

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 3122 of 1999**

- Dinesh Verma, S/o Manharan Verma, Aged About 20 years, R/o Patan, District- Durg, At Present- R/o Village Charoda, Police Station- Dharsiva, District- Raipur (M.P.) Now Chhattisgarh.

---- Appellant**Versus**

- State of Madhya Pradesh though Dharsiva, District- Raipur (M.P.) Now Chhattisgarh.

---- Respondent

For Appellant - Shri Shailendra Sharma, Advocate.
For Respondent - Shri Sameer Sharma, Dy. G.A.

Hon'bel Smt. Justice Rajani Dubey**Judgment On Board****19/07/2021**

01. This appeal arises out of the judgment of conviction and order of sentence dated 12.11.1999 passed by the First Additional Sessions Judge, Raipur, in S.T. No.141/1997 whereby, the trial court convicted the appellant is as under:-

S.No.	Conviction	Sentence
1.	Under Section 307 of IPC	Rigorous Imprisonment for 5 years and fine of Rs. 1,000/- (in default of fine further Rigorous Imprisonment for 3 months)

02. Brief facts of the case are that, on 10.01.1997, complainant Shivnarayan lodged a report alleging that election for the post of President of Deep Jyoti Yuwa Samiti was held at village Chiroda in which Kaushal Sahu and Izrail were also participated & in the said election, Kaushal Sahu was declared President of the Samiti. It is further alleged that at about 10.00 P.M., when he was going along with Roopesh to his house, 30-40 boys were standing near the tea stall of Gowardhan, at that time, Dinesh stopped Roopesh and asked him as to why he was abusing him and gave a knife blow on his chest. In between Arun Verma also came and slapped him and when he tried to intervene, he was also assaulted. He called some of the villagers standing over there and thereafter, report was lodged against the appellant under Section 326 of IPC. Injured Roopesh (PW-7) was medically examined by Dr. S.B. Mangurkar (PW-13), Dr. A.K. Sharma (PW-12), Dr. Milan Kundu (PW-17), Dr. Archana Singh (PW-18), Dr. Kamal Kumar Gajbhiye (PW-1) & Dr. A. K. Sharma (PW-12) who have opined that the injuries sustained by him were fatal to life and were caused by sharp object. After investigation, charge sheet was filed against the appellant under Section 307 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution has examined as many as 18 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the charges levelled against him in the prosecution case & pleaded his innocence and false implication in the case.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that the learned trial court has failed to consider that the independent or reliable witnesses have not been supported the prosecution version, therefore, it creates a doubt on the prosecution story. Learned trial court has failed to consider that the entire case of the prosecution against the appellant was based on highly doubtful, therefore, the appellant could not be convicted. He further submits that the trial court ought to have considered that the statement of Shivnarayan (PW-2) who has clearly stated in his evidence that he has not lodged any report to the police and further denied the Ex.P/2 and he has not made any statement (Ex. D/1) to the police. The prosecution witnesses namely Ramakant (P.W.-5), Itwari Ram (P.W.-6) and Mahendra Verma (P.W.-8) have not supported the prosecution version, therefore, it creates a doubt on prosecution version. Therefore, no presumption can be drawn against the appellant. Learned trial court ought to have considered that Mahendra Verma (PW-8) has clearly stated in his evidence that the police authorities have not seized any knife before him, therefore his conviction is wholly illegal and the trial court erred in law in appreciating the evidence of Roopesh Kumar (PW-7) who has clearly stated in his evidence that the police authorities have not taken any statement in Medical College Hospital, Raipur and further there was contradiction and omission in his evidence, therefore, the appellant

cannot be convicted. Learned trial court ought to have considered that the doctors who examined the injured, have not given any opinion regarding the nature of injury, therefore, the offence punishable under Section 307 of IPC is not at all made out against the appellant. He further submits that learned trial court has not appreciated the evidence on record in its proper perspective, which has resulted in a great miscarriage of justice. Even if the entire prosecution case is taken as it is, at best the offence under Section 324 IPC is made out against the accused/appellant. Appellant has remained in jail for about 7-8 months.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. I have heard learned counsel for the parties and perused the material available on record.

08. Shivnarayan (PW-2) has sated that on the date of incident he was along with injured Roopesh Kumar (PW-7). Appellant- Dinesh called Roopesh and asked him as to why he abused him & gave a knife blow on his chest. Complainant tried to intervene and called some of the villagers who were standing there. This witness has also stated that when he went to intervene in the matter, he too was assaulted by the accused/appellants.

09. Ramakant (P.W.-5), Itwari Ram (P.W.-6) and Mahendra Verma (P.W.-8) have not supported the prosecution case and have been

declared hostile.

10. Dr. S.B. Mangurkar (PW-13), Dr. A.K. Sharma (PW-12), Dr. Milan Kundu (PW-17), Dr. Archana Singh (PW-18), Dr. Kamal Kumar Gajbhiye (PW-1). Dr. A. K. Sharma (PW-12) who have opined that the injuries sustained by Roopesh (PW-7) were caused by sharp object and were fatal to life. Dr. A.K. Sharma (PW-12) has admitted in his examination that it was not written in Ex. P/11 that there was a danger to life of the patient in the absence of treatment.

11. The only question which arises for consideration by this Court is as to what offence has been committed by the accused/appellants.

12. Considering the nature and extent of injuries caused by Dinesh Verma to Roopesh Kumar (PW-7), he is liable to be convicted under Section 324 IPC instead under Section 307/34. From the evidence of prosecution witnesses and injury reports of injured, it is evident that though the injuries caused by accused/appellant were grievous in nature but the prosecution has utterly failed to prove that the accused/appellant was having any prior intention to inflict the injuries which ultimately could have been fatal to the life of injured and thus, considering the act of accused/appellant, he is liable to be convicted under Section 324 IPC instead under Section 307/34 IPC.

13. Next question which arises for consideration by this Court is as to what would be the appropriate sentence to be imposed upon the accused/appellant.

14. Appellant – Dinesh Verma has already remained in jail for about 7-8 months & the incident had taken place about 23 years back, this

Court is of the opinion that, in the peculiar facts and circumstances of the case, ends of justice would be served if the sentence is reduced to the period already undergone by him.

15. Accordingly, accused/appellant -Dinesh Verma is convicted under Section 324 of IPC instead of Section 307/34 of IPC and he is sentenced to the period already undergone by him. The appellant is reported to be on bail. His bail bonds shall stand discharged.

16. The criminal appeal thus allowed in part.

Sd/-
(Rajani Dubey)
JUDGE

R/-