

HIGH COURT OF MADHYA PRADESH JABALPUR**Criminal Appeal No.1498/2005*****Dissu @ Deshraj Ahirwar******Vs.******State of Madhya Pradesh***

Present : Hon'ble Shri Justice N.K. Gupta.

Name of counsel for the parties:*Shri Rajkamal Chaturvedi, Advocate for the appellant.**Shri Prabhat Singh, Panel Lawyer for the respondent/State.***J U D G M E N T***(Delivered on the 15th day of December, 2010)*

The appellant has preferred this appeal against the judgment dated 22.7.2005 passed by the Additional Sessions Judge, Nowgaon District Chhatarpur in S.T. No.47/02 by which he was convicted for the offence punishable under Section 324 of IPC and sentenced to R.I. for three years with fine of Rs.1,000/-, in default of payment of fine, further R.I. for three months.

2. The prosecution's case in short is that on 18.10.2001 at about 4:00 p.m. in the evening the complainant went to answer the call of nature at river and when he was coming back, near *Tiriya's Khet* he found that the appellant Dissu had an axe and other three co-accused persons were there with the stick. They assaulted the

complainant. The accused persons namely Kallu, Babblu and Jagdish told to kill the complainant. On shouting by the complainant, some witnesses came to the spot and the accused ran away. The complainant lodged an F.I.R. at Police Station, Nowgaon. Thereafter, the complainant was sent to the Government Hospital, Nowgaon. Dr. K.P. Tripathi (PW-11) examined the complainant and found three incised wounds on right portion of the neck, left arm and right side of the face respectively. Each wound was muscles deep. After preliminary treatment, the complainant was referred for X-ray examination to District Hospital, Chhatarpur. After due investigation, the police Nowgoan District Chhatarpur had filed a challan before the committal Court for the offence punishable under Section 307 read with Section 34 of IPC.

3. The appellant abjured his guilt. He did not take any specific defence and, therefore, no defence evidence was adduced.

4. The Additional Sessions Judge, Nowgaon District Chhatarpur after considering the evidence adduced by the prosecution acquitted all the co-accused persons, however the appellant was acquitted for the offence punishable under Section 307 read with Section 34 of IPC, but he was convicted for the offence punishable under Section 324 of IPC and inflicted the aforesaid sentence.

5. Heard the learned counsel for both the parties.
6. Learned counsel for the appellant has submitted that the appellant does not want to challenge the conviction, but since he was 22 years of old boy at the time of incident and he remained in the custody for more than 107 days, therefore, he prays that he may not be sent to jail again and his sentence may be reduced.
7. After considering the contention advanced by learned counsel for the appellant, if case of the appellant is considered then it is clear that the appellant was 22 years old boy at the time of incident. Though, he was found to be a sole assailant in the case, but the complainant has stated in his statement that the appellant gave him only one blow by axe. Dr. K.P. Tripathi (PW-11) found three injuries caused by sharp edged weapon, but none of these injuries were sufficient deep. All the injuries were muscle deep and, therefore, it appears that the appellant did not assault with much force. He remained in the custody for more than 107 days and there is no criminal past alleged against the appellant. Therefore, looking to the above circumstances, it would not be proper that the appellant be sent to jail again, whereas it would be proper to enhance some fine amount against him.
8. On the basis of aforesaid discussion, the appeal of the appellant is partly allowed. His conviction for the offence

punishable under Section 324 of IPC is hereby affirmed, however the sentence is reduced. He is punished with the jail sentence for the period, which he has already undergone in the custody. In lieu of jail sentence, the fine of Rs.2,000/- is imposed on the appellant and in default of payment of fine, he has to undergo for R.I. of six months. The appellant Dissu @ Deshraj Ahirwar is directed to deposit the fine amount before the trial Court within a period of two months from today. If the fine amount is not deposited within the stipulated period, then the trial Court may proceed to execute the default sentence. On depositing the fine amount, the complainant Girja Anuragi S/oMukunda Anuragi, R/o village Bilhari Police Station, Nowgaon District Chhatarpur will get a sum of Rs.1,000/- as a compensation.

9. At present, the appellant is on bail and his presence is not required before this Court. Therefore, it is directed that his bail bond shall stand discharged.

(N.K. GUPTA)
JUDGE
15.12.2010