His age is mentioned in the judgment of the trial Court to b

10. Criminal Appeal No.907/1996 years of age. In such a tender age, it is possible that due to lack of maturity, the appellant could do such a crime. Therefore all these facts may be considered for consideration of sentence of the appellant. In the case of Tarak Nath Singh & another Vs. State of WB., [1998 SCC (Cri) 587]. the Hon'ble Apex Court reduced the sentence of the accused to the period which he has already undergone in the custody by enhancing the fine amount but the period of custody of the accused in that case is not known.

16. Learned counsel for the appellant has placed his reliance on the order of this Court in the case of Sanjay alias Sanju Patil & another Vs. State of Madhya Pradesh., [2004(2) MPHT 1 (NOC)]. in which the appellant was convicted for commission of offence punishable under Section 307 of IPC, but his sentence was reduced to the period which he had undergone in the custody. In that case such period was computed to be 19 days only. In this connection, the order of the Honble Apex Court in the case of State of MP Vs. Badri alias Bhuru., (AIR 200.SC 571).may be referred in which such type of orders are deprecated. It was criticized that sentence lesser than one year was granted in such a grave offence without any basis. In the light of the judgment passed by the Hon'ble Apex Court in the case of Badri alias Bhuru (supra), the order passed in the case Sanjay 11 Criminal Appeal No.907/1996 alias Sanju Patil (supra) cannot be considered as a precedent in the present case.

17. In the light of the judgment of the Hon'ble Apex Court in the case of Badri alias Bhuru (supra) it appears that while considering the various facts that the appellant was of tender age, he has faced the trial for a longer period, he remained in custody for sometime, then custody period to be considered proportionate to the offence committed by the accused in the case. Under such circumstances, the order passed by the Single Judge in the case of Sanjay alias Sanju Patil (supra) appears to be per incurium. In the present case, when the appellant remained in the custody for only 40 days, then his sentence cannot be reduced to the period which he has already undergone in the custody. In such circumstances, considering the age of the appellant at the time of incident and the period in which he has suffered the trial and appeal, it would be essential to reduce his jail sentence appropriately by enhancing the fine amount.

18. On the basis of aforesaid discussion, the appeal filed by the appellant is partly allowed. The conviction directed by the Court below for commission of offence punishable under Section 307 of IPC is hereby maintained, but his sentence is reduced from five years' rigorous imprisonment to two years' rigorous imprisonment by enhancing the fine amount from Rs.100/- to Rs.10,000/-. 12 Criminal Appeal No.907/1996 The appellant is directed to deposit the remaining fine amount before the trial Court within a period of two months from today, failing which he shall undergo rigorous imprisonment for two years in addition.

19. The appellant is on bail, therefore he is directed to surrender before the trial Court within one month and after his surrender, the trial Court shall send him to undergo the remaining jail sentence. It is also directed that if fine amount is deposited, then entire amount may be given to the victim Mohd. Anees S/o Mohd. Yusuf, resident of Azad Ward Tikari, Betul (MP) by way of a compensation. (N.K.Gupta) Judge 26/06/2012 Ansari

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