

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 563 of 2001

1. Faguram Sahu, aged about 30 years, S/o Samayram Sahu, R/o Gendpur, PS, S. Lohara, District Kawardha (CG)
2. Tekram Sahu, aged about 29 years, S/o Samaylal Sahu, R/o Gendpur P.S. S. Lohara, District Kawardha
3. Ramnath Sahu, Aged about 30 years, S/o Kolhu Sahu, R/o Kaylari, P.S.Pipariya, District Kawardha (CG)

---- Appellant

Versus

The State Of Chhattisgarh Through Police Station Sahaspur
Lohara, District Rajnandgaon (CG)

---- Respondent

For Appellant : Ms. Aparajita Gaikwad, Advocate

For State/ Respondent : Shri Bhaskar Payashi, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA

JUDGMENT ON BOARD

04/05/2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 28th June, 2001, passed by the Additional Sessions Judge, Khairagarh, Sessions Division Rajnandgaon(CG) in ST No.39/2000, wherein the said Court has convicted appellant No.1 under Sections 324 IPC and sentenced him to undergo R.I. for 2 years and fine of Rs.500/-, Appellant Nos. 2 and 3 under Section 324 r/w Section 34 IPC and sentenced them to undergo R.I. for 1 year and fine of Rs.200/- and all the three appellants under Section

325 or 325 r/w Section 34 of the IPC and sentenced to undergo R.I. for 3 years and fine of Rs.500/- respectively with default stipulations.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. In the present case, name of the victim is Pramod Kumar (PW6). As per version of the prosecution, he was going towards village Gendpur on Bicycle where all the 3 appellants wrongfully restrained him saying that he had involved them in false criminal cases, thereafter, appellant Faguram assaulted him by axe and other appellants assaulted him by clubs. The matter was reported and after investigation the appellants were charge sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellants as aforementioned.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellants submits that independent witnesses have not supported the case of the prosecution and weapon of offense has not been seized. Again, the version of prosecution witnesses are full of contradictions and improvements and no reliance can be placed on the said evidence. Necessary ingredients of the offence are not established and the matter is

reported with delay but no explanation is offered for delay in lodging the report. Medical evidence is not conclusive as the medical expert is unable to state the time of injuries received by the victim.

6. On the other hand, learned counsel for the State supporting the judgment submits that the Court below has rightly convicted and sentenced the accused/appellants and the conviction is not liable to be interfered with.

7. To substantiate the charge prosecution has examined as many as 11 witnesses. To nullify the charge, defence has examined 2 witnesses.

8. Pramod Kumar (PW6) is victim of the incident. As per his version, he was going to village Khamhariya and when he reached near a Bridge, all the 3 appellants restrained him, there some altercation took place between them and thereafter appellant Faguram assaulted him with axe and Takram assaulted him with club. He further deposed that appellant Ramnath caught him and he also assaulted him with club. Version of Pramod Kumar (PW6) is supported by the version of Kunjlal (PW3) and Balla @ Rajendra (PW8). All the witnesses have been subjected to searching cross-examination but, nothing could be elicited in favour of the defence. Version of these witnesses is again supported by F.I.R. Ex. P/12 in which, names of all the 3 appellants are mentioned as culprits. Oral and documentary evidence is again supported by the version of medical evidence of Dr. Vineet Shrivastava (PW5), who examined

the victim Pramod Kumar on 29.11.1999 at 3.15 pm and noticed following injuries on the body of the victim:

- (i) Swelling contusion of 2 x 1" on left hand,
- (ii) Abrasion of 1 x 1" on right elbow joint,
- (iii) Contusion of 3 x 1" over ankle of left feet.
- (iv) Incised wound of 1 ½ x ½" on left parietal one and
- (v) Incised wound of 1" long on left ear.

As per version of this witness, injury on left hand was grievous as fracture was found on the same part and rest of the injuries were simple in nature.

9. Now, the point for consideration is whether the appellants have assaulted the victim voluntarily.

10. From the entire evidence on record, the act of the appellants does not fall in any of the exceptions mentioned between Sections 76 to 106 IPC. All the appellants were having knowledge of the consequence of assaulting anyone and that the injuries caused by them will cause pain and defects on the body of the victim, therefore, the act of the appellants falls under Section 325 of IPC which is voluntarily causing grievous hurt and the offence under Section 324 IPC is for voluntarily causing simple hurt by sharp or deadly weapon for which the appellants have already been

convicted and sentenced by the trial Court and the same is hereby affirmed.

11. Heard on the point of sentence:

12. From the record it appears that the appellants have already suffered the jail term of 36 days during trial and after conviction for 16 days. The case is pending for last about 17-18 years and the appellants remained in custody for 52 days.

13. Considering all the facts and circumstances of the case, I am of the view that the ends of justice would be served if the sentence imposed on the appellants by the trial Court is reduced to the period already undergone by them while maintaining the conviction under Sections 325 and 324 of IPC and the fine amount.

14. Consequently, the appeal is allowed in part. The appellants are convicted under Sections 325 and 324 IPC and sentenced to the period already undergone by them. The fine amount shall remain intact. The appellants are reported to be on bail. Their bail bonds shall continue for a period of six months in view of Section 437-A Cr.P.C.

15. With these modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)
JUDGE

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