

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 210 of 2015**

Ganga Ram Chouhan Aged about 46 years, S/o Sobhit Ram, R/o village Jevra,
PS & Tahsil Basna, District Mahasamund, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh, Through SHO Basna, District Mahasamund, Chhattisgarh.
2. Brij Lal, Aged about 24 years, S/o Dasarathi Chouhan.
3. Ling Raj, Aged about 36 years, S/o Dasrathi Chouhan.
4. Dasrathi Chouhan, Aged about 60 years, S/o Durriyodhan Chouhan.

No. 2 to 4 R/o village Jevra, PS & Tahsil Basna, District Mahasamund,
Chhattisgarh.

---- Respondents

For Appellant	:	Shri Ravindra Shrama, Advocate.
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer.
For Respondents 2 to 4:	:	Shri Sunil Sahu, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****17/02/2016**

1. The Appellant assails acquittal of Respondents No. 2 to 4 from the charges under Section 294, 506-B, 307/34 and 324/34 IPC and conviction under Section 323/34 IPC for the period undergone of 37 days simple imprisonment and fine of Rs. 1000/- each, ordered on 27.8.2015 by the Additional Sessions Judge, Saraipali, in Sessions Trial No. 10 of 2014.

2. Learned Counsel for the Appellant submits that injury No. 3 was serious in nature as the front parietal bone had been fractured. Even if it was not dangerous to life, it could not be classified as simple hurt and fell in the category of grievous hurt. Conviction ought to have been ordered under Section 325 or 326 IPC. The Appellant was in coma for 15 days and had to undergo

hospitalization for 37 days. The conviction therefore deserves to be altered appropriately as the punishment is not proportionate to the nature of the assault.

3. Learned Counsel for the Respondents No. 2 to 4 submitted that there existed previous enmity between the parties who were co-villagers. There existed a rivalry between them for quite some time past for the post of Kotwar. What originated only as a verbal duel suddenly escalated into a fight. The sharp edge of the iron Tangi was not used by the Respondents. Had they intended to cause injuries dangerous to life or even cause grievous injuries, nothing prevented them from assaulting with the sharp edge of the Tangi. In the entirety of the matter, considering the relationship between the parties, nature of rivalry, that they were residents of the same village, that they had no intention to kill the Appellant, the Trial Judge has committed no error by convicting them under Section 323/34 IPC and sentenced them for the period undergone.

4. Learned Counsel for the State submitted that the Trial Judge was not satisfied with regard to the nature of injury No. 3 as to whether it was dangerous to life or not. No positive conclusion could be reached either ways from the medical evidence because the Doctor at Mekahara, Raipur was not queried by the police or produced as witness, but that does not take away the fact that the Appellant was assaulted on the head with a Tangi causing fracture. The fact that the sharp edge may not have been used may not attract Section 307 IPC but will certainly attract Section 324 IPC for which the maximum sentence was three years or fine.

5. We have considered the submissions on behalf of the parties and considered the evidence on record also.

6. That the Appellant was assaulted on the head repeatedly with a Tangi has been established. It is equally established that the sharp edge of the Tangi was not used. It reveals that the Respondents No. 2 to 4 never had the intention

either to kill or cause injuries likely to cause death. Whether injury No. 3 was sufficient in the ordinary course of nature to cause death also could not be conclusively determined because of the failure of the prosecution to either query or lead evidence of the Doctor at Mekahara, Raipur where the Appellant was treated. The Doctor at Raipur did not give any clear opinion while the Chief Medical Officer, Mahasamund had opined that the injuries were dangerous to life. In the circumstances, the Trial Judge concluded that he was unable to form a conclusive opinion with regard to the nature of the injury and we find no fault with the same.

7. The only question for consideration is that if the Respondents No. 2 to 4 assaulted the Appellant on the had repeatedly causing fracture of the front parietal bone, obviously it does not classify as simple hurt under Section 323 IPC. Even if there had been no intention to cause death, the offence certainly falls within the ambit of Section 324 IPC for which the maximum punishment was three years. We are satisfied that the conviction for the period of 37 days only was certainly not appropriate in the facts and circumstances of the case once it stood established by evidence that the Respondents were the assailants, that they assaulted with an iron Tangi repeatedly and which caused fracture of the front parietal bone measuring 4cm x 3cm x 0.4cm. Normally, we would have ordered incarceration of the Respondents No. 2 to 4 for at least half of the period mentioned in Section 324 IPC considering their concerted assault on the Appellant repeated in nature on a sensitive part of the human body keeping the aspect of old rivalry between them originating in a verbal duel and suddenly transforming into assault with Tangi.

8. In order to decide whether Respondents No. 2 to 4 need to be incarcerated further after cancelling their bail bonds we had required the State Counsel to obtain information with regard to the capacity of the Central Jail, Raipur and the present number of incarcerated persons. The report dated

15.2.2016 placed on affidavit reveals that against a capacity of 1,110 male prisoners, there are already 2,869 prisoners and against capacity of 80 female prisoners, there are already 192 in custody alongwith 22 children.

9. Keeping all aspects in mind, the rivalry for the post of Kotwar existing since long years as deposed by Hembai (PW-5), that only one injury was caused on the head, the other two being simple in nature, no useful purpose would be served by sending Respondents No. 2 to 4 in incarceration more particularly in view of the report of gross over crowding received from the Jail Superintendent, Raipur.

10. Considering that the Appellant was in coma for 15 days and had to remain hospitalized for 37 days, only fine has been imposed upon Respondents No. 2 to 4 but no compensation awarded to the Appellant, we deem it proper in lieu of further incarceration to award compensation to the Appellant exercising powers under Section 357(4) CrPC by awarding a sum of Rs. 20,000/- payable to the Appellant by the Respondents. The amount shall be paid to them before the Additional Sessions Judge, Saraipali within a maximum period of 30 days. In the event of their failure to do so, Respondents No. 2 to 4 shall be taken into custody and will be required to undergo rigorous imprisonment for a period of 1½ years after adjusting the period of custody already undergone.

11. The appeal stands disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE