

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1369 of 2000**

Nem Singh, Aged about 25 years, S/o Shri Bhumma Singh Rathore, R/o Village Bhadoura, Thana and Tahsil Pendra Road, District Bilaspur (M.P.) (Now C.G.).

---- Appellants**Versus**

State of Madhya Pradesh (Now Chhattisgarh) Through Police Station, Gaurella (Pendra Road) District Bilaspur (M.P.) (Now C.G.)

---- Respondent

For Appellant	:-	Shri Dashrath Prajapati, Advocate.
For Respondent/State	:-	Shri Ashutosh Pandey, P.L.

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgement on Board****08-03-2017**

1. This appeal has been preferred against the judgement of conviction and order of sentence dated 11-05-2000 passed by Fourth Additional Sessions Judge, Bilaspur, Link Pendra Road, in S.T. No.148 of 1999 convicting the appellant for offence punishable under Section 324 of the IPC and sentencing him to undergo RI for 2 years and to pay fine of Rs.1000/- with default stipulation.

2. Case of the prosecution, in brief, is that Daduram Rathore (PW-1) had been to field to answer the call of nature on 03-03-1999 between 7-30 and 8-00 A.M., the appellant arrived on the spot carrying a sickle who all of a sudden started assaulting the complainant Daduram Rathore (PW-1) with sickle causing injuries on his hands and legs. Complainant Daduram Rathore (PW-1) was taken to Senotoriam Hospital, Gaurella and admitted for treatment. On arrival of policemen from Police Station Gaurella, he informed about the incident, on the basis of which FIR (Ex. P-12) was recorded and offence under

Sections 323, 324 and 506 of the IPC was registered. Daduram Rathore (PW-1) was medically examined by Dr. Raj Dulani (PW-6), vide his report Ex. P-5, found incised wounds on his right thigh, left thigh and on the palm of right hand caused by some hard and sharp object. On further query Dr. Raj Dulani (PW-6) opined that the injuries were dangerous to life and fatal. On his advise, X-ray of injuries was conducted but no bony injury was found. Further on query, Dr. Raj Dulani (PW-6) opined vide Ex. P-8 that the injuries caused to the complainant Daduram Rathore (PW-1) may be caused by the seized sickle. One sickle has been seized from the possession of the appellant vide Ex. P-1 and a spot map was prepared vide P-17. On completion of investigation, charge-sheet has been filed against the appellant under Sections 323, 324 and 506 of the IPC.

3. The appellant was charged under Section 307 of the IPC. He denied the charge and demanded for trial. The prosecution examined as many as 10 witnesses. On examination under Section 313 of Cr.P.C., the appellant denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. On completion of trial, impugned judgement was passed by which the appellant was acquitted of the charge under Section 307 of IPC but convicted and sentenced for minor offence as mentioned in first paragraph of this judgement.

4. The grounds in this appeal are that the judgement passed by the trial Court is contrary to the facts and evidence of prosecution. The prosecution has failed to prove its case beyond reasonable doubt. The appellant was entitled for acquittal. Prayer has been made to set aside the judgement against the appellant.

5. It is submitted by learned counsel for the appellant that initially the offence was registered against the appellant under Sections 323, 324 and 506 of the IPC. Without there being any ground for enhancement of the offence, the appellant was charge-sheeted under Section 307 of the IPC. The medical report clearly indicates that Daduram (PW-1) suffered only simple injuries. The opinion of Doctor that injuries were fatal, has not been accepted by the trial Court. It is submitted that the appellant has already undergone 1 month and 26 days in jail. Looking to the nature and the background of the offence, the sentence of imprisonment passed against the appellant may be reduced to sentence of imprisonment of the appellant already undergone by him.

6. On the other hand, learned State counsel submits that the prosecution has proved its case beyond reasonable doubt. The offence under Section 324 of the IPC is well supported with prosecution evidence and this fact is being admitted by the appellant in the appeal itself. Under these circumstances, this is not a fit case for reduction of sentence, hence the appeal may be dismissed.

7. I have heard learned counsel for the parties, perused the judgement impugned and record of the Court below.

8. The evidence of prosecution is perused. To consider whether the offence under Section 324 of the IPC was made out against the appellant and also the circumstances are taken into account to consider on reduction of sentence as prayed for by the appellant.

9. Daduram Rathore (PW-1) has stated that on the date and time of incident, he had been to answer the call of nature, the appellant arrived and assaulted with sickle causing injuries to him. He was brought to Senotoriam Hospital, Gaurella where he informed the police. In cross-examination, his

statement remained unrebutted though he was confronted with his statement under Sections 161 of the Cr.P.C., there seem to be minor contradictions, omissions and improvement compared to his Court statement are of no consequence. Luman Rathore (PW-2) has stated that he went to the spot of incident and saw the appellant and Daduram (PW-1) engaged with each other and both were holding the sickle. On his arrival, the appellant fled away from the spot and he saw that Daduram (PW-1) was injured. His statement remained unrebutted in cross-examination. Ganesh Prasad Rathore (PW-3) came to the spot after the incident took place and saw Daduram in injured condition. Nanduram (PW-5) is an eyewitness to this incident but he has not supported the prosecution case and was declared hostile. Ramvishal Rathore (PW-9) came to know about the incident later on and he has stated about the information received. Geetaram (PW10) has stated that he saw the appellant and complainant Daduram engaged with each other on the day after Holi. He intervened and separated them. He has not made any further statement. No question was put to him in cross-examination.

10. Dr. Raj Dulani (PW-6) has stated on examining Daduram (PW-1), he found one incised wound in the size of 5' x 1.1/2' on his right thigh, one incised wound in the size of 6' x 1.1/2' on left thigh, the injuries were muscle deep. Further, he found an injury on the palm of right hand in the size of 1½" x ¾" "subcutaneous deep. All the injuries were bleeding caused by some hard and sharp object. The report was (Ex. P-5). Further in his report, on query (Ex. P-6), stated that there were no bony injuries caused to Daduram and that the injuries were dangerous to life and fatal. This statement has remained unchallenged in his cross-examination and supports the version of injured witnesses and other prosecution witnesses.

11. Dr. R.C. Mishra (PW-4) has conducted X-ray examination. Kirtan (PW-7) is hostile witness. Head Constable Rajendra Kumar Sharma (PW-8) has conducted the investigation.

12. Roop Singh (Dw-1) has stated that on the date and time of incident, Daduram (PW-1) was using abusive words for appellant. Daduram (PW-1) along with his sister's husband went to the residence of the appellant abusing him and with preparation to have a fight. On the date of this incident, he saw Daduram (PW-1) with a sickle in one hand and a container full of water near the pond. Further, he states that Daduram (PW-1) himself ran towards the appellant Nem Singh carrying the sickle in his hand. On seeing Daduram (PW-1), the appellant ran away and Daduram himself fell down in a ditch. He has no knowledge about the incident that took place between the appellant and the complainant on the next day of Holi Festival. Hence, the statement given in examination in chief is not a ground to be connected with the incident in this case.

13. Considering the evidence of prosecution in defence and on close scrutiny, it is found that the appellant was the assailant who used the sickle to assault Daduram (PW-1) thereby causing injuries to him, which is supported by medical evidence and hence the offence under Section 324 of the IPC is very clearly made out and there is no illegality and infirmity in the impugned judgement of the trial Court, conviction under this offence needs no interference in this appeal.

14. It is submitted by learned counsel for the appellant that the incident is about 17 years old and no purpose would be served if the appellant is again sent back to jail after a lapse of 17 years. The appellant has undergone

sufficient hardship and he has also undergone imprisonment for a period of one month and 26 days in jail.

15. On perusal of record, it appears that the appellant was arrested on 04-03-1999 and was released on bail on 16-04-1999 by order of Sessions Court. The appellant was taken into custody on his conviction on 11-05-2000, who was released on bail by order dated 24-05-2000. Hence, the total period of custody undergone by the appellant is 1 month and 25 days. Considering the facts and change in circumstances, the prayer on behalf of the appellant deserves to be allowed. Accordingly, the appeal is allowed in part. The conviction by the impugned judgement is maintained but the sentence awarded to the appellant is set aside. The appellant is sentenced with a period of imprisonment of the custody already undergone by him during the trial and appeal along with a fine of Rs.5000/-. As informed, the appellant has already paid the fine amount of Rs.1000/- awarded by the trial Court. On non-payment of remainder fine within two months from today, the appellant shall be required to further undergo rigorous imprisonment for two months. Bail bonds of appellant are discharged.

Sd/-
(Rajendra Chandra Singh Samant)
Judge