

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1256 of 2002****Judgment Reserved on 07.08.2018****Judgment Delivered on 12 .10 .2018**

- Gazan Singh, S/o Ram Singh, aged about 31 years,
- Jai Singh, S/o Ram Singh, aged about 31 years,

Both R/o Camp, Shanti Para, P.S. Chnaoni, District Durg,
Chhattisgarh Previous residence Kurud, Bhathapara, P.S. Jamul,
District Durg, C.G.

----Appellants**Versus**

- The State Of Madhya Pradesh (Now C.G.)

---- Respondent

For Appellants : Shri Uttam Pandey, Advocate.
For State/Respondent : Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Gautam Chourdiya**C A V Judgment**

1. This appeal arises out of the judgment of conviction and order of sentence dated 18.11.2002 passed by learned 6th Additional Sessions Judge, Durg, Chattisgarh in Sessions Trial No. 50/2002, whereby, the appellants stand convicted and sentenced as under:-

Conviction	Sentence
<u>Appellant- Gazan Singh</u>	
Under Section 323 of Indian Penal Code	R.I. for 6 months with fine of Rs.500/-, in default additional

Under Section 325 IPC	R.I. for 1 month. R.I. for 2 ½ years with fine of Rs.1000/-, in default additional R.I. for six months.
<u>Appellant- Jai Singh</u>	
Under Section 323/34 of IPC	R.I. for 6 months with fine of Rs.500/-, in default additional R.I. for 1 month.
Under Section 325/34	R.I. for 2 ½ years with fine of Rs.1000/-, in default additional R.I. for six months.

2. Prosecution case in brief is that FIR Ex.P-2 was lodged by Ishwari Devi Yadav wife of Keju on 6th October, 2001 at 9:45 am. As the per the FIR, accused Gazan Singh molested Ishwari Devi Yadav on 5th October, 2001 at about 5:30 PM, when Ishwari Devi Yadav was returning from her duty towards her abode. Thereafter, she informed her mother about the incident and next morning i.e. 6th October, 2001 the brother of Ishwari Devi Yadav, Bajrang Kumar Yadav reached the home of accused Gazan Singh and asked why he molested his sister. At that time the accused Gazan Singh and his brother Jai Singh used filthy language against him and assaulted Bajrang Yadav by club. When Gazan Singh and Jai Singh were assaulting Bajrang then Bajrang's brother Devendra Kumar came and intercepted them. Then, accused Gazan Singh and Jai Singh both again started

assaulting them. At the instance of Ishwari Devi Yadav, FIR Ex.P-2 was recorded. Bajrang Kumar and Devendra Kumar were sent for medical examination. As per Ex.P-11 Bajrang Kumar and as per Ex.P-12 Devendra were examined by Dr. P. Balkishor PW-14, wherein, he found injuries on the body of the victims:-

Bajrang Kumar-

1. Contusion over the left shoulder and Deltoid region multiple overlaps each other extends upto size of 9cm x 3 cm with red colour.
2. Contusion right leg above knee joint size of 10cm x 3cm redish colour.
3. Multiple abrasion over the back scattered lines multiple with one irregular abrasion with contusion size of 6cm x 3cm redish colour.
4. Multiple contusion over back and thigh size of 7cm x 3cm each.
5. Lacerated wound over the scalp on left parietal region size of 5cm x $\frac{1}{2}$ cm x $\frac{3}{4}$ and occipital region 5 cm x $\frac{1}{2}$ x $\frac{3}{4}$ cm each.

The above stated injuries are simple injuries caused by hard and blunt object within 12 hours.

Devendra Kumar

1. Multiple contusion over the back scattered all over size of 15cm x 6cm and others overlapped each other.
2. Multiple abrasion lines over the right hand back also having variable size.
3. Lacerated wound over the scalp size of 3cm x $\frac{1}{2}$ x $\frac{1}{2}$ cm bleeding right parietal and occipital region 3cm x $\frac{1}{2}$ x $\frac{1}{2}$ cm.
4. Swelling and deformity present in the right leg.

1, 2 & 3 are all simple injuries except 4 caused by hand and blunt object within 12 hours.

As per X-ray report of Devendra Kumar i.e. Ex.P-13 fracture of Shaft middle 1/3 Radius right forearm and

shaft upper 1/3 Tibia right leg was found. During investigation, Ex.P-8 spot map was prepared by ASI.

6. After completion of investigation charge sheet was filed against the accused under Sections 294, 506B, 324, 34, 354, 307, & 325 of IPC. However, while framing charge the trial Court framed charges against the accused persons under Sections 294, 354, 506 B, 324 in the alternative 324/34, 307 in the alternative 307/34 of IPC.
7. So as to hold the accused persons guilty, the prosecution examined 14 witnesses. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, no witness has been examined.
8. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Ram Singh convicted and sentenced the appellants as mentioned in para-1 of this judgment, hence this appeal.
9. Learned counsel for the appellants submits that learned trial Court has failed to appreciate the prosecution evidence, charges under Sections 354 & 506B were not made against the accused/Gazan Singh whereas cause of dispute was the molestation of Ishwari Devi Yadav by accused Gazan Singh. Prosecution has failed to prove the origin of disputes

between the parties and therefore, the entire prosecution case becomes doubtful and it is clear that the accused/appellants have been falsely implicated in this case. No independent eye witness as mentioned in FIR has been examined. Only the family members and relatives of the victim were examined. In these circumstances, the prosecution evidence needs to be examined with great care and caution but learned trial Court wrongly appreciated the evidence adduced by the prosecution and held the appellants guilty. Learned trial Court judgment is bad in law, erroneous and deserves to be set aside.

10. Opposing the submission of counsel for the appellants, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in accordance with law and as such there is no illegality or infirmity in it warranting interference by this Court.
11. Heard counsel for the respective parties and perused the material on record.
12. This case is based only on the statements of witnesses PW-2 Devendra Kumar, PW-3 Bajrang Kumar, PW-13 Dr. A.K. Sahu, PW-14 Dr. P. Balkishor, and I.O. of this case PW-12 B.S. Sharma and victim PW-6 Ishwari Devi Yadav.
13. PW-2 Devendra Kumar has stated in his deposition that

when he came back from his duty his mother informed him that accused Gazan Singh molested his sister Ishwari Yadav. On this information, next day when he was going to perform his duty on the way he went to the home of Gazan Singh and asked him why he molested his sister. On this, quarrel took place between them, thereafter accused Gazan Singh started assaulting Devendra by hands. When Devendra Kumar was trying to protect him then Gazan Singh started assaulting him by club. At that time, his brother Bajrang came and tried to intercept accused Gazan Singh, then Gazan's brother Jai Singh came and both started assaulting Devendra Kumar and Bajrang by hands and club. PW-3 Bajrang Kumar also narrated the same thing and they state that in this incident they got injured and suffered fracture also.

14. As per medical report proved by Dr. P. Balkishor PW-14, wherein, he found multiple injuries on the body of the Bajrang Kumar PW-3 and proved Ex.P-11 and the injuries caused on the body of the Devendra Kumar was proved as per Ex.P-12 and there is no cross-examination regarding the injury caused to the Devendra Kumar and Bajrang Kumar.
15. PW-13 Dr. A.K. Sahu proved the X-ray report of Devendra Kumar and PW-14 Dr. P. Balkishor also proved the multiple injuries on the body of the Devendra Kumar and Bajrang Kumar.

16. PW-6 Ishwari Yadav also proved this fact that both accused/appellants assaulted her brothers i.e. Bajrang Kumar and Devendra Kumar and thereafter she lodged FIR against Gazan Singh and Jai Singh.
17. There is no reason to disbelieve the statements of Devendra Kumar, Bajrang Kumar and Ishwari Devi Yadav and medical reports also confirmed this fact that Devendra Kumar and Bajrang Kumar both were assaulted & beaten by accused/appellants.
18. Counsel for the appellants argued that in this matter there is no molestation by accused Gazan Singh to Ishwari Bai Yadav and it is also not proved before the trial Court, therefore, Gazan Singh was acquitted from the offence under Section 354 of IPC. Definitely it is true but in his examination under Section 313 Cr.PC Gazan Singh in reply to question No.9 admits that when Devendra Kumar was going to perform his duty on the mid way he went to the home of Gazan Singh and asked him why he was molesting his sister then on that discussion, Gazan Singh started assaulting Devendra Kumar and he admits this fact about the incident.

Though, the appellant Gazan Singh has been acquitted of the charge under Section 354 of IPC as the prosecution failed to substantiate the said charge beyond reasonable doubt but merely on that ground the statements

of prosecution witnesses PW-2 Devendra Kumar, PW-3 Bajrang Kumar and PW-6 Ishwari Devi Yadav cannot be disbelieved. Further, as per admission of Gazan Singh in his statement under Section 313 of Cr.P.C in reply to question No.9, it is evident that cause of dispute between the parties was alleged molestation by appellant Gazan Singh to sister of PW-2 Devendra Kumar.

19. After appreciating the evidence on record with care and caution and keeping in view the injuries found on the persons of Bajrang Kumar and Devendra Kumar, it stands proved that both the accused/appellants Gazan Singh and Jai Singh assaulted them by hands and club and caused injuries to them.

20. No other defence was proved by the accused/appellants. Definitely in the statements of Ex.D-1 of Devendra Kumar, Ex.D-2 of Bajrang and Ex.D-4 of Ishwari Bai Yadav there are some contradictions and omissions but that contradictions and omissions are not major. As per the medical report and statements of the eye witnesses, it is clearly proved that both accused/appellants i.e. Gazan Singh and Jai Singh assaulted both Devendra Kumar and Bajrang Kumar and caused injuries to them as mentioned in their medical reports.

21. After careful examination and analysis of the evidences available on record, it is clearly proved that accused/appellant Gazan committed offence punishable

under Section 323 & 325 of IPC and accused/appellant Jai Singh also participated in commission of the said offence with common intention and as such, his conviction under Section 323/34 & 325/34 of IPC is also in accordance with law.

22. As regards the sentence, considering the facts and circumstances of the case giving rise to the incident, in particular the fact that the incident occurred as long as 17 years ago, there is no minimum sentence prescribed under Sections 323 and 325 of IPC, the age of the appellants, the fact that this is their first offence, appellant No.2 has remained in jail for from 7.10.2001 to 11.12.2001 whereas, the appellant No.1 has been in jail from 1.10.2001 to 18.11.2002 and from the record, it appears that even after grant of bail by this Court on 11.12.2002, he could not be released on bail due to non-furnishing of bail bonds, this Court is of the opinion that the ends of justice would be served if they are sentenced to the period already undergone by them under the aforesaid sections by enhancing the fine amount under Section 323 & 325 of IPC.

23. In the result, the appeal is allowed in part. While maintaining conviction of the appellants under Sections 323, 323/34, 325, 325/34 of IPC, they are sentenced to period already undergone by them. However, the fine amount imposed by the trial Court under Section 323 & 323/34 of

IPC i.e. of Rs.500/- is enhanced to Rs.1000/- and the fine under Section 325 & 325/34 of IPC of Rs.1000/- imposed by the trial Court is enhanced to Rs.10,000/-. In the event of default in payment of fine amounts, the appellants shall have to suffer additional RI for two months and six months respectively. The amount deposited by the appellants under Sections 323 & 323/34 of IPC shall be disbursed to victim Bajrang PW-3 and the amount deposited under Sections 325 & 325/34 shall be disbursed to Devendra Kumar (PW-2) as compensation under Section 357 of Cr.P.C by the trial Court after due verification.

Sd/-
Gautam Chourdiya
Judge

Akhilesh