

(35) 17-91

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1079 OF 2015
(Arising out of SLP (Crl.) No.8627/2014)

SAKHARAM

...APPELLANT

VERSUS

STATE OF MADHYA PRADESH & ANR.

...RESPONDENTS

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the judgment dated 01.08.2013 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.935 of 2004 whereby the High Court partly allowed the appeal thereby modifying the conviction of the appellant-Sakharam under Section 307 IPC to

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Section 325 IPC and sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- with default clause.

3. Briefly stated case of the prosecution is that complainant-Ramnath (PW-1) lives in village-Devrimaal and runs a flourmill and also an agriculturist. On 09.06.2002 at about 6.00 p.m., when Ramnath-PW-1 was working at his flourmill, Raju came to PW-1's flourmill and asked him whether Ramnath called Jogi Lodhi for a meal in Jhalar function to which the complainant replied in the negative and on this issue there was a wordy altercation between them. At about 7.30 p.m., when Ramnath was returning back from his flourmill in front of one Prahlad Vishwakarma's house, Raju wrongfully restrained him and started quarrelling with him. At that time Vipatlal-grandfather of Raju came thereon with *lathi* and hit the complainant-Ramnath's head. On hearing the hues and cries of the fight, from the complainant's side, his nephew Santu Lodhi (PW-2) and his younger brother Badri Lodhi came to the spot and from the side of the accused Raju's father-Tularam armed with a sharp iron rod (*Ballam*) and appellant-Sakharam armed

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with *lathi* came to the spot. Accused Tularam pierced his *Ballam* on the left side of the chest of Badri, when complainant-Ramnath(PW-1) tried to prevent, Tularam also attacked Ramnath on his left shoulder with the *Ballam*. Appellant-Sakharam caused two *lathi* blows on the head of Santu-PW-2 due to which he became unconscious. Raju threw Ramnath (PW-1) on the ground due to which Ramnath (PW-1) sustained head injuries. On hearing the noise, Jogi Lodhi (PW-10), Mahasingh (PW-5), Shivsingh Gond (PW-8) came to the spot and intervened to stop the fight. Badri succumbed to injuries.

4. On the complaint lodged by complainant-Ramnath (PW-1), FIR was registered in FIR No.58 of 2002 under Sections 341, 323, 324, 302 and 34 IPC at police station Chand, District-Chhindwara, Madhya Pradesh. Injured Santu (PW-2) was sent to the hospital for treatment. ASI-V.P. Mishra (PW-16) took up the investigation and after due investigation chargesheet was filed against Tularam, appellant-Sakharam, Raju and Vipatlal.

5. Upon consideration of evidence, Additional Sessions Judge, Chhindwada, held that the prosecution has established the guilt of the accused beyond reasonable doubt. Trial court

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vide its judgment dated 28.05.2004 convicted accused-Vipatlal and Raju under Sections 323 and 323 read with Section 34 IPC respectively and each of them were sentenced to undergo three months rigorous imprisonment. Raju was also convicted under Section 341 IPC and a fine of Rs.500/- imposed on him with default clause. Accused Tularam and accused appellant-Sakharam were convicted under Sections 302, 302 IPC read with Section 34 IPC respectively and each of them were sentenced to undergo imprisonment for life with a fine of Rs.2,000/- with default clause. They were also convicted under Sections 307 read with Section 34 IPC, 307 IPC respectively and each of them were sentenced to undergo ten years rigorous imprisonment with a fine of Rs.500/- with default clause.

6. Being aggrieved by the conviction and sentence awarded to them by the Additional Sessions Judge, the accused-Tularam and appellant-Sakharam preferred criminal appeal before the High Court of Madhya Pradesh Bench at Jabalpur. Conviction of accused-Tularam under Section 302 IPC was confirmed. High Court vide impugned judgment dated 01.08.2013 partly allowed appellant-Sakharam's appeal setting

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aside his conviction under Section 302 IPC and modified his conviction under Section 307 IPC as conviction under Section 325 IPC and sentenced him to undergo rigorous imprisonment for seven years with a fine of Rs.2,000/-. This appeal assails the correctness of the conviction of the appellant-Sakharam under Section 325 IPC and the sentence of imprisonment imposed upon him.

7. Learned counsel for the appellant Mr. Himanshu Dubey contended that a quarrel took place between the parties and the incident happened all of a sudden and without prior meeting of mind and accused-appellant had no common intention to assault the complainant parties. It was submitted that Dr. Moitra-PW-15 did not opine about the nature of injuries caused to Santu-PW-2 and in the absence of evidence to prove that the injuries sustained by PW-2 were grievous injuries, the High Court erred in convicting the appellant under Section 325 IPC. It was submitted that the sentence of imprisonment of seven years imposed on the appellant is harsh and excessive and prayed for reduction of the sentence.

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8. Learned counsel for the respondent Mr. Naveen submitted that the appellant caused two blows on the head of Santu (PW-2) and considering the gravity of the offence and the injuries, the High Court rightly awarded the sentence of seven years and the same warrants no interference.

9. Key witness Ramnath (PW-1) has clearly deposed that the appellant attacked Santu (PW-2) with *lathi* on his head and his statement was further corroborated by the testimonies of Maltibai (PW-3), Mahasingh (PW-5), Shanta Bai (PW-7), Shiv Singh (PW-8), Jogi (PW-10) and Horilal (PW-11). Appellant himself claims that he intervened to prevent the fight, he himself has admitted that he has caused two injuries with *lathi* on the head of Santu-PW-2. In the light of the concurrent findings of the courts below and the admission of the appellant, in the SLP, notice was issued only limited to the quantum of sentence.

10. Insofar as the injuries sustained by Santu-PW-2, injury No.1 was found to be a lacerated wound size 2 x ½ cm deep upto the skin on the right side of the head; injury No.2 was a lacerated wound size 2 x ½ cm deep upto the skin on the

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left side of the head. Dr. Moitra-PW-15 opined that both the injuries were inflicted by a blunt and hard object. X-ray report (Ex. P-23) revealed that there was a fracture of the frontal bone of the head of Santu and there was a callus. Dr. Moitra-PW-15 neither gave any opinion regarding nature of injuries caused to Santu (PW-2) nor the questions were put to him.

11. 'Grievous hurt' is defined in Section 320 IPC. To make out the offence of voluntarily causing grievous hurt, there must be a specific hurt voluntarily inflicted and coming within the eight kinds of hurt enumerated in Section 320 IPC. By perusal of X-ray report (Ex. P-23), it is evident that PW-2 sustained fracture or dislocation of the bone which clearly falls in the category of grievous hurt as expressly mentioned in clause (7) of Section 320 IPC. The fracture or dislocation of bone is considered grievous hurt because it causes great pain and suffering to the injured person. Even though Dr. Moitra-PW-15 was not questioned about the nature of the injuries, fracture of the frontal bone would bring the offence within the definition of 'grievous hurt'. Having regard to the nature of injuries and the X-ray report, in our view, the High Court rightly convicted the

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appellant under Section 325 IPC and the same cannot be modified.

12. For conviction under Section 325 IPC, the High Court imposed seven years rigorous imprisonment. The imposition of sentence is always a matter of discretion of the Court. In imposing the sentence, Judge must consider variety of factors and circumstances and overall view of the situation and impose appropriate sentence. The measure of punishment in a given case must depend upon nature of the offence, the conduct of the accused and unprotected state of victim. The Supreme Court will not interfere with the sentence unless this Court finds that the discretion has been exercised arbitrarily or capriciously or on unsound principles or that the lower court or the High Court has not taken into account any relevant factor in imposing the sentence. In the present case, when the complainant was returning from the flourmill, Raju restrained him and there was a wordy altercation. On hearing the hues and cries, both complainant party and accused party gathered and there was a fight and in which the appellant inflicted two *lathi* blows on Santu-PW-2. As the occurrence was a sudden

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fight and in a fit of passion the appellant inflicted injuries on Santu-PW-2. In our view, the sentence of imprisonment of seven years imposed on the appellant is excessive and the same is to be reduced.

13. While confirming the conviction under Section 325 IPC, the sentence of imprisonment of seven years imposed on him is reduced to three years and this appeal is partly allowed.

.....J.
(T.S. THAKUR)

.....J.
(V. GOPALA GOWDA)

.....J.
(R. BANUMATHI)

New Delhi;
August 19, 2015