

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 112 of 2015**

Thanuram Kamar, S/o. Chamar Singh Kamar, aged about 23 years,
R/o. Village Gourmund, Police Station Mainpur, District Gariyaband
(CG)

---- Appellant

Versus

State of Chhattisgarh, through the Station House Officer, Police Station
Mainpur, District Gariyaband (CG)

---- Respondent

Shri Avinash Chand Sahu, counsel for the appellant.
Shri Sumit Jhawar, Panel Lawyer for the State.

Judgment On Board**26/8/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.11.2014 passed by the Additional Sessions Judge, Gariyaband in Sessions Trial No.19/2014 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for causing grievous hurt to Dukalu Ram Kamar, (PW-4), uncle of the appellant, and also causing simple injury to Lakshmi Bai (PW-6), convicted him under Section 325 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo RI for three months.

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

3. As per the case of the prosecution, on 06.02.2014 at about 12.00 at night, the appellant, on account of previous enmity, came to the house of complainant Lakshmi Bai abused and uttered obscene words, threatened to take the life of Dukalu Ram (PW-4) and thereafter by

wooden plank caused grievous injuries to him and also caused simple hurt to Lakshmi Bai (PW-6). The matter was reported to Police Station Mainpur on the next date. The Police registered First Information Report as Crime No.07/14 under Sections 294, 307, 323 and 506 Part-II of the IPC against the appellant and started investigation. Both the injured were sent for medical examination. Dr. Sunil Singh (PW-5) examined Lakshmi Bai and noticed one lacerated wound, simple in nature. He also examined Dukaluram (PW-4) and noticed one lacerated wound on chest and also on right hand. He advised for X-ray examination and gave his report (Ex-P/3 & P/4). Dr. Santosh Sonkar (PW-1) after X-ray examination noticed fracture on right side of the rib and also fracture on right hand and forehead. The patient was discharged after treatment on 21.02.14. The Police collected Bed Head Ticket and other papers. Spot map was prepared and statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973, (for short 'the Code'). After completion of investigation, charge sheet was filed before Chief Judicial Magistrate, Gariyaband, who in turn committed the case to the Court of Sessions. The learned Additional Sessions Judge received the case on transfer and conducted the trial. The appellant was charged for the offence under Sections 294, 307, 323 and 506 Part-II of the IPC. The appellant denied the charges and prayed for trial.

4. In order to prove the guilt of the appellant, the prosecution has examined as many as 12 witnesses. Statement of the accused was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question. After providing opportunity of hearing

to the parties, the learned Additional Sessions Judge acquitted the appellant for the charges under Sections 307, 294 and 506-Part-II of the IPC and convicted him for lesser offence i.e. Section 325 of the IPC and sentenced him as aforementioned.

5. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

6. Learned counsel for the appellant submits that as directed, he is not contesting the instant appeal on its conviction part. He is confining his argument on the quantum of sentence only. The appellant is in jail since 08.02.14, thereby he has served about more than half of his sentence for one year, six months and eighteen days. The appellant, aged about 23 years at the time of the incident, is the first offender. On account of previous enmity, the present incident happened. On sudden provocation the appellant assaulted the victims by a wooden plank present at the spot as he was not armed at the time of the incident. Looking to his age and also considering that there was no criminal history against him and also the nature of injuries, his case may be considered.

7. On the other hand, learned counsel for the State opposed the prayer and submitted that on account of previous enmity, he inflicted grievous injuries to the complainant and the trial Court rightly convicted and sentenced the appellant, hence, the appeal may be dismissed.

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

9. The appellant is not contesting the instant appeal on its merits. Even after perusal of the entire evidence, I do not see any infirmity or impropriety in the judgment of conviction passed by the trial Court

under Section 325 of the IPC, hence, judgment of conviction under Section 325 of the IPC requires no interference and the same is liable to be affirmed. Also on appreciation of the fine sentence passed by the trial court, the same cannot be held as on higher side. Hence, fine sentence passed also does not require any interference and the same is liable to be maintained.

10. So far as the substantive jail sentences awarded to the appellant is concerned, the appellant, aged about 23 years at the time of the incident, was the nephew of the complainant, he has already served the sentence of one year six months and eighteen days. In the considered view of this court, looking to the entire facts and circumstances surfaced for the appreciation on the substantive jail sentence of RI for three years requires interference and the period already undergone by the appellant would meet the ends of justice.

11. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 325 of the IPC is hereby affirmed. Fine sentence awarded by the trial Court is also hereby maintained. So far as the substantive jail sentences are concerned, instead of RI for three years, the appellant is sentenced for the period already undergone by him. The appellant is in jail. He be released forthwith if not required in any other case after realizing all the fine amount and if not paid after serving the sentence for the default period as mentioned in para 33 of the judgment of the trial Court.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE