

CASE NO.:  
Appeal (crl.) 806 of 2006

PETITIONER:  
SHAKEEL

RESPONDENT:  
STATE OF M.P

DATE OF JUDGMENT: 23/01/2008

BENCH:  
P.P. Naolekar & Markandey Katju

JUDGMENT:  
JUDGMENT  
O R D E R

1. Twelve accused persons including the appellant stood charged with offence under Sections 148, 307/149 and 324/149 of the Indian Penal Code. Out of the twelve accused persons, the Sessions Judge acquitted 6 accused persons and convicted 6 accused persons. Each convicted accused was sentenced for two years' rigorous imprisonment for the offence under Section 148 IPC and fine of Rs.500/-; five years' rigorous imprisonment for offence under Section 307/149 IPC and fine of Rs.500/-; and 3 years' rigorous imprisonment for offence under Section 324/149 IPC and fine of Rs.500/-. In case of default of payment of fine, the accused persons shall undergo additional rigorous imprisonment for 6 months under Section 148 IPC, one year under Section 307/149 IPC and 6 months under Section 324/149 IPC.
2. The convicted accused persons filed an appeal before the High Court and the High Court by its judgment dated 10.2.2005 affirmed the conviction and sentence of all the six accused persons but reduced their sentence under Section 307/149 IPC from 5 years to 4 years.
3. The present appeal by way of special leave has been filed by accused Shakeel only.
4. The case of the prosecution is that on 8.4.1997 at about 4.00 p.m. when complainant Bharat Kumar (PW.1) with his mother Leelabai (PW.2), brother Naresh Kumar and father were sitting in their house at Village Tagore Bedi, all the accused persons attacked them and as a result of which they suffered injuries. In support of its case, the prosecution had examined PW.1 Bharat Kumar (complainant) and PW.2 Leelabai. PW.1 in his statement has not named Shakeel as the person who had attacked him. In paragraph 16 of his deposition he has stated that when he reached at the Police Station, Shakeel was standing there and informed PW.1 that first he (PW.1) should get his brother treated and thereafter should lodge a report. PW.2 Leelabai in her statement has admitted that she did not know any of the accused persons and the name of Shakeel was informed to her by her son. There is no test identification parade conducted by the police to lend support to the identification of the accused persons. In the absence of any evidence against Shakeel, the Sessions Judge and the High Court have wrongly convicted the accused-appellant.
5. Considering the facts and circumstances of the case, the appeal is allowed. The judgment of the trial court as well as that of the High Court are set aside. The accused appellant shall be set at liberty immediately, if not required in any other case.