

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 82 of 2010**

- State of Chhattisgarh, Through the District Magistrate, District-
Rajnandgaon (C.G.).

---- Appellant**Versus**

1. Mohd. Rafik, S/o Abdul Rauf Khan, Caste- Muslim, aged about- 28 years, Occupation- Undergarment Shop, R/o Multani para, Dongargarh, District- Rajnandgaon (C.G.).
2. Mohd. Saleem, S/o Abdul Rauf Khan, aged about – 30 years, Occupation- Undergarment Business R/o Multani Para, Dongargarh, District- Rajnandgaon (C.G.).
3. Rauf Khan, S/o Abdul Sattar, Caste- Muslim, aged about- 78 years, Occupation- Retd. Railway employee, R/o Multani para, Ward No. 14, Dongargarh, Distt.- Rajnandgaon (C.G.) (Name of Respondent No. 3 has been deleted as per Hon'ble Court order Dated 10.01.2020.).

---- Respondent

For Appellant/State	: Ms. Madhunisha Singh, Panel Lawyer.
For Respondent	: Shri Dev Ashish Biswas, Advocate

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Judgment On Board by Justice Shri Prashant Kumar Mishra****10/01/2020**

1. On 12.07.2019, learned counsel for respondent No. 3 had informed that the said respondent has died. We had allowed time to learned State counsel to verify the above statement. Today Ms. Madhu Nisha Singh, P. L. would state that the information of death of respondent No. 3 is correct as per instruction received from the concerned Police Station. In view of this, the appeal is dismissed as abated against the respondent No. 3- Rauf Khan S/o Abdul Sattar. Let his name be deleted from array of the cause title during the course of the day.

2. This appeal is directed against the judgment rendered by the Court of ASJ, Rajnandgaon dated 11.09.2009, in Session Trial No. 41/2007, whereby the respondents have been acquitted of the charges under Sections 307 & 307/34 of the IPC.
3. As per the prosecution case injured- Abdul Zamir & Abdul Samir are engaged in selling readymade clothes at Gol Bazar, Dongargarh and the accused persons were also selling clothes in a separate *Thela* in the close vicinity almost adjoining. At about 16:19 hours on 28.01.2007 the accused persons with common intention reached the place of occurrence with scissors, *Gupti*, iron pipe etc. and started abusing filthily and assaulted injured persons- Abdul Zamir & Abdul Amir by means of the above weapons.
4. On lodging of report, the injured persons were immediately sent for medical examination at Community Health Centre, Dongargarh and were treated by Dr. N. Sachdev (PW-11). This witness found six stab injuries, two superficial scratch injuries over the person of injured Abdul Zamir. Similarly, he found that Abdul Samir has sustained three stab injuries and one simple injury. The reports have been proved as Ex. P/14-A and Ex. P/15-A.
5. This witness also examined injured- Mohd. Amir who was found to have sustained only one stab injury. The injured persons were referred for treatment at higher medical center, therefore, they were treated at Sector- 9 Hospital, Bhilai by Dr. Sumanta Mishra (PW-10). At this hospital, the injured persons were admitted from 28.01.2007 to 30.01.2007. During treatment they were radiologically examined, however, no bony injury was found on the person of any of the injured persons. Similarly, the injuries found on their person were referred to as superficial injuries as stated by this witness in paragraphs 7 to 9 of his deposition. The report in respect of investigation and treatment of the injured persons at Sector-9 Hospital, Bhilai have been proved as Ex. P-20, Ex. P-21, Ex. P-22, Ex. P-23, Ex. P-24 and Ex. P-28.
6. In their Statements recorded under Section 161 of Cr.P.C. as also in the Court, the injured persons stated that they had sustained

less number of injuries than what was found by the treating Physician, therefore, the Trial Court has disbelieved the statements of all injured witnesses.

7. In our considered view, such an approach of the Trial Court is not permissible in law. Merely because the injured as a layman has mentioned less number of injuries as per his common understanding but was found to have sustained more number of injuries during medical examination, the whole statement cannot be disbelieved. It is a case where the incident had taken place in broad day light in open market area and as such, there is no possibility of the injured being misled or confused to have named the assailants. They are otherwise known to each other having adjoining *Thelas* for sale of ready made garments. They lodged prompt FIR after which they were medically examined and the injury sustained by them have been proved by Dr. Sumanta Mishra (PW-10) and Dr. N. Sachdev (PW-11). Their statements are thus fully corroborated with the medical reports and statements of the treating Physicians. The learned Trial Court has not assigned any reason as to why the medical reports and the statements of two medical experts are not to be believed.
8. In view of the above, clean acquittal of the respondents from all the charges does not appear to be proper as the impugned judgment suffers from grave perversity.
9. We are now required to consider as to whether the respondents/accused have committed offence under section 307/34 of IPC or their act would attract any lesser offence.
10. As earlier discussed, Dr. Sumanta Mishra (PW-10) and Dr. N. Sachdev (PW-11) have clearly stated that the injuries sustained by the injured persons were superficial in nature and they have not sustained any bony injury. Even though the assault was made on vital part i.e. on chest but that by itself is not sufficient to attract offence under Section 307 of IPC. For an offence to attract the said penal provision, host of factors are required to be looked into and satisfied. Not only the part of the body chosen for assault but the

genesis of the incident, their prior acquaintance or relationship, the nature of injuries, the time taken for healing the injuries etc. are all such factors which need to be kept in mind while deciding the matter.

11. The injured persons were admitted at Sector-9 Hospital Bhilai only for 2 days. The incident took place on account of business rivalry as both the parties are operating their ready made cloths business at the same place. Thus considering the nature of injuries, the duration of their admission in the hospital etc, we are satisfied that the offence committed by the accused would not attract section 307 of IPC but it would be punishable under Section 324 of IPC for the reason that the injuries sustained were simple in nature without their being any bony injury and they were not sufficient to cause death in the ordinary course of nature.
12. As regards the quantum of sentence, in the totality of facts & circumstances of the case giving rise to the incident; the fact that the incident occurred in January, 2007 i.e. about 13 years ago; the fact that respondent Nos. 1 & 2 have remained in jail from 29.04.2007 to 16.04.2007 i.e. for more than 2-1/2 months, we are of the view that the ends of justice would be served if they are sentenced to the period already undergone by them. In the result the appeal is allowed in part. The respondent Nos. 1 & 2 are held guilty under Section 324 of IPC and they are sentenced to the period already undergone by them.

Sd/-

Sd/-

(Prashant Kumar Mishra)
Judge

(Gautam Chourdiya)
Judge