

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 26-10-2018****Delivered on 12-11-2018****CRIMINAL APPEAL No. 693/2001**

(Arising out of judgment of conviction and order of sentence dated 18-7-2001 passed by the Special Judge, Durg in Special Case No. 123/2000)

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Brijlal, aged about 65 years, S/o. Shri Vishal Dhimar, Agriculturist, R/o. Village Hirukhopri, Thana Rincharai, Distt. Durg (CG) ----**Appellant**

-Versus-

State of Chhattisgarh, through Station House Officer, PS Ranchirai, Distt. Durg (CG) ----**Respondent**

For appellant : Shri Vikas Shrivastava, Adv.
For State : Shri Ashok Kumar Swarnkar, PL.

Hon'ble Shri Sharad Kumar Gupta, Judge
CAV JUDGMENT

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 18-7-2001 passed by the Special Judge, Durg in Special Case No. 123/2000 whereby and whereunder he convicted the appellant for offence punishable under Section 324 of the Indian Penal Code (in brevity 'IPC') and sentenced to undergo RI for 2 years and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo RI for 3 months.

2. In brief, case of the prosecution is that complainant Guharam was a resident of village Hirukhapri. On 30-3-1999 he was getting clean his courtyard through Netram God. At that time appellant and co-accused Dayaram reached there. They abused him, co-accused Dayaram beat him by hands and fists. Appellant caused injuries on his head by an axe and a club. On very day said complainant lodged FIR in

police Station Ranchirai. After completing the investigation a charge sheet was filed against them. Trial Court framed charges against them under Section 294/34, 307/34 of the IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act'). After conclusion of the trial, Trial Court acquitted appellant and co-accused Dayaram of the charges punishable under Section 294/34, IPC, Section 3(2)(v) of the SCST Act, co-accused of the charge punishable under Section 307/34, IPC, however, convicted appellant for offence punishable under section 324, IPC instead of Section 307, IPC.

3. Shri Vikas Shrivastava, counsel for the appellant strenuously argued that trial Court has not appreciated the evidence in its proper perspective. Thus, aforesaid conviction and sentence are bad in the eyes of law and not sustainable. Thus, aforesaid conviction and sentence may be set aside and the appellant may be acquitted of the aforesaid charge.

4. Shri Ashok Swarnkar, Panel Lawyer for the State submitted that aforesaid conviction and sentence are based on clinching evidence led by the prosecution. He supported the aforesaid conviction and sentence and submitted that no interference is called for by this Court.

5. As per the MLC report Ex. P-6, P.W. 6 Dr. R.K. Dewangan had examined said complainant and found one incised wound size 10 cm x 1 cm x bone deep on upper side of the skull, one another incised wound 1 cm x ½ cm x skin deep on the back of neck. He opined that both the injuries were caused by hard and sharp object.

6. There is no such evidence on record on strength of which it can be said that Ex. P-6 is not natural, not normal, not simple. Thus this

court believes on Ex. P-6.

7. P.W. 1 Guha Singh Sori and P.W. 3 Netram say in para 2 of their statements given on oath that appellant had caused injuries on head of P.W. 1 Guha Singh by axe.

8. FIR Ex. P-1 was lodged promptly without delay. In Ex. P-1 it has been clearly mentioned that appellant had caused injuries on the head of the said complainant by axe.

9. There is no such evidence on record on the basis of which it can be said that lodging of Ex. P-1 was an afterthought to falsely implicate the appellant.

10. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Guha Singh Sori and P.W. 3 Netram are not natural, not normal, not simple.

11. Looking to the above mentioned facts and circumstances of the case, this Court believes on the aforesaid statements of P.W. 1 Guha Singh Sori and P.W. 3 Netram.

12. Looking to the above mentioned facts and circumstances of the case this Court finds that prosecution has succeeded to prove the charge punishable under Section 324 of the IPC against the appellant. Thus, the impugned conviction under Section 324, IPC is affirmed.

13. At the time of the incident, no minimum imprisonment was provided for the offence punishable under Section 324, IPC. The appellant has remained in jail from 31-3-1999 to 12-4-1999 and 18-7-2001 to 14-8-2001 i.e. total 40 days. About 19 years have passed after the incident. At the time of incident, he was aged about 64 years, now he is about 83. Now he is in mainstream of society. Sending him to jail would disturb him as well as his family members' life. Hence, no useful

purpose would be served if he is sent to jail after 19 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if RI of 2 years is reduced to the sentence for the period already undergone by him and fine amount may be suitably enhanced.

14. Consequently, the appeal is partly allowed. The sentence of the appellant of RI for 2 years is reduced to the period already undergone by him and fine of Rs. 500/- awarded by the trial Court is enhanced to Rs. 15,000/-(Rupees fifteen thousands only), in default of payment of fine, to undergo RI for six months.

15. The appellant is granted two months' time from the date of this order for depositing the fine amount. The amount deposited earlier by him shall be adjusted in the fine amount awarded by this Court.

16. Out of the fine amount of Rs. 15,000/-, if deposited, Rs. 10,000/- be given to the complainant as compensation after expiry of the prescribed period for further remedy available to parties.

17. The appellant is reported to be on bail. His bail bond stands canceled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge