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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2127 of 2000

- M. Wilson S/o M. William, aged about 32 years, r/o Opposite Sapna Talkies, durgapara, P.S. Chhawani, Distt. Durg (M.P.) (Now Chhattisgarh)

---- Appellant

Versus

- State of M.P. (now Chhattisgarh)

---- Respondent

For Appellant :	Shri Praveen Durandhar, Advocate
For Respondent/State :	Shri Vijay Bahadur, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

JUDGMENT ON BOARD

(18/10/2016)

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by 6th Additional Sessions Judge, Durg in Sessions Trial No. 59/2000 on 03/08/2000, by which the appellant has been convicted under Section 324 of Indian Penal Code (on four counts) and has been sentenced with rigorous imprisonment of two years on each count with direction that all the sentences shall run concurrently

2. The case of prosecution in brief is that on 27/08/1999 at about 11 p.m. appellant arrived at the house of complainant Moin S/o Abdul Aziz and called Khalikunnisha, hearing his call

Khalikunnisha opened the door and she came out then complainant along with elder brother also came out. At this time all of a sudden appellant took out of a shaving knife (Ustara) and assaulted Khalikunnisha on her breast causing injury, thereafter he assaulted the complainant's brother Mohd. Rahis causing him injury on his left side of the neck and on the left side of the abdomen. Complainant went to intervene in this incident when appellant assaulted him as well and injured him on right side of his head and on left side of his abdomen by using the shaving knife (Ustara). Hearing the noise, Kamla Bai came to the spot then appellant also assaulted her and caused injury on her cheek. Wife of the appellant Seema who came on spot was also injured by the appellant. Complainant Moin lodged the FIR (Ex. P/1) in Police Station – Chhawani, District Durg on completion of investigation charge-sheet was filed in the Court.

3. After the committal procedure, appellant was charged under Section 307 of IPC for attempting to murder Moin, Rahis and Khalikunnisha. Further he was charged under Section 324 of IPC for deliberately causing injury to Khalikunnisha and Seema with sharp edged weapon (Ustara). Trial was conducted. After giving opportunity to the prosecution and defence, the impugned judgment was passed in which the charge under Section 307 of IPC was not proved which was converted into conviction under Section 324 of IPC, giving this finding appellant was convicted and sentenced as mentioned above.



4. Grounds of appeal are that the appellant exercised his right of private defence for which he has been falsely implicated. Prosecution has failed to prove the case against the appellant even then he has been convicted under Section 324 of IPC, therefore, prayed for setting aside the conviction and sentence against him.

5. At the stage of argument counsel for the appellant submits that appellant does not want to press on the grounds against conviction. It is prayed that looking to the circumstance that almost 17 years have passed since the date of incident, the appellant is presently aged about 50 years and during the trial and appeal he has remained in jail for 92 days. Hence the sentence given to the appellant may be rectified and he be punished with sentence of period of custody already undergone by him during trial and appeal.

6. On behalf of the State this fact is objected to submitting that in this incident appellant caused injury to five persons by using sharp object, hence in such a case liberal view should not be adopted.

7. Considering the prayer made on behalf of the appellant it would be relevant to consider the injuries caused by him to complainant and others in this case. Dr. Lal Mohammad (PW-7) has been examined he has conducted Medico Legal Examination of complainant Abdul Moin and found three incised wound on his left lumber area, head and on other place of lumber area. On the

basis of report Ex.P/7 he has opined that all the injuries were simple in nature caused by sharp and hard object which were curable within seven days. Further on examining Abdul Rahis he found two incised wound on his left cheek and left side of abdomen, on the basis of report Ex.P/8 he has opined that these injuries are simple in nature and curable within seven days. Further he has examined Khalikunnisha and found one incised wound on her left chest, again on the basis of report Ex.P/9 he has opined that the injury is simple and curable within seven days. This witness also examined Kamla Bai and on the basis of report Ex.P/10 stated that Kamla Bai received two incised wound on her left cheek and one incised wound near thyroid cartilage. In his opinion the injury is simple and curable within seven days.

8. Although the offence seems to be grave because appellant used a hard cutting object (Ustara) for causing injuries to all these persons but as per the report given by the examining doctor, injuries caused to all are simple in nature and curable within seven days.

9. Counsel for the appellant has relied on judgment of Apex Court in the matter of **Ramesh Vs. State of Punjab**, reported in **AIR 2016 SC 2858** wherein the Apex Court looking to the circumstances of time lapse of 19 years and that the appellant was not involved in any other criminal case' granted him benefit on Probation of Offenders Act. In this case the situation appears to be similar there had been cordial relationship between the appellant



and the complainant before the incident, due to some reason which is not clear in the evidence, the incident took place and the appellant went berserk by causing injuries to complainant and others. The injuries caused by him to the injured persons were not of the nature having any grave consequences, this can be taken into consideration on first count and on second count the period of custody undergone by the appellant is 92 days which may appear to be less in such a case where four persons were injured in one incident, but it is a fact that almost 17 years have elapsed since the date of incident. Hence for this reason, it appears that prayer on behalf of the appellant can be allowed. Hence this appeal is allowed in part. The conviction under Section 324 of IPC against the appellant is confirmed. The sentence part is interfered with and set-aside, in place of that appellant is awarded sentence of period already undergone by him in custody during trial and appeal for the offence under Section 324 of IPC (four counts).

10. Appellant is on bail. He need not surrender. Bail bonds furnished by him shall continue for six months from the date of this judgment for compliance of Section 437-A of Cr.P.C.

11. Appeal disposed off accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE