

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 685 of 2007

1. Shivcharan S/o Khelawan Sahu, aged about 40 years.
2. Ravindra Kumar S/o Shivcharan Sahu, aged about 25 years,
Both R/o Village Bhagwanpur, P.S. Premnager, Distt. Surguja (C.G.)

---- Appellants

Versus

State Of Chhattisgarh through Police Station Premnagar, District Surguja (CG)

---- Respondent

For Appellant	:	Ms. Laxmin Tondey, Advocate
For State	:	Ms. M. Asha, Panel Lawyer

SB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

25/11/2017

Heard.

1. This appeal is directed against the judgment of conviction and order of sentence dated 26.7.2007 passed by learned 2nd Additional Sessions Judge (FTC) Surajpur, Sarguja (CG) by which the appellant Ravindra Kumar has been convicted under Section 326 IPC and sentenced to undergo RI for 4 years with a fine of Rs.1,000/-, in default of payment of fine RI for 3 months and appellant Shivcharan has been convicted under Section 323 IPC and sentenced to undergo RI for one year.
2. Prosecution case as unfolded from the records of the case and impugned judgment is that on 23.9.2006 at about 10:00 a.m. in the morning, appellants assaulted one Manoj Kumar and caused injury. According to prosecution, appellant Ravindra caused grievous injury whereas appellant Shivcharan caused simple injury.
3. Learned counsel for the appellants argues that in so far as appellant Ravindra is concerned, the injury caused by Ravindra cannot be said to be an injury

grievous in nature, warranting his conviction under Section 326 IPC. According to learned counsel for the appellant, appellant Ravindra caused one single injury with the help of a club. Learned trial Court wrongly held the injury to be grievous even though it was not covered under the definition of 'grievous hurt' as defined under Section 320 IPC and there was no concrete evidence to prove the fact that the hurt endangered life or caused the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits. At the most, even if the entire case of the prosecution is accepted, it would only be a case of commission of offence under Section 323 IPC. It is further submitted that as the incident arose all of a sudden during agricultural activity and no dangerous weapon was used, sentence awarded to appellant Ravindra may be reduced to the period already undergone by him. Appellant Ravindra had undergone 3 ½ months sentence before he was released on bail.

4. As far as appellant Shivcharan is concerned, it is submitted that though learned trial Court has held him guilty for commission of offence under Section 323 IPC, in the circumstances stated above, nature of injury alleged to have been caused by him, his sentence may also be reduced to the period already undergone by him. Appellant Shivcharan had undergone 3 months RI before he was released on bail.
5. Victim Manoj Kumar (PW1) has stated the circumstances in which he sustained injury. According to him, while he was working in the field, he was assaulted by the appellants. According to him, there was scuffle between him and the appellants. He states that appellant Ravindra was holding a club and with the help of that assault was given on his head, temporal part, back, west and thigh. According to him, he also went unconscious for some time. He has accepted suggestion that appellant had also gone to the police station to lodge report but denied suggestion that appellant Shivcharan sustained injury. It has also been elicited in his cross-examination that while appellant Ravindra was ploughing in his agricultural field, his buffaloes trespassed over the agricultural field of victim which led to dispute. His evidence further shows that at the beginning of the quarrel, Shivcharan was not there but he arrived at the spot after some time.
6. Evidence of Raju Prasad (PW2) also shows the same genesis of the dispute as

stated by victim Manoj. According to him, Shivcharan arrived at the spot after some time. According to this witness, both Manoj and Ravindra had entered into altercation with each other. Similar is the evidence of Dinesh (PW3) which shows that the dispute between Manoj and Ravindra arose during ploughing of agricultural field by Manoj and Ravindra. The buffalo belonging to appellant had crossed over and trespassed in the land of the victim giving rise to altercation followed by assault. This witness in his cross-examination has stated that when Ravindra gave a blow to Manoj by club, Manoj had fainted but had regained consciousness at the spot itself and he supported him to reach his home.

7. Pawan (PW4) had admitted that there was no previous enmity between the appellants.
8. Dr. S.K. Gupta (PW 7) has stated regarding injury. According to him, when Manoj was brought for medical examination, he complained of pain on left part of his head. There was no external injury but Manoj was seen in semi-conscious stage and had also vomited. After primary treatment, he was advised to go to district hospital. In respect of aforesaid injury, doctor has further stated that the injury on the head could be dangerous to life. All other injuries are simple in nature. This witness has stated that if the injury would not have been treated in time, it could lead to death but in his cross-examination he has admitted that the opinion that in the absence of treatment, hurt was likely to endanger life is based only on the fact that it was on the head. Therefore, from the evidence of the doctor, what is seen is that only because injury was given on the head of victim, the doctor gave an opinion that it could endanger life whereas there was no external injury nor any internal injury causing damages to internal part of the head nor any fracture. What treatment was given to Manoj has also not been elicited.
9. In order to hold a hurt to be 'grievous', it has to be proved from cogent evidence that hurt is of such a nature which endangered life. Merely because the injury was on the head, that by itself, without anything more, could not be said to be a hurt of category which could endanger life.
10. In order to constitute a hurt to be grievous one, as defined under Section 320

IPC, it is required to be covered under any of the eight clauses. The word “endangers life”, as stated in clause-*eight* thereof requires a well considered medical opinion and not mere apprehension. As is seen from the evidence of doctor (PW7), there was pain in the left part of head of the victim Manoj (PW1) and he looked semi-unconscious and also vomited. Based on this apparent condition, Doctor seems to have formed opinion of it being a grievous hurt. This opinion is not supported by any specific medical examination of the internal parts of the head. Therefore, except that there was a superficial injury caused damage by a single assault which was neither incised nor resulted in fracture of bones nor there being any other medical evidence that it caused damage to any part of brain, it is difficult to uphold the finding that it is a case of grievous hurt as defined under Section 320 IPC.

11. Therefore, this Court is of the considered opinion that the prosecution has not come out with cogent medical evidence to hold that the victim Manoj sustained any grievous hurt. It is pertinent to mention here that after primary treatment, Manoj was discharged and no further serious injury was noted.
12. The dispute between the appellants and victim took place all of sudden while working in their respective agricultural field. It is not a case where any sharp edged weapon or any other dangerous weapon was used. While working in the field, it is common knowledge, the agriculturists keep club with them and in the circumstances of the present case, there was a quarrel between Manoj and Ravindra and appellant Ravindra is alleged to have given a single blow on the head without any further repetition on the vital part.
13. In the result, the conviction of the appellant Ravindra under Section 326 IPC is found unsustainable in law but on the basis of oral and medical evidence appellant, at the most, appellant Ravindra can be held guilty of commission of offence under Section 323 IPC.
14. Appellant –Shivcharan has undergone RI for 3 months and appellant Ravindra has undergone 3 & ½ months RI. There is nothing to show that victim remained admitted in the hospital. Therefore, taking into consideration the totality of the circumstances, the conviction of **appellant- Ravindra** is altered to that under Section 323 IPC and sentenced for the period already undergone

by him. Conviction of **appellant- Shivcharan** under Section 323 IPC is maintained but sentence is reduced to the period already undergone by him.

15. Accordingly, the appeal of the two appellants is partly allowed in the manner and to the extent held as above. The bail bonds stand discharged.

Sd/-
(Manindra Mohan Shrivastava)
Judge