

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1322 of 2000**

Kumman Singh S/o Dilbandhu, aged about 28 years R/o Kusu, Police Station Dariya, District Sarguja (M.P.) (Now Chhattisgarh)

**----Appellant****Versus**

State of Madhya Pradesh Through Police Station Incharge P.S. Darima, District Sarguja (C.G.).

**---- Respondent**


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| For Appellant  | : | Mr. Sangeet Kumar Kushwaha, Advocate |
| For Respondent | : | Ms. Smita Ghai, PL                   |

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**Hon'ble Shri Justice Arvind Singh Chandel****Judgment on Board****07/11/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 27/04/2000 passed in Sessions Trial No. 123/1998 by the First Additional Sessions Judge, Ambikapur, whereby the Appellant has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo RI for 05 years.
2. Facts of the case are that in the intervening night of 12-13/01/1998 Complainant Somarsai was sleeping in Kothar. At about 4 am, wife of the Complainant Shanti Bai (PW2) woke up and saw the Complainant in injured and unconscious condition. The Complainant sustained injuries on various part of his body. His wife informed the incident to her Devar Khalsai (PW6) and neighbor Bharat. They had taken the Complainant to the concerned police station and FIR Ex.P-7 has been lodged. The Complainant was referred to District Hospital Ambikapur where he was admitted. His dying declaration has been recorded by Executive

Magistrate. During course of investigation on the basis of memorandum statement of the Appellant, one Danda was seized vide Ex.P-3. Statements of witnesses under Section 161 of the Cr.P.C have been recorded. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges under Section 307 of the IPC. As many as 12 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. There is no eye witness to the incident in this case. Though the Complainant has named the Appellant as assailant before the Court, he admitted the fact that at the time of incident there was dark night and he identified the Appellant only on the basis of his voice, which is doubtful. He further submits that the Appellant has been only convicted on the basis of his memorandum statement and recovery of one Lathi which is a very weak evidence, therefore, the conviction of the Appellant is not sustainable.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.

7. Complainant Somarsai (PW1) in his Court statement has stated that at about 2-3 am in the night when he was sleeping, the Appellant assaulted him by a Lathi and knife, due to that he sustained injured. He further stated that after assaulting him, the Appellant was saying it appears that the Complainant has died which means that other persons were also involved with the Appellant. In his cross-examination, this witness has also stated that when the incident took place there were 3-4 person and he recognized the Appellant only on the basis of his voice, but in his case dairy statement he has not stated anything that he recognized the Appellant on the basis of his voice. Shanti Bai (PW2) wife of the Complainant has stated that when his husband came in conscious condition in hospital then he told her that the Appellant had assaulted him. Achambhit (PW3) is a witness before whom the police has recorded memorandum statement of the Appellant, but his witness has not supported the case of the prosecution. Dr. Habib had examined the Complainant. His report is Ex.P-6. Dr. J.K. Jain (PW5) had also examined the Complainant on 13/01/1998. Khalsai (PW6) had deposed that when he reached to the spot and asked how the incident took place then the wife of the Complainant told him that she does not know. Radh (PW7), Sukmano (PW8) and Ghuran (PW9) are the other witnesses and they have only deposed that the the Complainant was taken to the hospital. Nandeshwar (PW10) had deposed that on the date of incident some people asked about the Complainant but he has not stated the Appellant was one of the person in those.
8. On minute examination of the evidence available on record, it is clear that Somarsai (PW1) has stated that the Appellant had assaulted him,

but this fact was not disclosed by him while recording his dying declaration. He himself admitted that there were 3-4 person and he only recognized the Appellant only on the basis of his voice, but this fact is also not mentioned in his case diary statement. From his statement, it appears that he was not able to recognize the assailant. Shanti Bai (PW2) has stated that the Complainant has told her that the Appellant had assaulted him, but from the statement of the Complainant itself, it is clear that he himself did not know that who had assaulted him. Thus, the statement of Shantibai (PW2) does not provide any advantage to the prosecution case. Apart from this, there is no evidence available on record against the Appellant. From the above it is clear that though the Complainant had sustained injuries, the Appellant is a person who assaulted the Complainant is not established beyond all reasonable doubt, therefore, the conviction of the Appellant is perverse and is not in accordance with law. Thus, the impugned order dated 27/04/2000 passed in Sessions Trial No. 123/1998 by the First Additional Sessions Judge Ambikapur, Distt. Surguja is quashed.

9. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him. It is reported that the Appellant is on bail. His bail bond be discharged.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

**Sd/-**  
**(Arvind Singh Chandel)**  
**Judge**