A JITU @ JITENDER

v.

STATE OF M.P.

(Criminal Appeal No. 679 of 2006)

MARCH 5, 2009

B

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

Penal Code, 1860 – s. 326 – Trial of accused with 3 co-
C *accused – For causing murder and causing injuries – Injured eye-witnesses to the incident – Conviction of the accused u/s. 302 IPC – Held: In view of the evidence of eye-witnesses and the nature of injuries on the deceased, conviction altered to one u/s. 326 – Custodial sentence of seven years imposed.*

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Appellant-accused, alongwith three co-accused was tried u/ss. 302/34 and 324/34 IPC for having caused death of one person and causing injuries to three eye-witnesses. One of the co-accused died during trial. Trial
E **court relying on the evidence of injured eye-witnesses convicted appellant-accused u/s. 302 IPC and convicted accused 'R' u/s. 324 IPC. Another co-accused was acquitted. High Court dismissed the appeal of the appellant-accused. Hence the present appeal.**

F **Partly allowing the appeal, the Court**

HELD: PW8, the informant on whose evidence trial court and the High Court placed reliance had categorically stated that it was accused 'R' who had
G **attacked the deceased with a sword, and he was not sure as to how the other two accused persons including the appellant attacked the deceased. The evidence of PW9 shows that the appellant accused had given a blow on the belly. The Doctor found no injury on the belly, but**

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same was on the back side. In this scenario, it would be difficult to uphold the conviction of the appellant for offence punishable under Section 302 IPC. Considering the nature of injuries, the conviction of the appellant is altered to one u/s. 326 IPC and custodial sentence of seven years is imposed upon him. [Paras 7 and 8] [1160-G, H; 1161-A; 1161-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 679 of 2006.

From the Judgment and Order dated 7.7.2005 of the High Court of MP Criminal Appeal No. 927 of 1999.

Triloki Nath Razdan, Smriti Razdan for the Appellant.

Sidhartha Dave, Jemtiben AO and Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court, Indore Bench upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'IPC'). Four persons faced trial for allegedly committing murder of one Umesh (hereinafter referred to as the 'deceased'). Accused-Mukesh died during the pendency of the trial, while another accused Pappu@Deepak was acquitted by the trial court.

2. It is stated that on 17.11.1995, the occurrence took place in which due to the assaults made by the accused persons Umesh breathed his last, while three of the persons Bhagirath PW8, Bherulal PW9 and Yogesh PW10 sustained injuries. On the basis of the information lodged by PW8 law was set into motion and investigation was conducted. On completion of investigation, charge sheet was filed. Reliance was placed on the evidence of PWs 8,9 and 10 by the trial court to record,

A conviction, so far as accused Rakesh and present appellant-Jitu @ Jitender are concerned.

3. It is to be noted that the accused persons were charged for offences punishable under Section 302 read with Section 34 and Section 324 read with Section 34 IPC. As noted above, B accused-Mukesh died during the pendency of the trial and accused-Deepak was acquitted of the charges.

4. It is interesting to note that the accused Rakesh was convicted only for offence punishable under Section 324 IPC. C There is no discussion as to why he was acquitted of charges under Section 302 read with Section 34 IPC. Be that as it may, accused Rakesh was found guilty of offence punishable under Section 324 IPC and the present appellant was held guilty of offence punishable under Section 302 IPC.

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5. The appellant's appeal before the High Court was dismissed. Primary stand before the High Court was that the place of occurrence has been changed, and entirely different version as to how the incident took place was given and, therefore, the prosecution version should not have been E accepted. The High Court found no substance in the appeal and, as noted above, dismissed it.

6. The stand taken before the High Court is reiterated in the present appeal by the learned counsel for the appellant. F Learned counsel for the respondent-State supported the judgment of the High Court.

7. It is to be noted that PW8, the informant on whose evidence trial court and the High Court placed reliance had categorically stated that it was accused Rakesh who had G attacked the deceased with a sword, and he was not sure as to how the other two accused persons including the present appellant attacked the deceased. The evidence of PW9 shows that the accused Jitu@Jitender had given a blow on the belly. The Doctor found no injury on the belly, but same was on the H

back side. In this scenario, it would be difficult to uphold the conviction of the appellant for offence punishable under Section 302 IPC. Accordingly, the conviction of the appellant is altered to Section 326 IPC. We find it strange that though the evidence of PW8 was accepted, no conviction was recorded so far as the present appellant is concerned for the assaults made by him on Bhagirath PW8. There are several disturbing factors. Strongly, the State has not questioned the conviction of Rakesh for offence punishable under Section 324 IPC and non recording of any conviction insofar as the present appellant is concerned in respect of injuries inflicted by him on Bhagirath PW8.

8. Considering the nature of injuries, the conviction of the present appellant is altered to one under Section 326 IPC and custodial sentence of seven years is imposed upon him. It is stated that the appellant has already undergone the sentence of more than seven years. If that be so, he shall be released from custody forthwith unless required to be in custody in connection with any other case.

9. The appeal is allowed to the aforesaid extent.

K.K.T. Appeal partly allowed.