

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.5 of 2009

1. Girdhari Sahu, s/o Kriparam Sahu, aged about 21 years,
 2. Girvar Sahu, s/o Kriparam Sahu, aged about 22 years,
 3. Krishna Sahu, s/o Ramdayal Sahu, aged about 19 years,
- All r/o Village Mujgahan, Police Station Arjuni, District Dhamtari, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through the District Magistrate, District Dhamtari, Chhattisgarh

--- Respondent

For Applicants	:	Shri Shivendu Pandya, Advocate
For Respondent	:	Shri Anil Pandey, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

17.9.2018

1. The instant revision is directed against the judgment dated 27.12.2008 passed by the Additional Sessions Judge (FTC), Dhamtari in Criminal Appeal No.29 of 2008 arising out of the judgment dated 14.7.2008 passed by the Judicial Magistrate First Class, Dhamtari in Criminal Case No.104 of 2008 convicting and sentencing each of the Applicants/accused as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 326 of the Indian Penal Code	Rigorous imprisonment for 2 years and fine of Rs.1,000/- with default stipulation

2. Case of the prosecution, in brief, is that on 15.3.2006, a dispute took place between Vishnu Gond and son of Gopal Tiwari. When

Complainant Vichitra Veer alias Munna (PW1) tried to intervene, allegedly, all the Applicants/accused abused him and assaulted him with lathi and rod. The Complainant sustained grievous injuries. First Information Report (Ex.P1) was lodged by the Complainant. He was medically examined by Dr. R.H. Mishra (PW11) on 15.3.2006. His report is Ex.P12 in which he found total 6 injuries. Injuries No.2 and 5 were serious in nature and other injuries were simple in nature. During investigation, one danda was seized from Applicant Krishna Sahu vide Ex.P3. One iron rod was seized from Applicant Girvar Sahu vide Ex.P4. One more iron rod was seized from Applicant Girdhari Sahu vide Ex.P5. The seized articles were also examined by Dr. R.H. Mishra (PW11). His reports are Ex.P14 and P15 in which he opined that the injuries suffered by the Complainant could be caused by the said rods and danda. He also opined that injuries No.1 and 2, which were present on the head, could be dangerous to life. On completion of the investigation, a charge-sheet was filed against the Applicants/accused for offence punishable under Sections 326, 294, 506B, 323, 34 of the Indian Penal Code.

3. The Trial Court framed charges against the Applicants/accused under Sections 294, 326/34 and 506 Part II of the IPC. After trial, the Trial Court acquitted the Applicants of the charges under Sections 294 and 506 Part II of the IPC, but convicted and sentenced them under Section 326 of the IPC, which has been affirmed by the Appellate Court vide judgment dated 27.12.2008.
4. Learned Counsel appearing for the Applicants/accused submits that though Complainant Vichitra Veer alias Munna (PW1)

sustained 6 injuries on his body, only injuries No.2 and 5 were found to be of serious nature. Allegedly, he was assaulted with rods and danda, which do not fall within the category of deadly weapons. Therefore, no offence under Section 326 of the IPC is made out. He further submits that even if the evidence available on record is taken as it is, the act committed by the Applicants falls within the purview of Section 325 of the IPC only. He further submits that all the Applicants have already undergone about 15 days and they are facing the *lis* since the year 2006 and if their conviction is affirmed, they may be sentenced with the period already undergone by them.

5. Learned Counsel appearing for the State/Respondent opposes the submission made by Learned Counsel for the Applicants/accused and supports the impugned judgment of conviction and sentence. He further submits that 2 injuries were found on the head and as opined by Dr. R.H. Mishra (PW11), both the injuries of the head could be dangerous to life of the injured/Complainant. Therefore, both the Courts below have rightly convicted the Applicants under Section 326 of the IPC.
6. I have heard Learned Counsel appearing for the parties and perused the record with due care.
7. In support of its case, the prosecution has examined total 11 witnesses. Out of them, Vichitra Veer alias Munna (PW1) is the Complainant/injured, who, in his Court statement, has categorically stated that at the time of incident, some children were quarreling with each other. When he tried to intervene, he was assaulted by all the Applicants/accused. As stated by him, Applicant Girvar

Sahu assaulted him with fist and other Applicants assaulted him with iron rods. He denied the fact that he had any previous enmity with the Applicants. His statement is duly corroborated by his wife Shantabai (PW2) and his daughter Laxmibai (PW4). They have remained firm during their cross-examination.

8. Dr. R.H. Mishra (PW11) has stated that he examined Complainant/injured Vichitra Veer alias Munna (PW1) and gave his report (Ex.P12). As reported by him, he found total 6 injuries on the body of the Complainant. Injuries No.2 and 5 were only found to be grievous in nature. As opined by him, all the injuries were caused by hard and blunt object. He also advised for x-ray examination of said injuries No.2 and 5. On x-ray examination of injury No.5, it was found to be grievous in nature. It was found that the 10th rib of right side had been fractured. Though this witness has opined that injury No.2 was also grievous in nature, on what basis he opined so is not clear. As stated by this witness, in the x-ray examination of injury No.2, it was found that density of the injury in the right parietal region was enhanced to some extent.
9. Grievous hurt is defined in Section 320 of the Indian Penal Code as under:

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

First.— Emasculation.

Secondly.— Permanent privation of the sight of either eye.

Thirdly.— Permanent privation of the hearing of either ear.

Fourthly.— Privation of any member or joint.

Fifthly.— Destruction or permanent impairing of the powers of any member or joint.

Sixthly.— Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.— Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

10. Injury No.2 sustained by the Complainant does not fall within the definition of grievous hurt as given in Section 320 of the IPC. Thus, it is clear that only injury No.5 was grievous in nature and all other injuries were simple in nature.
11. Allegedly, the Complainant was assaulted by the Applicants with iron rods. From the medical evidence, it is clear that only injury No.5 was grievous in nature as a result of which, 10th rib of right side had been fractured. Though 2 injuries were found on the parietal region of the head, they were found to be simple in nature. In these circumstances, those 2 injuries were dangerous to life cannot be considered. Under these circumstances, iron rods with which the injuries were caused cannot be treated as deadly weapons. Therefore, in my considered opinion, offence under Section 326 of the IPC is not made out. Instead, offence under Section 325/34 of the IPC is made out against the Applicants/accused. Hence, the offence is altered from Section 326 of the IPC to Section 325/34 of the IPC and the Applicants are accordingly convicted under Section 325/34 of the IPC.
12. So far as sentence part is concerned, the Applicants have already undergone 15 days. They are facing the */is* since the year 2006.

In my considered opinion, it would be in the interest of justice to sentence the Applicants for the conviction under Section 325/34 of the IPC with the period already undergone by them and with fine of Rs.30,000/- payable by each of the Applicants within a period of 2 months from the date of receipt of this order. Ordered accordingly. In default of payment of the fine, the Applicants shall be liable to undergo rigorous imprisonment for 6 months. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine imposed today.

13. Consequently, the revision is allowed in part to the extent indicated above.
14. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE