

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No 1879/2000****Reserved on 4-2-2019****Delivered on 13-2-2019**

(Arising out of judgment of conviction and order of sentence dated 30-6-2000 passed by Addl. Session Judge, Bemetara, Distt. Durg, MP (now CG) in S.T. No. 346/1997)

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Cheturam Verma, aged 40 years, son of Anjori Verma, Cultivator, resident of village Kirki, Police Station Bemetara, Distt. Durg (MP) (now CG)

**Appellant**

VERSUS

State of Madhya Pradesh (now CG)

**Respondent**

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 For Appellant : Shri V.G. Tamaskar, Adv.  
 For Respondent : Sushri Sangeeta Mishra, GA.  
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**Hon'ble Shri Justice Sharad Kumar Gupta****CAV JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 30-6-2000 passed by Addl. Session Judge, Bemetara, Distt. Durg, MP (now CG) in S.T. No. 346/1997 whereby and whereunder he convicted and sentenced the appellant as under:-

| Conviction under Section | Sentence       | Fine sentence                                                         |
|--------------------------|----------------|-----------------------------------------------------------------------|
| 324, IPC                 | RI for 2 years | Rs. 1,000/-, in default of payment of fine to undergo RI for 3 months |

2. In brief the prosecution case is that complainant Dashrath Singh is a resident of village Kirki. On 16-6-1997 about 9.00 pm he was going to Kabir Temple constructed at across the pond. Near the house of appellant, co-accused Om Singh, Amar Sai, Bhuwan met him. Appellant

had a sword. He and other co-accused surrounded the complainant. The appellant caused injury on his right ear by sword. Complainant went to the house of Hemram. On very day, the son of complainant Chandrabhan Verma lodged an FIR in PS Bemetara. After completion of the investigation a charge sheet was filed against appellant and aforesaid co-accused under Section 307/34, of the Indian Penal Code (in brevity 'IPC') and Section 25 of the Arms Act. The trial Court framed charge against appellant under Section 307, IPC and against aforesaid co-accused under Section 307/34, IPC. The appellant and aforesaid co-accused abjured the charge and faced trial. To bring home the charge prosecution examined as many as 17 witnesses. He examined two witnesses in his defence. After conclusion of the trial, he was convicted and sentenced as aforesaid. However, the aforesaid co-accused are acquitted of the charge punishable under Section 307 or 307/34 or 326, IPC.

3. Being aggrieved by aforesaid conviction and sentence, the appellant has preferred this criminal appeal.

4. Counsel for the appellant submits that the appellant has been falsely implicated, Trial Court has not appreciated the evidence in proper perspective. Prosecution has examined interested witnesses. Therefore, the impugned judgment of conviction and order of sentence being bad in law may be set aside and he may be acquitted of the aforesaid charge.

5. On the other hand, State counsel supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. No interference is called for by this Court. Hence the appeal may be dismissed.

6. P.W. 7 Dr. P.K. Bajpai says in para 1, 2 and 5 of his statement given on oath that he had examined Dashrath Verma and found one incised wound on right ear size 6" x 1" x bone deep. Injury was caused by sharp cutting object, right ear was cut from middle, injured piece was not disassociated from the body. The injury was not on vital part thus not dangerous to life. It would heal within 7 to 10 days, if complication is not arisen.

7. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 7 Dr. P.K. Bajpai are not believable, in that reference MLC report Ex. P-4 is not believable. Thus this Court believes on aforesaid statements of P.W. 7 Dr. P.K. Bajpai and in that reference Ex. P-4 also.

8. As per the alleged memo Ex. P-7 appellant had made the discovery before P.W. 14, Town Inspector B.K. Datt that he has concealed a sword above the Patav of his house and ready to get it discovered.

9. On the basis of Ex. P-8, P.W. 14 B.K. Datt had seized one sword having blood like stains from the appellant vide alleged Ex. P-8.

10. There is no such evidence on record on the strength of which it can be said that Ex. P-7 and Ex. P-8 are not believable in that reference. Thus this Court believes on Ex. P-7 and Ex. P-8 in that reference.

11. As per the alleged RFSL report Ex. P-26 blood was found on Article 'D' sword.

12. There is no such evidence on record on the strength of which it can be said that Ex. P-26 is not believable. Thus this Court believes on Ex. P-26.

13. P.W 1 Dashrath Singh says in para 1 of his statement given on oath that he was going to Kabir temple. On the way appellant met him. He caused injury on his ear by sword.

14. P.W. 2 Hemram says in para 2 of his statement given on oath that Dashrath had come in his house and stated that appellant had caused injury.

15. P.W. 3 Chandrabhan who is the son of the complainant says in para 1 and 2 of his statement given on oath that they had brought complainant in their house from the house of Hemram. In their house complainant had told that appellant had caused injury by sword.

16. P.W.4 Santosh alias Vishal says in para 2 of his statement given on oath that Dashrath had come in the house of Hemram and stated that appellant had caused injury by sword. He had seen injury on ear of Dashrath.

17. P.W. 5 Rahasram says in para 1 of his statement given on oath that he had seen that appellant caused injury to Dashrath by sword.

18. P.W. 6 Champu Singh says in para 1 of his statement given on oath that Dashrath had told that appellant caused injury. He had seen injury on ear of Dashrath.

19. P.W. 10 Shanti Bai who is wife of complainant says in para 1 of her statement given on oath that complainant had told in the house of Hemram that appellant had caused injury by weapon.

20. D.W. 1 Hanuman says in para 1 of his statement given on oath that there is a dispute between the appellant and complainant regarding land since 30-35 years back, and regarding some other matters.

21. D.W. 2 Chaitu, appellant himself, says in his statement given on

oath that there is no speaking term between his family and family of complainant since 1959 on account of so many matters.

22. In the matter of **Sabbita Satyavathi -v- Bandala Srinivasarao and others** (2004 CRI.L.J. 3337) where one of the eye-witnesses was declared hostile, other two eye-witnesses in cross-examination admitted that they did not inform anyone about incident and also not able to identify accused, the Hon'ble Supreme Court observed that it would not be safe to place reliance on their testimony, further, witness who lodged FIR mentioned about dying declaration made to him by deceased which implicated only 3 persons, however in course of deposition he sought to implicate four other persons, in these circumstances, the oral dying declaration alleged to have been made to said witness was held not reliable, second dying declaration made to Medical Officer Contradictory to manner of occurrence as alleged by prosecution, that apart in case deceased having sustained injuries on his heart and lungs, cannot be in state to give two dying declarations, and the accused is entitled to benefit of doubt.

23. In the matter of **Kumar -v- State represented by Inspector of Police** (2018 CRI.L.J. 4379), where accused caused voluntary hurt to victim and one other deceased with wooden logs and the evidence of victim himself attributed the injury caused to him at the hands of deceased while intervening in fight between accused and the deceased, the Hon'ble Supreme Court held that conviction of accused under Section 324, IPC is unsustainable.

24. There is no such evidence on record on strength of which it can be said that P.W. 1 Dashrath Singh, P.W. 3 Chandrabhan, P.W. 10 Shantibai had stated aforesaid statements only on account of previous

enmity, knowing that appellant had not caused injury to P.W. 1 Dashrath.

25. There is no such evidence on record on strength of which it can be said that P.W. 2 Hemram, P.W. 4 Santosh alias Vishal, P.W. 5 Rahasram, P.W. 6 Champu Singh had stated aforesaid statements because they were interested with P.W. 1 Dashrath Singh or they were prejudiced with appellant knowing that appellant had not committed any wrong with the complainant.

26. In alleged FIR Ex. P-2 it has been mentioned that P.W. 1 Dashrath had told P.W. 3 Chandrabhan Verma that appellant had caused injury on him by sword.

27. Ex. P-2 has been lodged on very day i.e. 16-6-1997 at police station Bemetara within 3 hours from the time of alleged incident.

28. There is no such evidence on record on the strength of which it can be said that Ex. P-2 is not simple, not natural, not normal, or is an afterthought or it is a concocted document to falsely implicate the appellant.

29. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 1 Dashrath Singh, P.W. 2 Hemram, P.W. 3 Chandrabhan Verma, P.W. 4 Santosh alias Vishal, P.W. 5 Rahasram, P.W. 6 Champu Singh, P.W. 10 Shantibai are not simple, not natural, not normal. Thus, the appellant does not get any help from the aforesaid judicial precedents laid down by Hon'ble Supreme Court in **Kumar** (supra) and in **Subbitta Satyavathi** (Supra). Thus, this Court believes on aforesaid statements of aforesaid witnesses and disbelieves aforesaid statements of D.W. 1 Hanuman, D.W. 2 Chaitu in the reference that the appellant had been allegedly

falsely implicated in the case in hand on account of previous enmity.

30. Looking to the above mentioned facts and circumstances of the case, this Court finds that prosecution succeeded to prove the charge punishable under Section 324, IPC against the appellant. Thus, this Court finds that the trial Court has not committed any illegality in convicting the appellant for the offence punishable under Section 324, IPC.

31. At the time of the alleged incident, no minimum imprisonment was provided under Section 324, IPC. The appellant has remained in jail for 2 months and 19 days. Near about 21 years have passed from the date of incident. At the time of alleged incident the appellant was 40 years old. Now he is 61 years old. Now he is in mainstream of society. Sending him jail would disturb his as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 21 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if he is sentenced to the period already undergone by him for the offence punishable under Section 324, IPC with a suitable fine sentence.

32. Consequently, the appeal is partly allowed. The appellant is sentenced for imprisonment already undergone by him for offence punishable under Section 324, IPC, with a enhanced fine of Rs. 15,000/- (Rupees fifteen thousands), in default of payment of fine, he shall further undergo RI for 4 months. Out of fine amount of Rs. 15,000/- if deposited by the appellant, Rs. 10,000/- (Rupees ten thousand) be given to the complainant Dashrath Singh as

compensation after the expiration of prescribed period of the further legal remedy available to the parties. The amount already deposited, if any, by the appellant shall be adjusted in the fine sentence imposed by this order.

33. The appellant is granted two months time from today for depositing the fine amount in the trial Court.

34. Appellant is reported to be on bail. His bail and bond shall continue for a further period of six months as per requirement of Section 437-A, Cr.P.C.

**Sd/-**  
**(Sharad Kumar Gupta)**  
Judge