

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.168 of 2000**

1. Bhak Chand S/o Dauram Kalar, aged about 42 years,

2. Chamara Ram S/o Halal, aged about 32 years.

Both Cultivators, and R/o village-Barkai, P.S. Farasgaon, Distt-Bastar, M.P.

---- Appellants

Versus

- State Of M.P. (now Chhattisgarh)

---- Respondent

For the Appellant : Shri R.N. Jha, Advocate for the Appellant.

For the Respondent : Smt. M. Asha, PL for the State.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

05/10/2016

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the learned Second Additional Sessions Judge, Jagdalpur, Bastar in Sessions Trial No.187/94 on 11.01.2000 whereby appellant No.1-Bhakchand was convicted under Section 326 and in alternative Section 326 read with Section 34 of IPC and sentenced to R.I. for a period of

7 years along with fine of Rs.5000/-, appellant No.2-Chamra Ram has also been convicted under Section 326 read with Section 34 of IPC and sentenced to R.I. for a period of 7 years along with fine of Rs.5000/-.

2. The case of prosecution in brief is that on 25.9.1993 at about 7:00 p.m. in Village-Barkai complainant Mangneshwar was returning from the house of his sister Kaushilya and at the time of incident appellant No.2 Chamra Ram held his hand and Kishun, Prabhu, Deshraj, Siyaram, Bhanu, who were present there, provoked the main accused and appellant-Bhakchand on which appellant-Bhakchand stabbed the complainant on his chest at two places with a knife. Injured complainant was taken to the Primary Health Centre, Kondagaon from where the information was sent to Police Station, on the basis of which FIR Ex.P-7 was lodged. After completion of investigation appellants and five others were charge-sheeted under Section 307 of IPC.
3. Appellants were charged under Section 307 of IPC and on completion of trial, impugned judgment was passed by the trial Court in which the appellants were convicted and sentenced as mentioned above and rest of the accused under trial were acquitted. The ground taken by the appellants is that they have been falsely implicated.
4. The grounds of appeal are that the judgment of conviction and sentence is bad in law and is based only on the statement of Dr.

Smt. Anita Agrawal and evidence of Dr. S.K. Vyas and Dr. S.K. Nema, whose statement should have been crucial and relevant have not been examined. No other independent witness has been examined. Memorandum and seizure have not been proved. Hence, the witnesses produced by the prosecution were not reliable. The trial Court should have observed that complainant Mangneshwar himself is facing trial for causing injury to appellant-Bhakchand in the Court of First Additional Sessions Judge, Raipur. It is submitted that no offence under Sections 326 and 326/34 of IPC is made out. In the alternative it has been prayed that appellants are innocent persons and this is their first offence; they ought to have been given benefit of Probation of Offenders Act.

5. In course of argument, learned counsel for the appellant has argued that on the basis of evidence produced by the prosecution before the trial Court, at the most, offence under Section 324 IPC is made out. It is prayed that appellants be sentenced for imprisonment of the period of custody already undergone by them during trial and appeal stage.
6. Now the question before this Court is whether prosecution has been successful in establishing beyond reasonable doubt that appellants have committed offence under Section 326 and 326 read with Section 34 of IPC.
7. Learned counsel for the appellant has argued that the doctors

who examined and treated the complainant Mangneshar have not been examined. Statements of other witnesses are not helpful to come to any conclusion. Hence, considering the evidence on record the offence under Section 324 of IPC alone is made out.

8. Learned counsel for the State argued that prosecution has sufficiently established with the help of evidence produced that complainant was injured grievously by the appellant with a knife which is an instrument used for stabbing. Hence, the judgment of conviction and sentence should be maintained.
9. Perused the statements of witnesses before the trial Court. Mangneshar PW-1 has stated that at the time and place of incident he was on his way to home. Appellant No.2 Chamra held his hand and Bhakchand pulled out the knife and stabbed on his chest twice. Appellant was injured and he became unconscious. Later on he gained consciousness in hospital at Kondagaon. He has stated that he remained in hospital of 28 days. No further explanation has been given by him about the gravity of injury caused to him and treatment provided to him. In his cross-examination, the above statement has not been rebutted though suggestion of previous enmity have been though admitted by him, other suggestion in favour of defence have been denied.
10. No other eyewitness has been examined.
11. PW-2 Ratiram has stated that he heard the cries of Sukhiyarin

Bai and went to the spot and found that Mangnesher was lying on the ground and some blood was oozing from his chest. Mangnesher told him that appellant Bhakchand and Chamra Ram have injured him. This witness arrived at the spot immediately after the incident took place and this statement stand unrebutted in his cross-examination.

12. Dr. Smt. Anita Agrawal (PW-7) has been examined. She has stated that she is acquainted with signature of Dr. S.K. Vyas and proved the signature of Dr. S.K. Vyas on Ex.P-8, 9, 10 & 11. She has further stated that she is acquainted with the signature of Dr. S.K. Nema and has proved the signature of Dr. S.K. Nema on Ex.P-12, 13, 14, 15 and 16. This is the only statement given by this witness. It is the duty of the prosecution to prove its case to full extent. Non-examination of the relevant witnesses namely, Dr. S.K. Vyas and Dr. S.K. Nema has severely affected the case of prosecution because these witnesses who themselves examined the complainant and treated him were competent to prove the nature of injury and extent of injury. Statement of Mangneshwar (PW-1) that he remained hospitalized for 28 days, is not explained whether he was hospitalized for treatment of injury itself or for some other reason. It was essential for prosecution to prove beyond doubt that complainant sustained grievous injury in the incident in question. Looking to this kind of evidence adduced by the prosecution, gravity of the injury caused to the

complainant seems to have not been established.

13. In this situation and on the basis of the discussions made above and considering the fact that the incident took place and the complainant was injured with the help of a knife which is a sharp pointed and cutting object and the nature of injury caused to the complainant, the only conclusion which can be safely drawn on the basis of this evidence is that appellant No. 1 Bhakchand voluntarily caused injury with a help of a knife to the complainant and in this act the appellant Chamra was associated who was holding the hands of the complainant. Hence, in view of the medical evidence, the only finding which can be given is that complainant sustained simple injury. In these circumstances, the ground raised in the argument appears to be acceptable and the same is accepted.

14. For the foregoing, the appeal is partly allowed. The conviction of appellant Bhakchand under Section 326 and in the alternative 326/34 of IPC is altered to conviction under Section 324 and in the alternative 324/34 of IPC. Similarly, the conviction of appellant No.2 Chamra under Section 326 of IPC is converted to conviction under Section 324 of IPC.

15. As far as sentence is concerned, learned counsel for the appellants has argued that appellants have remained in custody during trial and appellate stage, hence, it is prayed that the punishment for undergone period of custody may be awarded to

the appellants.

16. On examining the record, it appears that appellant Bhakchand had been under custody for 51 days during trial. On the date of judgment i.e. 11.01.2000, he was again taken into custody and he was ordered to be released on bail by the order of this Court dated 06.02.2001. The bail papers are not in the record. Assuming that the appellant was released on 06.02.2001, this period of detention comes out to be one year and 77 days in total. Similarly, appellant Chamra was under custody for 51 days during trial, thereafter order for suspension and released on bail was passed by this Court on 03.03.2000. On calculation of this period of detention comes out of 102 days as the conviction of the appellants have been altered to a simple kind of offence. For this offence, the period undergone by the appellants seems to be sufficient punishment, hence, this prayer is allowed. The order of sentence passed by the trial Court in the impugned judgment is hereby set aside and it is ordered that the appellants are sentenced to the period already undergone by them during trial and appellate stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge