

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL No 1880/2000****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. 347/1997)

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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

 For Appellant : Shri V.G. Tamaskar, Adv.
 For Respondent : Sushri Sangeeta Mishra, GA.

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. 347/1997 whereby and whereunder he convicted and sentenced the appellant as under:-

Conviction under Section	Sentence	Fine sentence
324, IPC	RI for 6 months	Rs. 500/-, in default of payment of fine to undergo RI for 2 months

2. In brief the prosecution case is that complainant Hemram is a resident of village Kirki. On 16-6-1997 about 8.00 pm he was returning to his house. In front of his house, appellant caused injury on his left

shoulder by sword. On 17-6-1997 at about 12.30 am, he lodged an FIR in PS Bemetara. After completion of the investigation a charge sheet was filed against appellant under Section 324 of the Indian Penal Code (in brevity 'IPC') and Section 25 of the Arms Act. The trial Court framed charge against appellant under Section 324, IPC and Section 25(B) of the Arms Act. The appellant abjured the charge and faced trial. To bring home the charge prosecution examined as many as 9 witnesses. He examined two witnesses in his defence. After conclusion of the trial, he was convicted and sentenced as aforesaid. However, he was acquitted of the charge punishable under Section 25(B) of the Arms Act.

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. As per the MLC report Ex. P-2, P.W. 2 Dr. P.K. Bajpai had examined complainant Hemram and found one incised wound size 3" x 1 ½" x 1" on upper part of left shoulder, injury was caused by hard and sharp object and was simple in nature.

7. There is no such evidence on record on strength of which it can be said that Ex. P-2 is not believable. Thus this Court believes on Ex. P-2.

8. P.W 1 Hemram says in para 1 of his statement given on oath that he was going to his house. Near his house, appellant caused injury on his shoulder by sword.

9. P.W. 4 Santosh says in para 1 of his statement given on oath that appellant had caused injury on shoulder of Hemram by weapon.

10. P.W. 7 Rukhmani who is niece of the complainant says in para 1 of her statement given on oath that she had seen injury on shoulder of complainant Hemram, at that time appellant was standing there.

11. 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.

12. D.W. 2 Chaitu, appellant himself, says in his statement that there is no speaking term between his family and family of complainant since 1959 on account of so many reasons.

13. 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.

14. 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.

15. There is no such evidence on record on strength of which it can be said that P.W. 1 Hemram, P.W. 7 Rukhmani had stated aforesaid statements only on account of previous enmity, knowing that appellant had not allegedly caused injury to P.W. 1 Hemram.

16. There is no such evidence on record on strength of which it can be said that P.W. 4 Santosh had stated aforesaid statement because he was interested with P.W. 1 Hemram or He was prejudiced with appellant knowing that appellant had not allegedly committed any wrong.

17. In alleged FIR Ex. P-1 it has been mentioned that appellant had caused injury on left shoulder of complainant hemram by sword.

18. Ex. P-1 has been lodged on 17-6-1997 at police station Bemetara within 5 hours from the time of alleged incident. Distance has been shown 8 km. There is no such evidence on record on the strength of which it can be said distance is not correct.

19. There is no evidence on record on the strength of which it can be

said that Ex. P-1 is not simple, not natural, not normal, or is an afterthought or it is a concocted document to falsely implicate the appellant.

20. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 1 Hemram, P.W. 4 Santosh, P.W. 7 Rukhmani 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.

21. 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.

22. 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.

23. 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. 10,000/- (Rupees ten thousands), in default of payment of fine, he shall further undergo RI for 4 months. Out of fine amount of Rs. 10,000/- if deposited by the appellant, Rs. 5,000/- (Rupees five thousand) be given to the complainant Hemram 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.

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

25. 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