

**Kuwar Singh Vs. State of M.P.**

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**Court :** Madhya Pradesh

**Decided On :** Feb-20-2013

**Appellant :** Kuwar Singh

**Respondent :** State of M.P.

**Advocate for Pet/Ap. :** Shri. Masood Ali

**Judgement :**

HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH  
PRESENT : HON'BLE SHRI JUSTICE N. K. GUPTA CRIMINAL REVISION  
NO.1405/1998 Kuwar Singh and two others Vs. State of Madhya Pradesh  
..... Shri Masood Ali,  
counsel for the applicants. Shri Vinot Fauzdar, Panel Lawyer for the respondent/  
State. ....

**ORDER**

(Delivered on the 20th day of February, 2013) The applicants were convicted for offences punishable under Section 326 read with Section 34 of I.P.C and Section 324 read with Section 34 of I.P.C by the learned JMFC Rehli, District Sagar vide judgment dated 2.9.1998 in Criminal Case No.41 of 1998 and each was sentenced with two years rigorous imprisonment for each offences. It was also directed that sentence shall run concurrently. In Criminal Appeal No.191 of 1998 the learned Illrd Additional Sessions Judge, Sagar vide judgment dated 18.11.1998 dismissed the appeal. Being aggrieved with the aforesaid judgments passed by both the

Courts below the applicants have preferred the present revision. 2 Criminal Revision No.1405/1998 2. The prosecution's case in short is that, on 21.9.1986 at about 12.30 p.m the complainant Bhagwan Singh and his brother were moving on the road at Village Badgan (Police Station Rehli, District Sagar) and when they reached before the house of Bhagwan Singh, the applicants and one Jahar Singh surrounded them. Jahar Singh had a katarna, Naval Singh had a kulhadi and remaining applicants had a stick. They assaulted the complainant Bhagwan Singh and Randhir Singh. Mardan Singh who interfered in the incident was also assaulted. An FIR Ex.P/9 was registered at Police Station Rehli and the victims were sent for their medico legal examination. Dr. S.K. Mishra (PW6) examined the injured persons. He gave a report Ex.P/15 after examining the complainant Bhagwan Singh. He found one incised wound on his left arm and two contusions on left small finger and right knee respectively. He also examined the victim Randhir Singh and gave his report Ex.P/16. He found various contused injuries on left head, other portion of the head, dorsal aspect of left hand, right elbow and right leg. He also found one incised wound on his right shoulder. Mardan Singh sustained two simple injuries. During the investigation Dr. Mishra opined that incised wound which was caused to the victim Bhagwan Singh was fatal in nature and therefore, it was a grave injury. After due investigation a charge sheet was filed before the trial Court. 3 Criminal Revision No.1405/1998 3. The applicants abjured their guilt. They stated about the counter case in their statements. However, no defence evidence was adduced by them.

4. The learned JMFC, Rehli after considering the evidence adduced by the prosecution convicted and sentenced the applicants as mentioned above. The appeal filed by the applicants was dismissed in toto.

5. I have heard the learned counsel for the parties.

6. After considering the submissions made by the learned counsel for the parties and looking to the evidence adduced by the parties in the case, I am of the view that the applicants assaulted the victims Bhagwan Singh and Randhir Singh. They also assaulted them by sharp cutting weapons. Their common intention was very well established. The learned counsel for the applicants have submitted that the

injuries caused to the applicants were not explained and therefore, it was a case of right of private defence. Such contention cannot be accepted at this stage because it is a general rule that all the counter cases should be tried simultaneously but evidence of one case cannot be read in another case and therefore it was for the applicants to prove their FIR in the present case to show that there was a counter case against the complainant party of the present case. They tried to prove their injuries in the evidence of Dr. Mishra but it is nowhere proved that those injuries were caused in the same incident and therefore, when it was not proved that the 4 Criminal Revision No.1405/1998 applicants sustained any injury in the same incident then there was no need to the prosecution to explain such injuries. The applicants could not prove that they sustained any injury in the incident. They did not prove the FIR in the case and therefore, they could not prove their right of private defence. Under such circumstances, the trial Court as well as the appellate Court have rightly held the applicants to be guilty for the assault caused to 2-3 victims.

7. The contention of the learned counsel for the applicants can be accepted to that extent that no victim sustained any grave injury. Dr. Mishra (PW6) has stated that the injuries caused to the victim Randhir Singh were simple in nature. He informed about one injury to the victim Bhagwan Singh that it was fatal because some blood vessels were cut in his hand due to that injury. The victim was taken to the hospital in due course and still he was alive. Hand is not a vital part of the body and no vital part of the body was found cut therefore, by a cut of blood vessels it cannot be said that the injury caused to the victim Bhagwan Singh was fatal in nature. It was nowhere alleged by Dr. Mishra that the injury caused to the victim Bhagwan Singh was grave. Since that injury was not fatal in nature it cannot be said to be grave as per provisions of Section 320(8) of I.P.C and therefore, the injuries caused to the victim Bhagwan Singh were also simple in nature. Under such circumstances, the applicants could not be convicted for offence punishable under Section 326 of 5 Criminal Revision No.1405/1998 I.P.C either directly or with the help of Section 34 of I.P.C but they should have been convicted for offence punishable under Section 324 read with Section 34 of I.P.C.

8. So far as the sentence is concerned, the applicants are mature persons. There is no basis on which they could be enlarged on probation. However, they have faced the trial, appeal and revision for last 26 years and looking to their harassment where each of them remained in the custody for one month during the revision, it is fit case in which they may not be sent to the jail again but the fine imposed upon them may be enhanced.

9. On the basis of the aforesaid discussion the revision filed by the applicants is hereby partly allowed. The conviction of the applicants for offence punishable under Section 324 read with Section 34 of I.P.C for victim Randhir Singh is hereby maintained but the sentence and conviction directed for offence punishable under Section 326 read with section 34 of I.P.C for victim Bhagwan Singh is hereby set aside. However, the applicants are convicted for offence punishable under Section 324 read with Section 34 of I.P.C for the injuries caused to the victim Bhagwan Singh. Hence not they are convicted for two count charges for offence punishable under Section 324 read with Section 34 of I.P.C. As discussed above and therefore, sentence is reduced to the period which they have already undergone in the custody but a sum of Rs.5000/- is imposed as a fine upon each of the 6 Criminal Revision No.1405/1998 applicants for each count charges of Section 324 read with Section 34 of I.P.C and therefore, each of the applicant is required to deposit a sum of Rs.10,000/- before the trial Court within two months from today failing which each of them shall under go for six months rigorous imprisonment for each count of default. If fine is deposited a sum of Rs.3000/- be provided to each of the victims Viz. Randhir Singh and Bhagwan Singh by way of a compensation.

10. The applicants are on bail. Their presence is no more required before this Court and therefore, it is directed that their bail bonds shall stand discharged.

11. Copy of the order be sent to the trial Court and appellate Court along with their records for information. The trial Court is directed that if fine is not deposited within the stipulated period then the applicants be arrested and sent to the jail for execution of remaining sentence. However, the attention of the trial Court is drawn to the provisions of Section 68 of I.P.C. If fine is deposited even after the stipulated period then the applicants shall be released from the custody. (N.K.Gupta) Judge

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