

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 1163 OF 2001**

Devendra Singh @ Chhote Guddu, S/o Rajaram Singh Kshatriy, aged about 22 years, R/o Seepat Navadih, P.S. Seepat, District Bilaspur (C.G.)

... Appellant

Versus

State of Chhattisgarh, through P.S. Sarkanda, Tahsil & District Bilaspur (C.G.)

... Respondent

For Appellant	:	Ms. Renu Kochar, Advocate.
For Respondent	:	Mr. Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

21/10/2016

1. The present appeal has been preferred by the Appellant assailing the judgment of conviction dated 27.11.2001 passed by Vth Additional Sessions Judge, Bilaspur in Sessions Trial No. 275 of 2001 whereby the Appellant has been convicted and sentenced to undergo R.I. for 3 years under Section 324 of IPC and R.I. for 1 year with fine of Rs.1000/- under Section 452 of IPC.

2. At the outset, learned Counsel for the Appellant submits that she does not intend to argue the case on merits and prays that the Court may consider the question of sentence imposed upon the Appellant in the peculiar facts of the case and modify the sentence to the extent of the period that the Appellant has already undergone.

3. Brief facts of the case as per the prosecution are that on 14.4.2001 the Complainant, PW-2, Shivnandan Prasad Dewangan, was assaulted by the present Appellant at around 8:00 pm in the evening. It is said that the Appellant had entered into the house, where the Complainant was staying claiming for rent of the house which was not being paid by the Complainant and in the process some altercation took place between them

and it is said that the Appellant took out a small knife from his pocket and flashed it on the Complainant and in the course injury was caused on the neck and plam of the Complainant. Immediately thereafter the Appellant is said to have fled away from the scene. Thereafter, FIR was lodged and the matter was put to trial before the Vth Additional Sessions Judge, Bilaspur.

4. In due course of trial, the Appellant was charged for the offence punishable under Sections 307 and 452 of IPC. After the conclusion of the trial, the Court below reached to the conclusion that so far as the offence under Section 307 is concerned taking into consideration the nature of injuries the same was not made out and it was held by the Court that looking to the nature of offence committed by the Appellant he was punishable for the offence under Section 324 instead of 307 of IPC. Accordingly, the Court below convicted the Appellant for the offence punishable under Sections 324 and 452 of IPC and ordered for undergoing the sentence as stipulated in the preceding paragraph.

5. At this juncture, it would be trite to mention the evidence which has come on record particularly that of the injured/complainant, PW-2, Shivnandan Prasad Dewangan, who, in his deposition, has categorically stated that he was staying in the house of the Appellant as a tenant. It also appears from his evidence that the dispute between the Complainant and the Appellant was that of non-payment of the monthly rent which the Complainant had to give to the Appellant.

6. Further, it would also be relevant at this juncture to consider the deposition of the Doctor, i.e., PW-1, Dr. A.K. Shukla, who had examined the injured witness. In the deposition, the Doctor has clearly deposed that he had opined the nature of injuries to be simple in nature. Exhibit P-3 is the report of the Doctor.

7. Learned Counsel for the Appellant in the given factual matrix of the case relied upon the decisions of this Court rendered in the case of **Basant Kumar Vs. State of M.P. (now C.G.)**, reported in **2009 (4) C.G.L.J. 496**, wherein this Court upholding the conviction for the offence under Section 324 of IPC has modified the sentence to the period already undergone. In the said judgment also the accused had remained in custody for a period of about 7 days and in the instant case also it appears that the Appellant has remained in custody for a period of 4 days. Likewise, Counsel for the Appellant has further relied upon the judgments of this Court delivered in the case of **Devendra Kumar Vs. State of M.P. (now C.G.)**, reported in **2015 (4) C.G.L.J. 361**, and in the case of **Lakhanlal Vs. State of M.P. (now C.G.)**, reported in **2016 (1) C.G.L.J. 329**, wherein the sentence of the accused persons was modified to the period already undergone.

8. Learned Counsel for the State however opposes the appeal on the ground that the place where the injury was sustained was the neck of the Complainant and therefore it does not require any interference, though the State Counsel has admitted the fact that the dispute between the Appellant and the Complainant was for the non-payment of the rent of the tenanted portion of the house occupied by the Complainant.

9. Considering the submissions made by the Counsel appearing for the either side and on perusal of the records what clearly reflects is that there was no animosity between Appellant and the Complainant as such. That the dispute in the present case was that of the non-payment of the rent by the tenant to the landlord, that is by the Complainant to the Appellant. Further, the nature of injuries caused were very simple in nature. Thus, in the opinion of this Court, ends of justice would meet if maintaining the

conviction of the Appellant sentence part is reduced to the period already undergone.

10. Accordingly, the appeal is allowed in part, to the extent that the conviction of the Appellant for the offence under Sections 324 and 452 of IPC stands confirmed and the sentence for the said offence stands modified and reduced to the period already undergone. However, for the offence under Section 324 of IPC the Appellant shall be liable to pay a fine of Rs.2000/- to the Complainant. The fine imposed upon the Appellant under Section 452 of IPC is also confirmed and maintained.

Sd/-

(P. Sam Koshy)
Judge

/sharad/