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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.1361 of 2000

- Kamta S/o Dharmadas Satnami, aged 21 years, R/o Sector-5
Street-8 quarter No.2/D Bhilai Nagar.

---- Appellant

Versus

- State Of M.P. (now Chhattisgarh)

---- Respondent

For the Appellant	: Shri Arun Kochar, Advocate.
For the Respondent/State	: Shri Sameer Behar. Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

07/11/2016

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the Fifth Additional Sessions Judge, Durg in Sessions Trial No.320 of 1996 on 17.05.2000, whereby appellant was convicted under Section 326 of IPC and sentenced to undergo R.I. for a period of 5 years along with fine of Rs.1,000/-
2. The facts of the case are these, that on 03.09.1995 at about 6:30 p.m. before Pandit Pan Thela in Sector-5, Bhilai, complainant



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Ravi Chakrawarti (PW/3) was present along with his friend Sandeep (PW/2). At the same time, appellant Kamta along with Daulat Ram and one more came on the spot, he was in intoxicated condition. On seeing the complainant and his friend, he started using abusive words for them and then with help of a knife, he assaulted Ravi Chakrawarti (PW/3) and his friend Sandeep (PW/2), they received grievous injuries on their bodies. Injured Sandeep (PW/2) and Ravi Chakravarti (PW/3) were brought to the Sector-9 Hospital at Bhilai. S.I. S.K. Bhagat arrived at the hospital and on information given by Sandeep (PW/2) lodged unnumbered F.I.R. (Ex.P/4). On the basis of which, numbered F.I.R. was separately recorded in Police-Station-Bhilai Nagar. Complainant Sandeep (PW/2) and Ravi Chakrawarti (PW/3) were examined medically and at the advice of doctor, X-ray examination was also conducted. Spot map was prepared as vide Ex.P/9. After completion of investigation, appellant and other accused were charge-sheeted under Section 307/34 of IPC. On denial of charges by the accused persons, trial was conducted and impugned judgment has been passed in which, appellant has been convicted and sentenced as mentioned above.

3. Grounds in this appeal are, that the story of prosecution is false, ridiculous, contradictory and there had been no reason to believe the theory produced by the prosecution. Hence, the Court below



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erred in coming to this conclusion that appellant has committed the offence under Section 326 of IPC. In the alternative, it has been prayed that the sentence awarded is too harsh, prayed that appeal be allowed and the appellant be acquitted of charge.

4. Learned counsel on behalf of the appellant submits that the incident took place on 03.09.1995, appellant was arrested on 08.03.1996 and was released on bail on 01.05.1996, thereafter during the trial, he was again arrested on 03.06.1999 and released on bail by the order of trial Court on 24.05.2000 after passing the impugned judgment on 15.05.2000. Hence, the appellant has undergone a period of one year one month and 16 days in custody, almost 21 years has elapsed after the date of incident and appellant has suffered sufficient hardships during the prosecution against him. Considering this reasons, the sentence of imprisonment against him may be modified to sentence of imprisonment of period already undergone in custody. It has also been submitted that the prosecution has failed to establish that appellant has committed the offence under Section 326 of IPC and the conviction against the appellant would have been under Section 324 of IPC.
5. On the other hand, learned counsel for the State opposes the grounds raised in the appeal and the argument submitted on behalf of the appellant. It is submitted that the prosecution has

successfully proved the case of conviction under Section 326 of IPC against the appellant, hence, there is no scope for interference in this impugned judgment.

6. Considering the argument submitted from both the sides and in the additional prayer on behalf of appellant for modification of sentence of imprisonment, the evidence produced by the prosecution before the trial Court is perused for arriving at the conclusion in this appeal.
7. Main witness Sandeep (PW/2) has been stated that from the date of incident, he along with Ravi Chakarwarti (PW/3) was present on the spot near Pandit Pan Thela in Sector-9 Bhilai. At about 6:00 p.m. appellant along with his friend came to the spot in intoxicated condition. He started abusing the persons present there, on being interrupted by Ravi Chakrawarti (PW/3) appellant went away from the spot. Soon after that appellant and his partner came back to the spot, the other accused Daulat Ram (absconding) stabbed Ravi Chakrawarti(PW/3) on his hand and back on 2 to 3 places, this witness intervened, at that time Kamta took the knife from Daulat Ram and assaulted Ravi Chakrawarti (PW/3) on his head, shoulder, left thigh and abdomen. This witness and Sandeep (PW/2) were carried by the brother of Sandeep (PW/2) to Sector-9 hospital. In cross-examination, the statement of this witness regarding the act of the appellant at the



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time of incident has been challenged by confronting him with his previous statement Ex.D/1. On the basis of previous statement, the statement of this witness in Court that the appellant took the knife from Daulat Ram and used it to assault this witness seems to be an improved statement, hence, this kind of improvement has to be considered seriously and it cannot be believed. The presence of the appellant on the spot, when the accused Daulat Ram(absconding) assaulted Sandeep (PW/2) and Ravi Chakarwari (PW/3) is not contradicted in his statement, which means that the involvement of appellant in this incident has been successfully established by the statement of this witness.

8. Ravi Chakrawarti (PW/3) has stated in the same manner that the time of incident absconding accused Daulat Ram used a knife to stab him on 2 or 3 places of his body, thereafter, when Sandeep (PW/2) came to intervene, appellant Kamta took the knife from absconding accused and assaulted Sandeep (PW/2). He is the lodger of F.I.R. (Ex.P/4). In cross-examination, he was confronted with F.I.R. (Ex.P/4) wherein, which of the accused persons assaulted with knife has not been stated clearly. Hence, this witness also has improved the statement before the Court. On the other hand Sandeep (PW/2) has been found to have made improvement in his statement before the Court. Even then the involvement of appellant in this incident when Sandeep (PW/2)

and Ravi Chakrawarti (PW/3) were assaulted, is not negated by this improvement and contradiction.

9. Other witnesses, who have been examined as eyewitness are Rajmani Pandey (PW/4) and Umesh Mishra (PW/10) who have not supported the prosecution and declared hostile. The statement of complainant is supported by the medical evidence, Dr. Uday (PW/1) by proving his report Ex.P/1 stated that on 03.10.1995, he examined Sandeep (PW/2) and found one wound, deep injury on his left parietal region, two incised wounds on his left hand, one incised wound on his left hypochondrium, on incised wound at right shoulder, one incised wound on left thigh and one incised wound of 1 x 0.5 c.m. of left chest of which he did not examine the depth. He advised for admission and treatment of the injured and has not given any opinion regarding the gravity of the injuries. He even did not advise for X-ray examination of Sandeep (PW/2). Dr. A.K. Gupta (PW/9) operated on the abdomen of Sandeep (PW/2) on 04.09.1995 and has reported vide Ex.P/13 and he did not find any internal injuries. Dr. Smt. Usha Nishad (PW/8) has treated Sandeep (PW/2) describing the procedure of treatment, she has stated that one operation was conducted on the abdomen of Sandeep (PW/2), on opening the stomach, no internal injury was found on the organs of abdomen. She has made the statement on the basis of her report

Ex.P/13. No further evidence has been produced by the prosecution regarding the treatment and discharge of Sandeep (PW/2).

10. Dr. Girish Umredkar (PW/11) examined injured Ravi Chakrawarti (PW/3) on 03.09.1995, found one lacerated wound on tempo parietal region and seven stabbed injuries on the back scapular and nearby region, further one lacerated wound was found on his small finger of left hand for which report Ex.P/15 was given by Umesh Mishra (PW/10) on his advice, injured Ravi Chakrawarti (PW/3) was admitted in the hospital for treatment. Dr. Rajendra (PW/5) has on the basis of X-ray examination given report Ex.P/6, according to which, there had been no bony injury on the skull of Ravi Chakrawarti (PW/3).

11. A report Ex.P/14 was given by Dr. A.K. Goyal (PW/9) who has stated, on the basis of Ex.P/14 that while operating Ravi Chakrawarti (PW/3) and Sandeep (PW/2), no injuries were found in the internal organs of the persons operated.

12. Prosecution has examined all the medical witnesses, but none of these witnesses have given any opinion regarding the gravity of the injury caused to Sandeep (PW/2) and Ravi Chakrawarti (PW/3), neither there is any finding nor any statement to establish that the injuries caused to them can be considered as

grievous. It has clearly been the statement of Dr. Usha Nishad (PW/8) that the injuries caused to them vide Ex.P/13 and Ex.P/14 were not sufficient to cause death in due course of nature. Considering the medical evidence in totality, it is found that there had been no iota of evidence to establish that any of the injured in this case suffered from injury which could be termed as grievous injury as per the definition given Section 320 of IPC, hence, on this ground finding at the trial court needs interference. The only finding on the basis of this evidence could have been safely arrived at was that of the offence as defined under Section 324 of IPC, that appellant was instrumental for voluntarily causing injury to Sandeep (PW/2) and Ravi Chakrawarti (PW/3) by use of a sharp instrument as he had been in the incident, when it was initiated till it ended resulting in causing injuries to them.

13. After perusing and analyzing the prosecution evidence in whole, this conclusion is drawn, that the offence that have been committed by the appellant is punishable under Section 324 read with section 34 of IPC as appellant acted in furtherance of common intention of the absconding accused Daulat Ram.

14. Considering the argument submitted by the counsel for appellant, it is found proper that the sentence of an imprisonment for the conviction held in appeal the period undergone by the appellant

is sufficient punishment along with a suitable fine amount which can be awarded along with.

15. In view of above discussion, this appeal is partly allowed. Setting aside the conviction of appellant under Section 326 of IPC, he is convicted under Section 324/34 of IPC. Maintaining the fine sentence imposed by the trial Court the sentence of imprisonment is altered to imprisonment of the period of detention already undergone by the appellant-Kamta. He need not to surrender.

16. The appellant is on bail. His bail bonds shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the Cr.P.C. He shall appear before the higher Court, as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha