

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1785 of 2000**

1. Setram Sahu, S/o. Sahasram Sahu, aged about 48 years,
2. Mahavir Prasad, S/o. Sahasram Sahu, aged about 21 years,
3. Khirod Kumar, S/o. Sahasram Sahu, aged about 26 years,
4. Ishwar Prasad, S/o. Saharam Sahu, aged about 22 years,
All R/o. Mahalpara, Tahsil Saraipali, Distt. Mahasamund.

---- Appellants**Versus**

State of Madhya Pradesh, Through Police Station Saraipali Distt.
Mahasamund

---- Respondent

For the appellant : Shri Bhaskar Payashi, Advocate
For the respondent/State : Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****13.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 29.6.2000 passed by First Additional Sessions Judge, Mahasamund (CG) in Sessions Trial No.363/1999, wherein the said Court convicted the appellants for commission of offence under Section 324 read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for two years each and also convicted them for commission of offence under Section 323 read with Section 34 of the IPC and sentenced them to undergo RI one year each.
2. In the present case, Gajanand Gupta and Shiv Kumar Gupta are victims. To substantiate the charges, prosecution has

examined as many as ten witnesses. Vipin Tripathi (PW-1), Sohanlal (PW-2), Shiv Kumar Gupta (PW-3), Gajanand Gupta (PW-4) and Ajay Kumar Gupta (PW-5) are the witnesses of the incident. All these witnesses have stated in one voice regarding presence of the appellants on the spot. As per the version of these witnesses, the appellants gathered at the spot and one of them assaulted Shiv Kumar Gupta by axe and others also assaulted Gajanand Gupta by club. These witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence to rebut the version stated by these witnesses.

3. Version of all the eye witnesses are supported by version of Dr. AK Sahu (PW-8) who examined Gajanand Gupta and noticed the following injuries.

- (1) Lacerated wound on left side of head on parietal region of 3 x ½ x 1" with clotted blood
- (2) Pain with swelling on the left arm on lateral side with few scratches of 2 x 1/2"
- (3) A scratch on the left lumbar region on abdomen
- (4) A scratch on the right knee

4. The doctor examined Shiv Kumar Gupta also and found following injuries:

- (1) Swelling with pain on the upper 1/3 of right forearm of 2 ½ x 2"
- (2) Lacerated wound on left side of head of 1 x 1/2"

- (3) incised wound on left side of head on parietal region of 2 x 1 with clotted blood on part and all over head
- (4) Pain on both the legs.

The doctor opined that the injuries caused to Shiv Kumar is possible by axe and injuries caused to Gajanand Gupta is caused by some hard and blunt object. Upon X-ray no fracture was found and the expert has not opined that the injuries were dangerous.

5. The defence side also examined Jagnath Yadav (DW-1) as defence witness, but he has no explanation regarding the injuries found on the body of Gajanand Gupta and Shiv Kumar Gupta.

6. On overall assessment of the evidence, the trial Court opined that it is a case for causing injury to Shiv Kumar Gupta with help of some sharp object and the case does not fall into any of the exception of the Code 1860, therefore, it is a case of voluntarily causing hurt to Shiv Kumar Gupta by sharp edged weapon which is mischief under Section 324 of the IPC and injuries caused to Gajanand by hard and blunt object falls under Section 323 read with Section 34 of the IPC. Finding arrived at by the trial Court is based on relevant material adduced by the prosecution and there is nothing to say that the same is based on extraneous facts. In view of this finding, conviction of the appellants is not liable to be interfered and the same is hereby affirmed.

7. Heard on the point of sentence.

The appellants suffered jail sentence from 16.4.99 to 05.10.99 or 09.10.99 i.e. more than five months. Looking to the facts and circumstances of the case, the appellants are sentenced to the period already undergone by them

8. With the above modifications, the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)

JUDGE