

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 840 of 1999**

- Dayaram Shrivass

---- Appellant**Versus**

- State Of M.P.

---- Respondent

For appellant	:	Smt. C.K. Navrang, Advocate
For Respondent/State	:	Ku. Sangita Mishra, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****23/03/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 4-3-1999 passed by the Additional Sessions Judge, Balod, Durg (MP now CG) in Sessions Trial No. 184/1997 whereby and whereunder learned trial Court after acquitting co-accused Vishnu Shrivass, brother of the present appellant for the offence under Sections 450, 307/34, 323, 324/34 by extending benefit of doubt, convicted the present appellant for the offence under Sections 450, 326 and 324 of the Indian Penal Code (in brevity 'IPC') and sentenced him to undergo R.I. for 2 years, 2 years and six months and to pay fine of Rs. 200/-, Rs. 200/- and Rs. 100/- respectively with default stipulations with a direction to run the substantive jail sentences concurrently for causing voluntary hurt by dangerous weapon to P.W. 5 Mankunwar, also committed trespass in order to commit offence punishable for imprisonment for life.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 1-2-1997 at about 7.30 pm, there was a dispute and quarrel between children. The persons present on the spot intervened and separated them. Thereafter with this dispute and quarrel of children, the appellant along with acquitted co-accused Vishnu keeping sword with them trespassed the house of P.W. 4 Suresh and assaulted P.W. 4 Suresh, also assaulted PW 5 Mankunwarbai with sword. Co-accused also took part in the incident. P.W. 5 Mankunwarbai reached to the police station Rajhara, lodged FIR which was registered as Crime No. 50/97 against both the accused under Sections 452, 307 read with Section 34 of IPC. After registration of FIR as Ex. P-7, the Investigating Officer P.W. 9 J. Kujur, Sub Inspector started investigation. During investigation, he prepared spot Map vide Ex. P-12, also obtained spot map prepared by Patwari vide Ex. P-5. He also seized blood stained soil and plain soil from the spot and one pair of slipper vide Ex. P-8. He took the accused in custody. On the basis of disclosure statement Ex. P-11 made by the appellant, the IO seized one sword and one shirt having blood stain vide Ex. P-9. Blood stained shirt of the victim P.W. 4 Suresh was seized vide Ex. P-10. All the three injured were taken to BSP Hospital, Rajhara. P.W. 1 Dr. Rajeshwar Ram examined P.W. 4 Suresh and noticed following injuries: one obliquely cut wound at right side of chest below ribs 4 x 2 cm, upto peritoneal cavity, one lacerated wound at blow the left eye 2.5 x 1 x 0.5 cm and one lacerated wound over wrist of left hand 2.5 x 0.5 x 0.5 cm. Injuries were caused by hard and sharp object. His report is Ex. P-1. He referred the patient for treatment to Sector 9 Hospital. The doctor also examined P.W. 5 Mankunwarbai and noticed following injuries : one incised wound at left hand 1.5 x 0.5 cm, one abrasion on right thigh 1 cm x 0.5 cm, injuries may be caused by sharp object, his report is Ex. P-2.
4. P.W. 1 Dr. Rajeshwar Ram also examined Ku. Kamleshwarbai and noticed one abrasion over left side of stomach 1 cm x 1 cm, caused by hard and

blunt object, report is Ex. P-3. P.W. 3 Dr. Subhashis Mandal conducted operation for repair of peritoneal on 2-2-1997. Injuries were fatal for life. Hence he put the injuries in the category of grievous hurt. He gave his report Ex. P-6. The articles seized were sent for medical examination to the doctor who advised for chemical analysis of the same. During investigation, bed head tickets of indoor patient P.W. 4 Suresh were collected. Seized articles were sent for chemical analysis vide memo Ex. P-13 to FSL Raipur. FSL Raipur vide its report Ex. P-15 confirmed the presence of blood in sword and shirt seized from the appellant and also confirmed presence of blood in the soil and also in the cloth seized from Suresh P.W. 4. Both the accused were arrested vide arrest memo Ex. P-16 and 17. Dying declaration of P.W. 4 Suresh was also duly recorded by the Executive Magistrate.

5. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in brevity ('Code)). After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Baloda on 24-2-1997 who in turn committed the case to the Court of Session, Durg. Learned Additional Sessions Judge received the case on transfer and conducted trial.
6. Both the accused persons were charged for offence under Section 450, 307, 324 and 323/34 of IPC. They denied the charges. During trial, prosecution examined as many as 9 witnesses to prove the guilt of the accused. Statements of the accused persons were recorded under Section 313 of the Code in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication in the crime in question.
7. Accused also examined D.W. 1 Kapil and D.W. 2 Pyar Ali as defence witnesses. According to these two witnesses, family members of the accused and complainant were quarreling each other and the member of

the complainant party were assaulting family members of accused. Thereafter both the accused Dayaram and Vishnu came on the spot. They tried to intervene. P.W. 4 Suresh and others came on the spot along with sword. Appellant Dayaram attempted to resolve the dispute. He received a cut injury over his palm of the left hand.

8. By providing opportunity of hearing to the parties, learned trial Court acquitted accused Vishnu by affording benefit of doubt and convicted and sentenced the present appellant as aforementioned.
9. I have heard learned counsel for the parties and perused the record of the trial Court and impugned judgment.
10. Learned counsel for the appellant submitted that she is not disputing presence of the appellants and his taking part in the incident. As instructed, she is not assailing this appeal on the point of conviction. She is only submitting her argument on the point of quantum of sentence. She submitted that there was no previous issue. Only on account of dispute and quarrel of both the parties, this incident happened. The incident happened more than 18 years ago. The appellant was first offender with no previous criminal history and also after the incident as stated by the counsel, he has not involved himself in any other criminal activities. He was barber by profession belonging to middle income group earning his bread anyhow. By the same set of evidence, co-accused has been given benefit of doubt. He had served jail sentence from 2-2-1997 to 4-8-1997 i.e. six months and 3 days. He will not commit any similar offence in future. By long passage of time, looking to the entire facts and circumstances as there family members were also assaulted in the incident, lenient view may be taken and he may be sentenced to the period already undergone. The fine amount has already been paid.
11. Per contra, learned counsel for the respondent State while supporting the impugned judgment, opposed the arguments advanced on behalf of the

appellant and submitted that the judgment of the trial Court is well founded. Looking to the act of the appellant, he was adequately sentenced. There is no scope for interference in the impugned judgment. Hence the appeal may be dismissed as not maintainable.

12. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced on behalf of the parties before the trial Court.

13. By examining the defence witnesses and other suggestions, the appellant admitted his presence on the spot. The report is lodged without any delay. There was no previous enmity. Thereby it eliminates any false allegation or false implication. The witnesses P.W. 4 Suresh and P.W. 5 Mankunwarbai and other prosecution witnesses supported the prosecution case though they were cross-examined elaborately but nothing could be elicited so as to discredit their statement. On the other hand, learned counsel for the appellant is not assailing conviction of the appellant. By examining the entire evidence and the submission made on behalf of the appellant, in the considered opinion of this Court, the trial Court has rightly convicted the appellant for his act. There is no scope of interference in the finding of conviction recorded by the trial Court.

14. So far as quantum of sentence is concerned, as surfaced from the fact, the incident is about more than 18 years old. There is no previous criminal history shown in the charge sheet regarding present appellant. By the same set of evidence co-accused Vishnu has been acquitted by affording benefit of doubt. As submitted the appellant never involved himself in any other similar offence. The incident happened on a petty dispute of children. The appellant has already served jail sentence of six months and 3 days. Looking to the entire facts and circumstances of the case, it would be proper to afford one opportunity to the appellant. As there is no minimum sentence prescribed for the offence he may be sentenced to the period already

undergone by him.

15. Consequently, the appeal filed by the appellant is partly allowed. Judgment of conviction passed against the appellant under Sections 450, 326 and 324 of IPC is hereby affirmed. Fine sentence is also maintained. Substantive jail sentence under Section 324 is also affirmed. However, under Sections 450 and 326 of IPC, Instead of sentence to undergo RI for 2 years and 2 years awarded by the trial Court, the appellant is sentenced to the period already undergone by him

16. The appellant is on bail. His bail bond shall continue for a further period of six months as per provisions of Section 437-A of the Code.

Sd/

Chandra Bhushan Bajpai

Judge