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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 322 of 2002**

Ravishankar Gupta, aged about 45 years, S/o Shri Dhansingh Gupta, Government Service R/o C-4, Daawra Colony, Pachpedi Naka, District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. The State of Chhattisgarh.
 2. Manthlal Gupta S/o Babulal Gupta, aged about 56 years, Occupation-Doctor.
 3. Kailash Gupta S/o Manthlal Gupta, aged about 31 years, Occupation Doctor.
- Sl. No. 2 and 3 are residents of Saaja, Tahsil Saaja, District Durg, Chhattisgarh.

---- Respondents

For Petitioner	: Shri P.K.C.Tiwari, Senior Advocate with Shri Devesh G. Kela, Advocate.
For Respondent/State	: Ms. Madhunisha Singh, Panel Lawyer.
For Respondents No. 2 and 3	: Shri Vimlesh Bajpai, Advocate.

Criminal Appeal No. 684 of 2002

1. Manth Lal Gupta S/o Babulal Gupta, aged 52 years, Profession: Medical Practitioner.
 2. Kailash Gupta S/o Manthlal Gupta, Aged 27 years.
- Both resident of village Saza, Tehsil Saza, District Durg, Chhattisgarh.

---- Appellants**Versus**

The State of Chhattisgarh, Through PS Dhaurpur, District Surguja, Chhattisgarh.

---- Respondent

For Appellants	: Shri Vimlesh Bajpai, Advocate.
For Respondent/State	: Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****12/07/2016**

1. These two cases can be disposed by a common judgment as they arise out of judgment dated 14.05.2002 passed in Sessions Trial No. 166 of 2000 by the 3rd Additional Sessions Judge (F.T.C.) Bemetara, District Durg whereby the

learned Court below has acquitted the accused of having committed offence punishable under Section 307 IPC read with Section 34 IPC but convicted them of having committed offence punishable under Section 323 read with Section 34 IPC and sentenced them to pay fine of Rs. 1000/- each.

2. Briefly stated facts of the case are that on the basis of complaint lodged by the complainant-Ravishankar Gupta, FIR was registered against the Accused-Manthlal Gupta and Kailash Gupta for the offence under Section 307/34 IPC on the basis of which Criminal Case No. 687 of 1999 was registered and this was committed to the Court of Sessions. It would be pertinent to mention that on the basis of another complaint filed by the accused in this case, complainant-Ravishankar Gupta and some others were prosecuted on the basis of Crime No. 12/1998 giving rise to Criminal Case No. 730 of 1998. This case was also registered as Sessions Trial No. 130 of 2001. Ravishankar Gupta and others were charged for the offence punishable under Sections 323/34, 325/34, 294 and 506-B IPC but they have been acquitted by the judgment dated 14.05.2002. It is more apparent that there were more than two counter-cases.

3. There was a fight between the two parties. There is a finding of fact arrived at by the learned Court below that the present Appellants were the aggressors and therefore they were convicted and the revision petitioner-Ravishankar Gupta and others were acquitted. This occurrence is alleged to have taken place on 27.01.1998. Eighteen years have elapsed.

4. Though, two doctors were examined but the entire record was not produced. The learned Court below was unable to come to the conclusion with regard to the nature of the injuries and therefore it rightly held that it could not convict the accused of having committed an offence under Section 307 IPC. The weapon of offence was a rod. It appears that justice has not been done in this case because the police did not properly investigate the matter, the public

prosecutor did not do his job and even the Presiding Officer did not exercise his powers to summon the witnesses. This Court may have been inclined to order re-trial, but this case is already eighteen years old and at this stage, to order re-trial would itself amount to cause injustice to the parties.

5. On the basis of evidence, the only conviction which can be sustained is the one under Section 323 IPC and therefore, both the revision filed by the complainant and the appeal filed by the accused are dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE