

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 122 of 1999**

Satyendra Choudhary, son of Jaisingh Choudhar, aged about 24 years, Caste Mallah, resident of village Darripara, Police Station Ambikapur, Distt. Sarguja (M.P.)

---- Appellant**Versus**

The State of Madhya Pradesh through P.S. Ambikapur, Distt. Sarguja (M.P.)

--- Respondent

For Appellant: Mr. Sushil Dubey, Advocate.

For Respondent/State: Mr. Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order**24/06/2016**

(1) Appellant-Satyendra Choudhary stands convicted for commission of offence under Sections 325 & 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months for offence u/S 325 IPC, and to pay fine of Rs.500/- for offence under Section 323 IPC, in default of payment of fine, he has to suffer simple sentence of 2 ½ months, against which this Criminal Appeal has been preferred by the appellant questioning the conviction recorded and sentence awarded by the Special Judge (Atrocities), Sarguja vide judgment dated 8.12.1998 passed in Special Case No.407/97.

(2) Case of the prosecution, in brief, is that on 24.10.1997 complainant Bhagatram (PW-2), who was cobbler, went to the betel shop of appellant Satyendra Choudhary and on account of some dispute regarding purchase of *Bidi*, complainant was attacked & assaulted by appellant/accused by hand and fist, by which he suffered grievous injuries and simple injuries were also caused to his wife Kasturi Bai (PW-1)

(3) The matter was reported to the police on 25.10.1997 at 11.40 pm and he was referred to Dr. Azad Bhagat (PW-4), who has given injury report of the complainant as Ex.P-1 and Dr. H.N. Bhalla (PW-3), Dentist also examined the complainant and has given his report [Ex.P-2].

(4) Thus, after investigation by the concerned police station, charge sheet was filed before the competent jurisdictional Court against the appellant/accused for offence punishable under Sections 323 & 325 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (henceforth 'Act, 1989')

(5) Appellant abjured his guilt and decided to enter into defence stating that he has been falsely implicated in the offence in question.

(6) During the course of trial, prosecution examined as many as six witnesses and exhibited five documents in support of case of

the prosecution whereas defence examined one witness and did not exhibit any documents in support of his case.

(7) Upon appreciating the oral and documentary evidence available on record, learned Special Judge, by its impugned judgment dated 8.12.1998 convicted the appellant only for the offence punishable under Section 323 and 325 of the Indian Penal Code and sentenced as indicated in paragraph 1 of this judgment, however, acquitted him of the offence under Section 3(1)(x) of the Act, 1989.

(8) Feeling aggrieved & dissatisfied with the judgment of the Special Court, present appellant has filed this instant appeal under Section 374(II) of the Code of Criminal Procedure.

(9) Shri Sushil Dubey, learned counsel appearing for the appellant would submit that Special Judge has committed legal error in convicting the appellant for the offence punishable under Sections 323 and 325 of the Indian Penal Code as the prosecution has failed to prove the offences beyond reasonable doubt and would alternatively submit that the jail sentence awarded to the appellant is on the higher side as the appellant remained in jail for six days, which is sufficient jail sentence for offence under Section 325 of the Indian Penal Code, as such, impugned judgment be set aside and in alternative sentence undergone be held sufficient.

(10) On the other hand, Mr. Sameer Behar, learned counsel for

the State/respondent would submit that judgment of conviction recorded and order of sentence awarded is based on evidence available on record and no interference is called for in this appeal, as such, appeal deserves to be dismissed.

(11) I have heard learned counsel appearing for the parties and have also perused the record of the trial court with utmost circumspection.

(12) The following two questions fall for consideration in this criminal appeal:-

- (i) whether the prosecution has proved the offences under Sections 323 & 325 of the Indian Penal Code against the appellant beyond reasonable doubt ?
- (ii) Whether the sentence awarded is just and proper ?

Answer to question No. (i)

(13) The Special Judge, after appreciating the documents available on record, convicted the appellant for commission of offence under Sections 323 & 325 of the Indian Penal Code. At this stage, it would be necessary to notice Section 325 of the Indian Penal Code, which provides as under:-

“325. Punishment for voluntarily causing grievous hurt.- whoever, except in the case provided for by section 325, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

(14) Thus, in order to prove the offence under Section 325 of the Indian Penal Code, it must be proved that:-

- (a) that the accused has caused bodily pain, disease or infirmity to the victim;
- (b) this hurt has been caused voluntarily;
- (c) and this hurt has been caused without being provoked by any one; and,
- (d) that the hurt that has been caused answers any of the hurts described in Section 320, I.P.C.

(15) Section 320 of the Indian Penal Code defines the grievous hurt, which states as under:-

“320. **Grievous hurt.**- The following kinds of hurt only are designated as “grievous”:-

First.- Emasculation.

Secondly.- Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.- Privation of any member or joint.

Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly.- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

(16) The complainant was examined by Dr. Ajad Bhagat (PW-4) and he has given injury report Ex.P-2 and he referred the matter to Dr. H.N. Bhalla (PW-3) for dental examination of complainant. Dr. Bhalla (PW-3) examined the complainant and opined that complainant suffered grievous injuries vide Ex.P-1.

(17) The dislocation of tooth is grievous hurt within the meaning of clause seven of Section 320 of the Indian Penal Code. According to the injury report (Exs. P-1 & P-2) given by Dr. H.N. Bhalla (PW-3) & Dr. Azad Bhagat (PW-4), complainant Bhagatram (PW-2) has suffered grievous hurt. Thus, it is proved that complainant Bhagatram (PW-2) has suffered dislocation of tooth, which is grievous hurt within the meaning of clause seven of Section 320 of the Indian Penal Code.

(18) Now, the next question that arises for consideration is whether the appellant caused grievous injuries.

(19) The appellant has caused grievous hurt to the victim, which is apparent from the statement of complainant Bhagatram (PW-2) and Kabutari Bai (PW-1)-wife of complainant Bhagatram, who is eye witness to the incident, and they have also supported the case of the prosecution by clearly stating that it is the appellant/accused, who caused injuries to the complainant and nothing has been elicited in the examination of prosecution witnesses, that such injuries were not caused by the appellant/accused.

(20) Thus, finding recorded by the Special Judge that injuries were caused by the appellant is a finding based on evidence available on record. It is established beyond doubt that grievous hurt was caused by the appellant to complainant within the meaning of Section 320 of the Indian Penal Code. In my considered opinion, the Special Judge has not committed any

illegality in convicting the appellant under Sections 323 & 325 of the Indian Penal Code and I affirm the finding so recorded by the trial Court. Thus, conviction of the appellant under Sections 323 & 325 of the Indian Penal Code is hereby maintained.

Answer to Question No. (ii):-

(21) Now, the question would be whether the learned Special Judge is justified in awarding rigorous imprisonment of six months for offence under Section 325 of the IPC.

(22) Shri Dubey, learned counsel for the appellant submits that appellant remained in jail from 14.11.1997 to 19.11.1997 (six days) during trial samebe held sufficient sentence as the incident is of 25.10.1997 and he has suffered a lot of trauma in prosecuting the case for last 19 years and sentence be reduced accordingly.

(23) On the other hand, learned counsel for the State would submit that sentence awarded to the appellant is just and proper and no interference in sentence is warranted in facts & circumstances of the case.

(24) After hearing learned counsel for the parties, taking into consideration the finding recorded by the trial Court and totality of the facts of the case and sentence prescribed for offence under Section 325 of IPC, I am of the considered view that sentence of six months awarded to the appellant cannot be said to be harsh, or excessive, rather it is just & proper sentence, five days custody cannot be held to be sufficient sentence for offence under Section

325 of the Indian Penal Code.

(25) Recently, the Supreme Court in the matter of **Sukharam Vs. State of Madhya Pradesh**¹ has modified sentence of seven year for offence under Section 325 IPC to three years RI. Relevant paragraphs of the report state as under:-

“11. For conviction under Section 325 IPC, the High Court imposes seven years' rigorous imprisonment. The imposition of sentence is always a matter of discretion of the Court. In imposing the sentence, Judge must consider variety of factors and circumstances and overall view of the situation and impose appropriate sentence. The measure of punishment in a given case must depend upon nature of the offence, the conduct of the accused and unprotected state of victim. The Supreme Court will not interfere with the sentence unless this Court finds that the discretion has been exercised arbitrarily or capriciously or on unsound principles or that the lower court or the High Court has not taken into account any relevant factor in imposing the sentence.

12. In the present case, when the complainant was returning from the flourmill, Raju restrained him and there was a wordy altercation. On hearing the hues and cries, both the complainant party and the accused party gathered and there was a fight and in which the appellant inflicted two lathi-blows on Santu (PW-2). As the occurrence was a sudden fight and in a fit of passion the appellant inflicted injuries on Santu (PW-2). In our view, the sentence of imprisonment of seven years imposed on the appellant is excessive and the same is

¹ 2015 (10) SCC 557

to be reduced.

13. While confirming the conviction under Section 325 IPC, the sentence of imprisonment of seven years imposed on him is reduced to three years and this appeal is partly allowed.”

(26) The learned Special Court has awarded sentence of only six months rigorous imprisonment for offence under Section 325 IPC, which cannot be said to be arbitrary exercise of jurisdiction in awarding sentence following the judgment of Supreme Court in the above referred case **Sukharam** (supra).

(27) Consequently, the judgment of conviction recorded and sentence awarded by learned Special Judge (Atrocities) is hereby affirmed and appeal filed by the accused/appellant is hereby dismissed. Appellant is reported to be on bail. His bail bonds are cancelled. He be taken into custody to serve remainder of the sentence.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-