

**Waseem Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/490932](http://sooperkanoon.com/490932)

**Court :** Allahabad

**Decided On :** Sep-27-2002

**Reported in :** 2003CriLJ1080

**Judge :** M.C. Jain, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 324

**Appeal No. :** Criminal Appeal No. 2215 of 1981

**Appellant :** Waseem

**Respondent :** State of U.P.

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** V.S. Misra, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**M.C. Jain, J.**

1. The appellant Waseem was charged under Section 307, I.P.C. but on trial was convicted under Section 324, I.P.C. and sentenced to rigorous imprisonment of 15 months with a fine of Rs. 500/-. In default of payment of fine, he was 'ordered to undergo further six months rigorous imprisonment. Out of the amount of fine of Rs.

500/- half was directed to be paid to injured Bholu. The judgment was pronounced by Sri G.K. Gupta, the then XIII Additional District and Sessions Judge, Kanpur in Sessions Trial No. 255 of 1981. Aggrieved, he preferred this appeal.

2. The facts lie in a short compass. The injured Bholu PW 1 and his brother Nurul Haq PW 3 resided in house No. 89/140, Ram Chandi Ka Akhara, Anwarganj, Kanpur. Their aunt Mst. Shamsun was living on the upper floor. The appellant used to come to meet the said lady and cut jokes with her. Bholu, injured of the present case used to raise objection on his behaviour, which annoyed him. The incident took place on 23-12-1979 at about 5.30 P.M. The accused appellant came to the house of the complainant and injured and called Smt. Shamsun. On being objected to, he started altercating and assaulting Bholu injured by means of a knife causing injuries on his chest. On the alarm being raised by him, the complainant Nurul Haq PW 3 and other witnesses Hasim and Musarraaf came to the spot, on whose challenge the accused appellant ran away. The report was made by Nurul Haq PW 3 the same day at 6 P.M. P.W. 5 Dr. Omar medically examined the injured on 23-12-1979 at 6.50 P.M. and found the following injuries having been sustained by him :

1. Incised wound on the chest, 3 cm above left nipple, size 1 1/2 cm x 1 cm., depth not probed, bleeding present. X-ray of chest (P.A.) advised.

2. Incised wound 5 cm above injury No. 1 and medial 3 cm to injury No. 1. Size 1 1/2 cm. x 1/2 cm. depth not probed, bleeding present.

3. Though the F.I.R. was taken out under Section 324 I.P.C., but the Magistrate concerned committed the accused appellant to the Court of Session to face trial under Section 307 I.P.C. At the trial, the injured Bholu PW 1 and his brother Nurul Haq PW 3 supported the prosecution case, though Musharraaf PW 2 turned hostile. The accused appellant claimed false implication. According to him, Smt. Shamsun was issue-less and had adopted him as her son. She wanted him to be her legal heir after her death. When Bholu and Nurul Haq came to know about it, they started raising objection and threatened him with dire consequences, such as either they would kill him or get him imprisoned for the entire life. They allegedly falsely implicated him. However, the Court found the case to be proved against the

accused appellant to have committed offence under Section 324 I.P.C. The trial Court observed that though injuries of the injured were kept under observation and X-ray of injury No. 1 was also advised but no X-ray report or supplementary report was filed or proved to indicate the gravity of the injury. The depth of both the injuries had also not been proved. It was on such reasoning that instead of Section 307 I.P.C. he found the offence committed by the accused appellant to be under Section 324 I.P.C.

4. At the hearing of the appeal, none has appeared from the side of the appellant though he is represented on record by Sri V. Section Misra, Advocate, I have perused the record myself and have heard learned A.G.A. from the side of respondent State. The testimony of the injured Bholu PW 1 and that of his brother Nurul Haq PW 3 clinchingly proved that the accused appellant assaulted the victim (Bholu) with a knife on the given date, time and place. Despite being subjected to searching cross-examination, the testimonial assertions of these two witnesses of fact could not be displaced. Therefore, the conviction of the accused appellant under Section 324 I.P.C. is perfectly justified.

5. However, while bestowing thought on the aspect of punishment, it is to be noted that the incident took place nearly 23 years before when the accused appellant was aged about 16 years as recorded in his statement under Section 313 Cr. P.C. He was a young lad at that time. The record also shows that he had been in jail since 30-3-1981 till 30-9-1981 when he was ordered to be released on bail by this Court on admission of his appeal. Few more days must have passed before he was actually released from jail. Thus, he had already been in jail for about six months. It would not be conducive in the interest of justice to send him back to jail again after the lapse of so many years. It would unsettle his settled life and is likely to visit him with great hardship and serious consequences affecting his family members as well. The case has also been hanging over his head through all these years. It is noted that realization of fine was not stayed by this Court while admitting the appeal and in all probabilities, it must have been deposited. The ends of justice would be met by altering the sentence passed against the accused appellant to the period of imprisonment already undergone with a fine of Rs. 500/-, out of which half has been ordered by the lower Court to be paid to the injured

Bholu.

6. Accordingly, the appeal is dismissed insofar as the conviction of the appellant under Section 324 I.P.C. is concerned but his sentence is altered to the period of imprisonment already undergone by him with payment of Rs. 500/- as fine. Half of the amount of fine would be paid to the injured Bholu. However, in case the amount of fine has not already been paid, he shall pay the same within thirty days from the date of being served a notice in this behalf by the Chief Metropolitan Magistrate, Kanpur Nagar. However, in case the same is not paid within the stipulated period as directed, he shall undergo six months rigorous imprisonment.

7. The office shall sent the copy of this judgment to the lower Court for needful compliance under intimation to this Court within two months.

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