



IN THE HIGH COURT OF JUDICATURE, M.P. AT JABALPUR



CF0000060723

CRIMINAL APPEAL NO. 178

/1996.

Single Bench (Criminal)

APPELLANT :

Pappu @ Pawan S/o Ganesh Sharma,  
Aged 23 years R/o Pendra (Old  
Basti) Police Station Pendra,  
District Bilaspur (M.P.).

-Vs.-

RESPONDENT :

State of Madhya Pradesh  
through Police Station, Pendra  
Distt. Bilaspur (M.P.).

CRIMINAL APPEAL UNDER SECTION 378 OF CODE OF CRIMINAL



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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**(Hon. Mr. Justice Pritinker Diwaker)  
Criminal Appeal No. 1781 of 1996**

**APPELLANT**

Papu @ Pawan

**VERSUS**

**RESPONDENT**

State of Madhya Pradesh

Dr. N. K. Shukla learned Sr. counsel assisted by Shri Aditya Khare, counsel for the accused/appellant.  
Shri Vaibhav Goverdhan, P.L. for the respondent/State.

**CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE  
CODE OF CRIMINAL PROCEDURE.**

**J U D G M E N T  
(30.03.2012)**

The present appeal arises out of the judgment and order dated 04.10.1996 passed by sixth Additional Sessions Judge, Bilaspur in Sessions Trial No. 496 of 1995 convicting the accused/appellant for the offence under Section 307 of IPC and sentencing him to undergo rigorous imprisonment for three years and pay fine of Rs.50, in default of payment of fine to further undergo rigorous imprisonment for one month.

2. Case of the prosecution in brief is that on 04.11.1995, FIR Ex. P-11 was lodged by Lalman (PW-3), father of the injured Tirath (PW-1) alleging in it that on that day at about 8 p.m. accused/appellant and co-accused Ganesh had assaulted his son Tirath as a result of which his son sustained several injuries on his body. Based on this FIR, offence under Section 307/34 of IPC was registered against appellant and co-accused Ganesh. After completion of investigation *Challan* was filed on 28.11.1995 against them for the offence under sections 307, 325 of IPC and 25 of Arms Act. However, the



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Court below framed charge against them for the offence under Section 307/34 of IPC.

3. So as to hold the accused persons guilty, prosecution has examined 13 witnesses in support of its case. Statements of the accused persons were also recorded under section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties the trial Court has though acquitted co-accused Ganesh of the charge under section 307 of IPC but convicted and sentenced him for the offence under section 323 of IPC whereas the present appellant has been convicted under section 307 of IPC. Hence, the present appeal.

5. Learned counsel for the appellant submits that even if the entire prosecution case is taken as it is, the appellant cannot be convicted under section 307 of IPC because the medical report does not show that the injuries sustained by the injured were grievous in nature and dangerous to life. He submits that at best offence under section 326 of IPC would be made out against the appellant for which he has already remained in jail for about 18 months 22 days.

6. On the other hand supporting the impugned judgment it has been argued by Shri Goverdhan, learned counsel appearing for the State that the impugned judgment is strictly in accordance with law and there is no infirmity in the same.

7. Tirath (PW-1), the injured in his court statement has stated that on the date of incident when he was returning to his house after closing his bicycle shop, near a betel shop, co-accused Ganesh came there and started beating him by

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hand, fist and leg. With the intervention of some local people, the matter was solved but immediately thereafter present appellant came there and assaulted on his head and right hand by stone. Thereafter the appellant went back, brought a sword from his house and assaulted him on his left leg as a result of which he became unconscious. He was taken to the hospital by the Police where he remained for about 15-20 days. In cross-examination this witness appears to be very firm and has reiterated what he has stated in the examination-in-chief. Shankar (PW-2) has though supported the prosecution case upto some extent but later on has been declared hostile. Lalman (PW-3), father of the injured had lodged the report Ex.P-11. Nutan (PW-4) has though stated about the incident of quarrel between the co-accused Ganesh and the injured but he has not fully supported the prosecution case and has been declared hostile. Semtin (PW-5), mother of the injured has stated that she was informed by Prem (PW-8) that her son had been beaten by someone. Pushni (PW-6), cousin sister of the injured had hospitalized the victim with the help of other persons. Babulal (PW-7), a seizure witness of Exs. P-3 to P-7 by which various articles were seized, has supported the prosecution case. Prem (PW-8) is a person who had seen the victim lying in injured condition and informed his parents about his condition. Dr. R. C. Mishra (PW-9) who medically examined the injured vide Ex.P-8 has found following injuries on his person:

- 1) Incised wound size 6 cm x 1.5 cm x 1 cm situated over occipital region.
- 2) Incised wound size 2.5 cm x 1.5 cm x 1 cm over mastoid region of left skull.
- 3) Incised wound size 2.5 cm x 1.5 cm x 1 cm situated over left temporal region.
- 4) Incised wound size 3.5 cm x 1.5 cm x 1 cm situated over occipital region.

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- 5) Incised wound size 1.5 cm x 1 cm x 0.5 cm situated over left occipital region.
- 6) Incised wound size 2.5 cm x 1.5 cm x 1 cm situated over left parietal region.
- 7) Incised wound size 2.5 cm x 1.5 cm x 1 cm situated over right occipital region.
- 8) Incised wound size 3.5 cm x 2.5 cm x 1 cm situated over right parietal region.
- 9) Abrasion 1.5 cm x 0.5 cm in size situated over exterior surface of left wrist.
- 10) Abrasions 1.5 cm x 0.5 cm in size situated over tip of middle and ring finger of the left hand.
- 11) Contusion 3.5 cm x 1.5 cm in size situated over tip of nose.
- 12) Contusion 6 cm x 3.5 cm in size situated over posterior surface of right forearm.
- 13) Lacerated wound 2.5 cm x 1.5 cm x 0.5 in size situated over lateral surface of lower 1/3 of left leg.

According to this witness, injury Nos. 1 to 8 were caused by sharp weapons and injury Nos. 9 to 13 were caused by hard and blunt object. He had advised for X-ray of the injured and also examined the sword which was used in the incident. According to him, he had given his opinion vide Ex.P-10 stating therein that injuries sustained by the victim could have been caused by stone, brick and sword. He has categorically stated that he had not mentioned in his report about the nature of injury as the same was not asked from him. However he has stated that the injuries sustained by the victim were not on the vital part of his body. Jayram Prasad (P.W.-10), the Head Constable had helped in the investigation. M. P. Dubey (PW-11) had recorded the FIR Ex.P-11 and made part of investigation. Dr. S. Chatterjee (PW-12) is the radiologist who had examined the X-ray of the

victim and his report is Ex.P-12. According to him, left middle finger of the victim was found fractured. P. S. Parihar (PW-13), the Investigating Officer has supported the prosecution case.

8. Minute examination of the evidence makes it clear that on 04.11.1995 victim Tirath was assaulted by accused/appellant and co-accused Ganesh and it is the appellant who caused him major injuries by using sword and stone. In the medical report of the victim it has not been stated that the injuries sustained by him were grievous in nature or were dangerous to life and according to the doctor R.C.Mishra (PW-9), injuries sustained by the victim were not on the vital part of his body. However as per the X-ray report, victim had suffered a fracture of his left middle finger. Further there is no evidence on record to show that the appellant had any intention to cause the death of the victim. Considering the entire evidence as adduced by the prosecution in particular medical and X-ray report of the victim, this Court is of the considered view that the appellant is liable to be convicted under Section 326 of IPC in stead of Section 307 of IPC as has been done by the Court below.

9. In view of above, the appellant is hereby acquitted of the charge under section 307 of IPC but he is convicted under Section 326 of IPC.

10. I find sufficient force in the arguments of the learned counsel for appellant that as the appellant has already remained in jail for about 18 months 22 days, the incident had taken place all of a sudden that too more than 16 years back, no useful purpose would be served in further keeping him in jail and it would be in the interest of justice if the sentence imposed on him is reduced to the period already undergone by him.



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11. Accordingly, keeping in view the detention period of the accused/appellant, and the fact that thereby a period of 16 years has rolled down, the jail sentence imposed on the appellant is reduced to the period already undergone by him. However, in lieu thereof, the sentence of fine imposed by the Court below is enhanced to Rs.3,000 from that of Rs. 50 which would be deposited in the trial Court and in turn the trial Court shall disburse the same to the victim Tirath (PW-1). The appellant is reported to be in jail. He is directed to be set free if not required in any other case provided he deposits the enhanced fine amount as directed above, before the trial Court, failing which the appellant shall undergo rigorous imprisonment for a further period of three months.

12. Appeal thus succeeds in part.

Sd/-  
Pritinker Diwaker  
Judge