

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 11 of 2010**

1. Diwaker Prasad S/o Bhim Ram Mehtar, aged about 36 years,
 2. Prabhakar Prasad S/o Bhim Ram Mehtar, Aged about 32 years,
- Both are R/o Saheli Gali, P.S. ambikapur, Distt.Surguja (C.G.).

----Appellants**Versus**

The State of Chhattisgarh Through: P.S. - Ambikapur, Distt. Surguja (C.G.).

---- Respondent

For Appellants	:	Mr. Goutam Khetrapal, Ms. Smita Ghai and Mr. Jitendra Shrivastava, Advocates
For Respondent	:	Mr. Shushil Sahu, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****12/02/2020**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 04/01/2010 passed in Sessions Trial No. 453/2007 by the Fourth Additional Sessions Judge, (FTC) Ambikapur, whereby the Appellant has been convicted under Section 307/34 of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that on 05/07/2007 at about 7:30 pm, Complainant Rakesh Mishra (PW8) hired a motor-cycle from one Bablu @ Mahendra Singh (PW2). After some time when he came and returned the key of the motor-cycle to Mahendra, a quarrel took place between the Appellants and the Complainant. The Appellants had assaulted the Complainant by a knife due to that he sustained injuries on his body. The incident was witnessed by Kallu (PW1), Mahendra @ Bablu (PW2)

and Santoshdhar (PW7). They took the Complainant to the hospital. On 06/07/2007, the Complainant made an FIR vide Ex.P-11. His statement as well as statement of other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 9 prosecution witnesses were examined. Statement of the Appellants under Section 313 of the Cr.P.C have been recorded, wherein they have pleaded their innocence and false implication in the matter. No defence witness has been examined.

3. After completion of trial, the trial Court has convicted and sentenced the Appellants as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellants submit that the Appellants have been wrongly convicted by the trial Court without there being any sufficient evidence available on record. They further submit that Complainant Rakesh Mishra (PW8) has not supported the case of the prosecution and he has categorically admitted that he does not know the assailants, instead thereof the trial Court has convicted and sentenced the Appellants only on the basis of statement of Santoshdhar (PW7). They further submit that if the entire statement of the Santoshdhar (PW7) is taken as it is yet from the statement of Dr. Uttam Singh (PW4) who examined the Complainant it is established that the Complainant sustained only three injuries and out of them only two injuries were lacerated wound found on the lateral part of the head and all the injuries were of simple nature. From the statement of the Complainant also, it is established that neither he knew the Appellants previously nor he was

having any previous enmity with the Appellant and in a sudden quarrel, the act of assault has been done, therefore, offence under Section 307 of the IPC is not proved against the Appellants and the Appellants should be convicted under Section 324 of the IPC. They further submit that since both the parties have settled their matter and filed an application for compounding the offence, therefore, they pray that converting the offence under Section 324 of the IPC, the Appellants may be acquitted from the said charge on the basis of application filed for compounding the offence.

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 Rakesh Mishra (PW8) in his court statement has deposed that at the time of incident at Chandni Chowk, when he parked his vehicle, a quarrel took place between him and some boys. Those boys had assaulted him by an iron rod due to that he sustained injuries on his head. According to this witness, later on when he inquired from the witnesses Babllu and Kallu then they disclosed the names of the Appellants. Kallu (PW1) and Mahendra @ Bablu (PW2) have been examined by the prosecution, but they have not supported the case of the prosecution. During his cross examination, the Complainant in para 4 has deposed that at the time of incident, Santoshdhar Dubey was also present and he tried to intervene. Santoshdhar Dubey has been examined as Prosecution Witness No. 7. This witness has supported the

entire case of the prosecution and has categorically stated that in front of him, the Appellants had assaulted the Complainant by a knife and iron rod. The above statement of this witness is not rebutted during his cross-examination. Thus, from the statement of Santoshdhar (PW7), it is established that the persons who assaulted the Complainant were the Appellants.

8. Dr. Uttam Singh (PW4) has examined the Complainant on 06/07/2007. According to this witness, he found three injuries on the body of the Complainant. First was lacerated wound size 5X1X1/2 cm on the lateral part of the head. Second was lacerated wound size 2X1X1/2 cm on the lateral part of the head. Third was lacerated wound 1X1/2X1/2 cm on the left palm. As opined by this witness, the injuries were caused by hard and blunt object. After examination of X-ray report, this witness has found no bone injuries. Thus, from the statement of Dr. Uttam Singh (PW4) and his medical report, it is revealed that the Complainant had suffered three injuries out of which two injuries were found on lateral part of the head of the Complainant and all the injuries were of simple nature which was caused by hard and blunt object. From the statement of Complainant Rakesh Mishra (PW8), it is also revealed that the incident took place suddenly on the matter of parking of a vehicle and there was no previous enmity between the party, therefore, it is not established that the Appellants had assaulted the Complainant with an intention to kill the Complainant. Looking to the injuries sustained by the Complainant, in my considered opinion, offence under Section 307 of the IPC should not be made out and only offence under Section 324 of the IPC should be made out against the Appellants.

9. Consequently, the Appellants are convicted under Section 324/34 of the IPC instead of 307 of the IPC. Since an application under Section 320 (2) of the Cr.P.C for compounding the offence has already been moved by both the parties and the statement of both the parties have also been recorded in this regard. Further, the Complainant has deposed that he is compromising the matter without any pressure and on his own will, therefore, this Court permitted the party to compromise and hereby allowed to compound the offence.
10. In view of the above, the Appellants are acquitted from offence punishable under Sections 324/34 of the IPC.
11. It has been submitted by the counsel for the Appellants that the Appellants are the government servant and if they are acquitted from the charges on the basis of compromise, it may affect their career in government service.
12. Considering the above, it is directed that this judgment shall not affect the career of the Appellants in their government service.
13. Accordingly, the appeal is allowed.
14. Records of the Courts below be sent back along with copy of this order for necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge