

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**Criminal Appeal No.2402/2010**

Ghoor Singh Bhilala,  
Son of Ramsingh Bhilala,  
Aged about 35 years,  
Resident of Village Bithori Tappar,  
Police Station, Noorganj,  
Distt. Raisen, (M.P.)

**...Appellant**

**vs.**

State of M.P., through SHO,  
P.S. Noorganj, Distt. Raisen (M.P.)

**...Respondent**

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Shri K.N. Fakhruddin, Adv. for the appellant.

Shri Akshay Namdeo, P.L. for the respondent-State.  
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**JUDGMENT**

(31.1.2013)

This appeal has been preferred against the judgment-dated 8.10.2010 passed by First Additional Judge to the Court of First Additional Sessions Judge, Raisen in S.T. No.222/2009, whereby the appellant was convicted under Section 307 of the IPC and sentenced to undergo R.I. for 5 years and to pay a fine of Rs.2000/- & in default, to suffer R.I. for 3 months. By that judgment only he was acquitted of the offence punishable under Section 450 of the IPC.

2. The prosecution story, in short, may be narrated thus -

- (i) The appellant while nurturing a grievance against complainant Nahar Singh (PW1) for making his mother blind in one eye, wanted to settle scores with him.

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- (ii) Against this backdrop, on 7<sup>th</sup> July, 2009, between 8 to 9 p.m. when complainant Nahar Singh (PW1) was going to sleep in his house located in village Bithori, the appellant armed with a ballam entered into the house and not only pierced the ballam into his neck but also rode over his chest. Alarm raised by Nahar Singh's wife Gulbi Bai (PW3) attracted attention of Kunwar Singh and Chatar Singh, the father of Nahar Singh, who saved Nahar Singh from further assault.
- (iii) Upon the FIR (Ex.P1) lodged by Nahar Singh only, a case under Section 323, 324, 307 and 452 of the IPC was registered at Police Station Noorganj. He was sent to the local PHC where he was examined by Dr. K.P. Yadav (PW2). The medical expert referred the case to Hamidia Hospital, Bhopal for further examination and treatment. Dr. Neeta Sharma, (PW6) posted as R.S.O. (E.N.T) in the Hamidia Hospital characterized the injury as grievous.

3. The appellant pleaded false implication due to prevailing enmity.

4. Dr. K.P. Yadav (PW2) described the injury found on the person of Nahar Singh in the following words –

*Penetrating wound 1" x ½" x deep upto trachea. Clotted blood present; With complaint of breathlessness and pain in the chest.*

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Further, Dr. Neeta Sharma (PW6), the RSO corroborated the fact that there was a stab wound measuring 4 cm x 3 cm x 4 cm above medial end of Nahar Singh's right clavicle obliquely placed near midline. In her opinion, the injury was grievous in nature. No serious dispute was raised as to nature and situs of the injury.

5. Complainant Nahar Singh (PW1) reiterated the allegations as recorded by Sub Inspector Pankaj Geete (PW5) at his instance only. The only inconsistency that surfaced related to part of the house where the assault was allegedly made and that ultimately resulted in appellant's acquittal of the offence under Section 450 of the IPC. According to Nahar, the appellant had inflicted a ballam blow on his neck in Aangan (Courtyard) of his house. His wife, Gulbi Bai (PW3) and *Jija* Kunwar Singh (PW4), though declared hostile by the prosecution clearly admitted the fact that by the time they reached the spot, the appellant had already caused the neck injury to Nahar Singh.

6. In the light of overwhelming evidence comprising the statement of complainant that was substantially in conformity with FIR, consistent medical evidence and *res gestae* evidence of Gulbi and Kunwar Singh, learned trial Judge did not commit any illegality in holding the appellant guilty of attempt to murder.

7. Coming to the question of sentence, it may be observed that the appellant is in custody since the date of arrest i.e. 5.9.2009.

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8. Taking into consideration the facts and circumstances of the case, the social impact of crime and other relevant aspect of the sentencing policy, interest of justice would be met if the term of custodial sentence is reduced to the period already undergone and the amount of fine is reduced from Rs.2000/- to Rs.1000/-.

9. In the result, the appeal is allowed in part. The impugned conviction is hereby affirmed. However, the term of custodial sentence is reduced to the period already undergone by the appellant and the amount of fine is reduced from Rs.2000/- to Rs.1000/- with the stipulation that in default he shall suffer R.I. for 1 month.

10. As an obvious consequence, if the appellant deposits the fine amount, thus reduced, he shall be released forthwith, if not required any other case.

*Appeal allowed in part.*

**(R.C. Mishra)**  
**Judge**  
**31.1.2013**

PK