

**(2018) 03 CHH CK 0287**  
**In the Chhattisgarh High Court**  
**Case No : CRA No. 301 of 2002**

DAVARU RAM AND ANR.

APPELLANT

Vs

STATE OF CHHATTISGARH

RESPONDENT

**Date of Decision :** 26-03-2018

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 324  
Code of Criminal Procedure, 1973 — Section 437A

**Citation :** (2018) 03 CHH CK 0287

**Hon'ble Judges :** PRASHANT KUMAR MISHRA

**Bench :** Single Bench

**Advocate :** Keshav Dewangan, Bhaskar Payasi, Arvind Dubey

**Final Decision :** Allowed

## **Judgement**

1. Appellants have been convicted for committing offence punishable under Section 324 read with Section 34 of the Indian Penal Code (IPC) and have been sentenced to undergo RI for three years and to pay fine of Rs.200/- each, in default of payment of fine to further undergo SI for one month.

2. The conviction is for causing grievous hurt to the injured persons namely; Vinod Kumar Jha (PW-5), Santosh Batra, S/o Mangalram Batra (PW-6), Santosh Kumar, S/o Late Shri Ram Kumar (PW-8) and Shyamlal (PW-9).

3. The incident occurred at about 10.30 pm on 9-9-2000. The First Information Report (FIR) (Ex.P/11) was lodged at 00.05 hours on the same night, however, the date has changed to 10-9-2000. As per the prosecution story, a large gathering of about 100 persons was enjoying the Lord Ganesh festival by dancing to the tune of orchestra party. The appellants demanded tobacco from Santosh Kumar, S/o Late Shri Ram Kumar (PW-8) and on

refusal they started assaulting the injured party by means of farsa, rod & club. In the FIR, Navin Singh Thakur (Appellant No.3) was stated to have

caused injuries to Vinod Kumar by means of sword whereas Davaru Ram (Appellant No.1) inflicted injuries by rod and Motu @ Ramnarayan Baghel

(Appellant No.2) caused injuries by club. However, when examined in the Court the injured namely; Vinod Kumar Jha (PW-5), Santosh Batra, S/o

Mangalram Batra (PW-6), Santosh Kumar, S/o Late Shri Ram Kumar (PW-8) and Shyamlal (PW-9) have stated that Davaru Ram inflicted injuries

on the person of Vinod Kumar by means of farsa, Navin Singh Thakur caused injuries by rod and Motu caused injuries by club.

4. Considering the discrepancy in the FIR and the statement of witnesses, learned counsel appearing for the appellants has argued that the appellants deserve to be acquitted.

5. Per contra, learned counsel appearing for the State would submit that all the witnesses have deposed consistently that Davaru Ram has inflicted

injuries to Vinod Kumar by farsa, Navin Singh Thakur by rod and Motu caused injuries by club. Therefore, it appears to be a case of wrong

description in the FIR, which is not fatal for the prosecution.

6. The FIR has been lodged within 1½ hour of the incident clearly mentioning that Navin Singh Thakur inflicted injuries by sword, Davaru Ram by

iron rod and Motu by club. In the Court statement all the injured would state that Davaru Ram inflicted injuries by means of farsa, Motu by sword and

Navin Singh Thakur by rod. Interestingly farsa has not been recovered during investigation. Sword has been recovered from Motu vide Ex.P/15,

however, the seizure is not supported by the independent witness.

7. In cross-examination, Vinod Kumar Jha (PW-5) would admit that almost entire audience enjoying the orchestra were drunk. The incident allegedly

occurred on a trivial dispute of not supplying the tobacco. Santosh Batra, S/o Mangalram Batra (PW-6), one of the injured, has turned hostile because

in his examination-in-chief he could not state as to who inflicted injuries to him or to Shyamlal, although he states that Vinod was inflicted injuries by

Davaru Ram. Similarly, Santosh Kumar, S/o Late Shri Ramkumar (PW-8) would also state in his examination-in-chief that he is not aware as to who

is responsible for causing injuries.

8. It is also to be seen that the prosecution has not recovered farsa from any of

the accused. It is apparent from the statement that the parties were not in dispute from a prior occasion and the incident occurred instantly during the orchestra where most of the audience were dancing in drunken state. The difference in describing the person as to who caused injuries and by which means would, therefore, assume significance because there was a crowd of about 100 persons and apart from Vinod other injured are not in a position to state as to who caused injuries to them. It is not possible that the witnesses were also not aware as to who, in fact, caused injuries to Vinod. The FIR states that it was Navin Singh Thakur who caused injuries to Vinod whereas the witnesses would say that it was Davaru Ram who caused injuries to Vinod.

9. Considering the contradictions and events, which unfolded at the time of incident where crowd of about 100 persons were dancing, the benefit of doubt must go to the accused.

10. For the reasons mentioned hereinabove, I am of the considered opinion that the prosecution has not been able to establish the guilt of the accused beyond reasonable doubt.

11. As a sequel, the appeal is allowed. Conviction and sentence imposed on the appellants under Section 324 read with Section 34 of the IPC are hereby set aside. The appellants are on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellants shall appear before the higher Court as and when directed.