

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 617 of 2002

1. Anil Mahar, aged about 20 years, S/o Gend Singh Mahar, R/o - Purai,
P.S. - Utai, District Durg (C.G.)

---- Appellant

Versus

1. State Of C.G. through Station House Officer, Police Station : Utai, Distt.
Durg (C.G.)

---- Respondent

For Appellant – Mr. Anurag Jha, Advocate.

For Respondent – Ms. Sangeeta Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

23/03/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27-02-2002 passed by the Sessions Judge, Durg, C.G. in Sessions Trial No.60/2001 whereby and whereunder the learned Sessions Judge after holding the appellant guilty for causing voluntarily causing grievous hurt to his maternal grand-father Mangluram (PW-1) by stick, convicted the appellant under Section 325 of the Indian Penal Code (for short 'the IPC') and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine Rs.500/-, in default of payment of fine, to undergo additional rigorous imprisonment for 1 month.

2. Conviction is impugned on the ground that without there being any iota of evidence, the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 11-12-2000 at about 5.30 p.m., at village Purai, Police Station Utai, on account of previous dispute, grand-son of the victim Mangluram (PW-1), the appellant, assaulted and inflicted one blow over head. The victim sustained lacerated wound. The blood was oozing out. The incident was witnessed by Laxmibai (PW-3), Kanti (PW-4), Rambai (PW-5) and others. Mangluram (PW-1) was admitted to the hospital. Rambai (PW-5) lodged the First Information Report vide Ex.-P/2. The Investigating Officer registered the crime no. 361/2000 under Sections 341, 294, 506-B and 307 of the IPC. The Investigating Officer-D.K.Chandrakar (PW-13) collected information regarding the injuries noticed by the treating doctor on body of Mangluram (PW-1) who was admitted by Doctor P.C.Deshmukh (PW-9) at District Hospital Durg who gave his report Ex.-P/11. The patient was further treated by Doctor I.K.Wadhvani (PW-8), who noticed one lacerated wound 12 x 3 cms. on left side of the head. Injuries were fresh, could be caused by hard and blunt object. He gave his report vide Ex.-P/8. He also examined subsequently the stick and gave his opinion and for confirmation of blood thereon he referred for chemical analysis. Radiologist Doctor A.K.Sahu (PW-10) conducted the X-ray and noticed fracture at left frontal and left parietal bone and he gave his report vide Ex.-P/12 along with X-ray plate Ex.-P/13. Dying declaration was also recorded vide Ex.-P/14. The investigating officer prepared the spot map vide Ex.-P/7. From the spot, plain soil and blood stained soil were seized vide seizure memo Ex.-P/8. The bed head ticket and other papers regarding treatment were also collected by the Investigating Officer. The appellant was taken into custody, he gave disclosure statement vide Ex.-P/15. One stick and blood stained shirt were seized at the instance of the appellant vide seizure memo Ex.-P/16. Blood stained shirt was seized from

victim Mangluram (PW-1) vide Ex.-P/17. Article seized were sent for chemical examination vide draft Ex.-P/18. The arrest memo of the appellant is Ex.-P/19. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code').

4. After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Durg on 27-12-2000, who, in turn, committed the case to the Court of Sessions, Durg, the learned Sessions Judge conducted the trial and he charged the appellant under Sections 341, 294, 506-B, 307 of the IPC which was denied by the appellant and he prayed for trial.

5. In order to prove the guilt of the appellant, the prosecution examined as many as 14 witnesses. The appellant was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. The appellant examined one defence witness namely Gendlal (DW-1) and as per this witness, there was a dispute going on between the appellant's mother and the appellant's maternal grand-mother. This witness informed the appellant for the same and went upto the place of incident along with the appellant and during the quarrel and dispute between the persons present the appellant pulled the stick from Mangluram (PW-1) thereby Mangluram fell down and he received injuries as he came into contact of the stone and boring.

6. After providing opportunity of hearing to the parties, the learned Sessions Judge acquitted the appellant for the offence under Sections 341, 506B and 294 of the IPC and also not found him guilty for offence under Section 307 of the IPC and held the appellant guilty for lesser offence under Section 325 of the IPC and convicted him under Section 325 of the IPC and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the judgment

impugned and record of the trial Court.

8. Learned counsel for the appellant vehemently submitted that Mangluram (PW-1) received the injury, but in his para 8 of cross-examination, he stated that he regain consciousness after the incident, he was informed that he was assaulted by the appellant, then only he came to know that the appellant assaulted him. By this statement the victim contradicted his earlier statement in the examination-in-chief in para 2 that he was assaulted by the appellant through stick. As the victim does not know who assaulted him, there were many persons near the boring and there were dispute, discussion and quarrel between those persons, though the other eye-witnesses supported the prosecution story but as the complainant himself not said against the appellant, it would not be safe to convict the accused on the basis of the other eye-witnesses. The eye-witnesses also are not of sterling character. The appellant may be given an opportunity by acquitting him as the benefit of doubt appeared on the basis of the complainant's statement. The appellant and the complainant are near relatives. The appellant is son of the daughter of Mangluram (PW-1)/complainant, there was no reason for inflicting injuries by stick. Learned counsel for the for the appellant further submitted that during the scuffle when the appellant was pulling the stick from the complainant, with this, the complainant fell down and received the injuries as he came into contact of stone near the boring which is supported by Gendlal (DW-1). Hence, the appellant may be acquitted by awarding him benefit of doubt.

9. Per contra, learned counsel for the State/respondent supported the judgment of conviction and order of sentence passed by the trial Court against the appellant and submitted that the judgment is well founded. No reason to disbelieve Laxmibai (PW-3), Kanti (PW-4), Rambai (PW-5) and also as per DW-1 Gendlal, the presence of the appellant was not under dispute. Scuffle between both the parties are not under dispute. Though the victim had not

seen the appellant assaulting him, but the complainant/victim admitted the presence of the appellant and the assault made by the appellant remained unrebutted in the statements of these three witnesses. Therefore, there is no force in the appeal and the same may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties.

11. On close scrutiny, it is not disputed that the appellant is maternal grandson of the complainant. Previously some dispute exist on the date and time, the appellant and the complainant were present on the spot; the spot was in front of the house of the appellant near the boring. It is also undisputed that the appellant received lacerated injuries followed by fracture in his left side of the head, he was admitted in the hospital and treated.

12. In para 2 of the complainant Mangluram (PW-1), he stated that the it was the appellant who assaulted by stick at his left side for forehead, but in the cross-examination, para 8, he contradicted his version and stated that when he regained consciousness he was informed that it was the appellant who assaulted him and he had not seen actually who assaulted him. On the other hand, in the FIR (Ex.-P/2) lodged by Rambai (PW-5), the maternal grandmother of the appellant and wife of the complainant, Rambai (PW-5) gave description regarding the incident that the incident was witnessed by Kanti (PW-4) and Laxmibai (PW-3), all these three witnesses in their court statement stated that it was Anil, the appellant, who assaulted by stick once at his left side of forehead. All these eye-witnesses were examined at length, but they remained very firm and nothing could be elicited in their cross-examination as to discredit them. There was dispute for taking water from the boring, the appellant and complainant and other eye-witnesses are close relatives. The FIR lodged without any undue delay. The defence witness also supported to some extent saying that the appellant was present on the spot, there was

physical quarrel between the appellant and the complainant and the appellant was pulling the stick of the complainant. By considering the entire statements and the evidence, I am agree with the finding of the Sessions Court as it was the appellant who assaulted his maternal grand-father once by stick on account of dispute regarding taking of water from the boring and thereby the complainant received the injuries also the fracture of parietal, frontal bone, the trial court has rightly acquitted the appellant from the charge of offence under Section 307 of the IPC as there was no intention to kill or any attending circumstances by which the appellant may be held guilty for offence under Section 307 of the IPC. The trial Court rightly acquitted the appellant for the offence under Section 307 of the IPC and instead thereof convicted the appellant for lesser offence under Section 325 of the IPC. Therefore, by convicting the appellant under Section 325 of the IPC, the trial Court has not committed any illegality or infirmity in its finding.

13. So far as quantum of sentence is concerned, the incident is about 15 years old, the appellant was real maternal grand-son of the complainant, there was no any old dispute between the parties, but on account of taking water from the boring a dispute developed at the spot and the appellant assaulted his grand-father (नाना). He was having stick, but not assaulted more than one blow, if he wished he could have assaulted more than once. At the time of the incident, the appellant was a young boy of 19 years as mentioned in his arrest memo Ex.-P/19. He was the first offender. No criminal past shown in the charge sheet. As submitted by his counsel during argument, he had not involved after this incident any other offence between the family members or with anyone. He remained in jail from 13-12-2000 upto 21-12-2000. As submitted, the fine amount imposed by the trail court upon the appellant was deposited by him. Looking to the entire facts and circumstances of the case and the facts that the incident happened in a spur of moment, without premeditation, no further assault was made and the appellant was of the age of

19 years with no criminal background and also there is no minimum sentence prescribed for the offence under Section 325 of the IPC, it would be appropriate and proper to sentence the appellant for the period already undergone along with some enhanced fine amount.

14. Consequently, the appeal filed by the appellant is partly allowed. Conviction of the appellant under Section 325 of the IPC is hereby affirmed. However, the jail sentence awarded to the appellant by the trial Court of R.I. for 3 years is hereby reduced and he is sentenced for the period already undergone by him and the fine sentence awarded by the trial Court to the appellant is hereby enhanced from Rs.500/- to Rs.4000/-, in default of payment of fine, the appellant shall have to undergo rigorous imprisonment for 3 months. The fine amount awarded by the trial Court, if already deposited, shall be adjusted in the fine awarded today by this Court and trial court is directed to realize the outstanding fine amount as ordered by this Court within 3 months from date of judgment of this Court. If fine amount is not deposited within the stipulated time, it shall be dutiful for the trial Court to send the appellant for serving the default sentence. The appellant is stated to be on bail. He be set at liberty forthwith. His bail bond shall continue for a further period of 6 months, as per requirement of Section 437-A of the Code. Orders made earlier during pendency of this appeal regarding proceed under Section 446 of the Code and regarding sending the appellant in jail for serving the remaining part of substantive jail sentence is of no force as the appeal is disposed of finally by this Court and the trial Court is directed to act now only as direction given in the judgment.

Sd/-
(C.B.Bajpai)
JUDGE

