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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1129 of 2003

Hansuram Mehar, S/o Chain Singh Mehar, aged about 36 years, R/o Village Ataria, P.S. Khairagarh, District Rajnandgaon, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Khairagarh, District Rajnandgaon, Chhattisgarh

--- Respondent

For Appellant	:	Smt. Smita Jha, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

28.4.2018

1. The instant appeal has been preferred against the judgment dated 30.8.2003 passed by the Additional Sessions Judge, Khairagarh in Sessions Trial No.60 of 2003, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 326 of the Indian Penal Code	Rigorous Imprisonment for 4 years

2. As per the prosecution story, on 26.2.2003 at about 8:00 p.m., the Appellant, armed with a tangiya, was wandering near the house of Goutam Jain. Complainant Goutam Jain, Sunil Jain and Hariram tried to inculcate the Appellant not to wander with a tangiya. On this, he assaulted Sunil Jain. He sustained injuries. First Information Report (Ex.P7) was lodged by Goutam Jain. Injured Sunil Jain was examined by Dr. U.S. Chandrawanshi (PW1). He gave his report (Ex.P1) in which he found one incised wound 6 cms. in length placed obliquely over the left side of the neck. He opined that the injury was grievous in nature and was caused by a

hard and sharp cutting object. Statements of witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, a charge-sheet was filed against the Appellant under Section 307 of the I.P.C. Charge was framed against him under Section 307 of the I.P.C.

3. To bring home the offence against the Appellant, the prosecution examined as many as 7 witnesses. The Appellant was also examined under Section 313 of the Code of Criminal Procedure in which he denied the guilt and pleaded innocence. No witness has been examined in his defence.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that though Dr. U.S. Chandrawanshi (PW1) has stated that the injury suffered by victim Sunil Jain was grievous in nature yet what he opined is not clear. She further submits that during cross-examination, the doctor has admitted the fact that the injury was not sufficient to cause death of the victim in natural course. Therefore, no offence under Section 326 of the IPC is made out. At the most, the act done by the Appellant falls within the purview of Section 324 of the IPC. She further submits that the Appellant has already undergone for about 8 months. Therefore, the conviction imposed upon him may be altered from Section 326 of the IPC to Section 324 of the IPC and he may be sentenced with the period already undergone by him.

6. On the contrary, Learned Counsel appearing for the State/Respondent supports the impugned judgment and opposes the prayer made on behalf of the Appellant.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. A bare perusal of the statement of Dr. U.S. Chandrawanshi (PW1) makes it clear that victim Sunil Jain had sustained only one incised wound 6 cms. in length placed obliquely over the left side of the neck. The doctor has categorically admitted in paragraph 14 that the said injury was not sufficient to cause death of the victim in natural course. There is no x-ray report on the record. The injury was caused over the neck. If the said injury was not sufficient to cause death in natural course then as defined under Section 320 of the IPC, this injury does not fall within the definition of grievous injury. Therefore, on what basis the doctor opined that the nature of injury was grievous is not clear. From his statement and medical evidence, it is clear that the injury was simple in nature. Therefore, the offence committed by the Appellant falls within the purview of Section 324 of the IPC. Hence, the conviction imposed upon the Appellant is altered from Section 326 of the IPC to Section 324 of the IPC.
9. So far as sentence part is concerned, the Appellant has already undergone for about 8 months. The matter is pending for about 15 years. The Appellant is facing the *lis* since the year 2003. Therefore, I am of the considered view that the interest of justice would be served if the Appellant is sentenced with the period already undergone by him. Ordered accordingly.

10. Resultantly, the appeal is allowed in part to the extent indicated above.
11. Record of the Court below be sent back along with a copy of this judgment for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge