

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 701 of 2003**

1. Darshan Singh, S/o Late Shri Nanak Singh, aged about 36 years, Occupation – Driver R/o Nagar Mahamayapara, Ambikapur District Surguja (C.G.).

---- Appellant**Versus**

1. State of Chhattisgarh, through P.S. Ambikapur, District Surguja (C.G.)

---- Respondent

For Appellant	:	Shri D.K. Tiwari, Advocate.
For Respondent/State	:	Shri Ashish Gupta, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**05/09/2019****Judgment On Board**

- 1) This appeal is filed under section 374 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 23/06/2003 passed by Session Judge, Surguja (Ambikapur) (C.G.) in Session Trial No. 74/2003; whereby the appellant Darshan Singh stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 324 of Indian Penal Code (in short "IPC")	R.I. for 1 year

- 2) Case of the prosecution in brief is that on the date of incident i.e. on 05/06/2002 around 01:45 AM (at night) near Mahamayapara, complainant Santosh Painka was sleeping in front of his house, the appellant Darshan Singh reached at that place and asked the complainant to bring liquor for him. When the complainant refused to do so, the appellant started abusing the complainant filthily and intimidated to kill him and by taking knife assaulted the complainant. Munna Mistry and Suresh Vishwakarma

neighbours of the complainant, came at the place and while rescuing complainant Santosh Painka, the complainant sustained injury on his abdomen and Munna Mistry also sustained injuries on his hand (palm). FIR Ex. P-1 was lodged by complainant Santosh Painka within half an hour of the incident. At the time of occurrence Munna Mistry, Suresh Vishwakarma and other neighbours were present on the spot. As per MLC Ex. P-3 Santosh Painka sustained one incised wound of size 2.5x.5 cm over left side of abdomen and as per Ex. P-4 Munna also sustained injury on his hand (palm) of size 1/4 x1/4 cm. After due investigation charge sheet was filed against the appellant/accused for the offence under sections 294, 307, 506(B), 324 & 323 of IPC.

- 3) The Trial Court framed charges against the accused/appellant under section 506(B) of I.P.C. for criminal intimidation to complainant Santosh Painka, under section 324 of IPC for voluntarily causing simple hurt to Munna Mistry and under section 307 of IPC for attempting to commit murder of complainant Santosh Painka. The accused appellant denied the charges and prayed for trial.
- 4) The prosecution in support of its case examined as many as 05 witnesses namely PW-01 Santosh, PW-02 Munna, PW-03 H.N. Singh, PW-04 Dr. J.K. Bhutani, PW-05 Mahesh Prasad Gupta. The statement of the accused was also recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. Defence witness DW-01 Mohd. Hussain was examined by the accused in his defence.
- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above.
- 6) Learned counsel for the appellant submits that the Trial Court has not properly appreciated the evidence available on record. He submits that the eye witness to the incident namely PW-02

Munna Mistry who is said to have also sustained injury in the incident, has turned hostile and not supported the prosecution case. He submits that the Trial Court has not appreciated the fact that as per the contents of the FIR and the statement of the complainant Santosh Painka PW-01 it is clear that the injury sustained by the complainant was not voluntarily caused by the accused but it was during the scuffle between the appellant and the complainant that the complainant accidentally sustained injury on his abdomen. Therefore, the conviction of the appellant under section 324 of IPC is not sustainable. Alternatively he submits that if this Court finally comes to the conclusion the appellant is guilty of the offence under section 324 of IPC, considering the age of the appellant, the fact that the incident occurred about 17 years back, the appellant has no criminal record, he has been on bail since July 2003 and never misused the liberty granted to him till date, the jail sentence of 1 year imposed by the Trial Court may be reduced to the period already undergone by him which comes to about 02 days.

- 7) On the other hand learned counsel for the respondent/State supporting the impugned judgment and submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 8) Heard counsel for the parties and perused the material available on record.
- 9) PW-01 Santosh complainant has stated before the Court that at the date of incident i.e. 05/06/2002 while he was at his home, the accused/appellant came there, woke him up and asked bringing liquor and when he refused to do so, the appellant started beating him by hands and fists and also assaulted on his abdomen by knife. According to him the said incident was witnessed by PW-02 Munna who took him on cycle to Police Station for lodging report Ex. P-1 which was lodged by him (complainant). In cross-examination this witness remained firm

and denied all the adverse suggestions put to him by the defence. PW-02 Munna eye witness to the witness has turned hostile and not supported the prosecution case. However, he admits that he had taken injured complainant on his bicycle to Police Station. PW-03 H.N. Singh, Assistant Sub Inspector recorded the FIR lodged by the complainant.

- 10) PW-04 Dr. J.K. Bhutani medically examined the complainant Santosh PW-01 and noticed incised wound of size 2.5x.5 cm over left side of abdomen which was caused by hard and sharp edged weapon. According to the PW-04 Dr. J.K. Bhutani said injury was fatal to life vide Ex. P-3. On the same day PW-04 Dr. J.K. Bhutani also examined PW-02 Munna vide Ex. P-4 and found abrasion over right palm of injured Munna which was caused by hard blunt object and was simple in nature.
- 11) PW-05 Mahesh Prasad Gupta A.S.I. conducted the investigation and supported the prosecution case.
- 12) Though the eye witness to the incident PW-02 Munna has turned hostile and not supported the prosecution case, however, the injured complainant PW-01 Santosh has categorically stated in his evidence before the Court as to the manner in which the incident occurred, he was assaulted by the appellant with a knife on his abdomen as a result of which he sustained grievous injury. Immediately about 1/2 hour of incident FIR Ex. P-1 was lodged by complainant PW-01 Santosh. The unrebutted oral evidence of the complainant also finds due corroboration from the medical evidence PW-04 Dr. J.K. Bhutani who treated the complainant and noticed, incised wound of his abdomen which was caused by hard sharp object. There is nothing on record brought out by the defence to establish that there was no previous enmity between appellant and the complainant on account of which the appellant has been falsely implicated in this crime. Thus considering the overall facts and circumstances, the evidence of the complainant, the prompt FIR Ex. P-1 lodged by the complainant and the corresponding medical evidence in the

form of MLC of the complainant Ex. P-3 and oral evidence of the treating Doctor PW-04 Dr. J.K. Bhutani this Court is of the opinion that the Trial Court was fully justified in holding the appellant guilty of offence under section 324 of IPC. Doing so findings of the Trial Court convicting the appellant under aforesaid section deserves affirmation by this Court. As regards the sentence, considering the factual document giving rise to incident, the nature and incident of injury suffered by the complainant the fact that the incident occurred around 17 years ago, the appellant has no criminal antecedent, he has been on bail since 2003 and did not misuse the liberty granted to him till date, this Court is of the opinion that no fruitful purpose would be served by sentencing the appellant back to jail at this stage and the ends of justice would be served if the appellant is sentenced to the period already undergone by him i.e. 02 days and he is directed to pay a fine of Rs. 3,000/- with default stipulation of 3 months imprisonment, which shall be payable to the complainant as compensation under section 357 of Cr.PC.

- 13) In the result the appeal is allowed in part. While maintaining the conviction of the appellant under section 324 of IPC, his jail sentence is reduced to the period already undergone by him. He is directed to pay a fine of Rs. 3000/- in default whereof he stayed lie to suffer additional R.I. for 3 months. The amount so deposited by the appellant shall be paid to the complainant PW-01 Santosh as compensation under section 357 of Cr.P.C. after due verification by the Trial Court. Since the appellant is reported to be on bail, his bail bonds shall remain in force for a period of six months from today in view of provision of section 437-A of Cr.P.C.

**-Sd/-
(Gautam Chourdiya)
Judge**