

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 8 of 2013**

Vishnu @ Dema S/o Akalu, aged about 40 years R/o Village- Semrakathra,
Police Station- Rajpur, District- Balrampur- Ramanujganj (C.G.).

----Applicant**Versus**

State of Chhattisgarh through the Station House Officer, Police Station- Rajpur,
District- Balrampur-Ramanujganj (C.G.).

---- Respondent

For Applicant	:	Mr. D.N. Prajapati, Advocate
For Respondent	:	Mr. U.K.S. Chandel, PL

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****02/07/2018**

1. This revision has been preferred under Section 397 & 401 of the Code of the Code of Criminal Procedure against the judgment dated 21/12/2012 passed by the Additional Sessions Judge, Ramanujganj in Criminal Appeal No. 22/2012 arising out of judgment of conviction dated 23/01/2012 passed by the Judicial Magistrate First Class, Abmikapur in Criminal Case No. 155/2009 convicting the applicant under Section 326 of IPC and sentenced to undergo RI for 3 years and to pay fine of Rs. 500/- with default stipulation.
2. Case of the prosecution, in brief, is that on 10/07/2011, complainant- Mahaan, Sunil and Madheen were going to Hardidohar for playing Karma. When they reached near Ghutrapara, it is alleged that they were assaulted by the present applicant with Axe, due to which Mahaan sustained cut injury on his back side of soldier. FIR was lodged vide

Ex.P-1. Crime under Section 326 of IPC was registered. Injured-Mahaan was medically examined by Dr. Preetam Ram (PW4) who gave his report Ex.P-4. On medical examination, he found one cut injury sized 7X1 c.m., muscle deep on scapular region and opined that the injury was caused by hard and sharp object which was of grievous nature. Statement of witnesses under Section 161 Cr.P.C were recorded. After investigation, a charge-sheet under Section 326 of IPC was filed. After trial, the learned JMFC vide judgment dated 23/01/2012, has convicted and sentenced the applicant as mentioned in para 1 of this order, which was also affirmed by the Appellate Court vide judgment dated 21/12/2012. Hence this revision.

3. Learned counsel appearing on behalf of the applicant submits that the trial Court has failed to appreciate the evidence of complainant Mahaan (PW1) who has categorically deposed that at the time of incident, he had no knowledge that how he sustained injury. He further submits that Sunil (PW2) and Madheen (PW5) have not supported the case of the prosecution. The conviction of the applicant is based upon assumption and presumption. There is no clinching evidence produced by the prosecution to prove the offence under Section 326 of IPC against the applicant beyond all reasonable doubt. Therefore, he prays that the applicant may be acquitted from the charges.
4. Counsel appearing for the State supported the judgment passed by the Courts below and submits that the impugned judgment requires no interference.
5. I have heard learned counsel for the parties and perused the record.

6. Mahaan (PW1) has deposed that at the time of incident, the applicant assaulted him with the Axe due to which, he sustained injury on his right hand and back side. His statement is duly corroborated by Sunil (PW2) & Madheen (PW5). Both witnesses have categorically stated that the complainant was assaulted by the applicant with Axe. All above 3 witnesses have remained firm during their cross-examination.
7. Gansu (PW3) has also supported the prosecution story and stated that he also saw the injury on right shoulder of the complainant- Mahaan.
8. Complainant- Mahaan was medically examined by Dr. Preetam Ram (PW4) on 11/11/2007. His report is Ex.P.4. As per MLC report, one injury, size 7X1 cm muscle deep was found on the Scapular region of the complainant. As per the opinion of doctor, the nature of injury was grievous and caused by hard and sharp object.
9. A. Toppo (PW8) is the witness who recorded FIR (Ex.P-1). The matter was investigated by the Head Constable, T.S. Rathiya (PW7). During investigation, he prepared the spot map vide Ex.P.2 and seized one Axe from the possession of the Applicant vide Ex.P.3
10. On minute examination of all the evidence, it makes clear that complainant- Mahaan (PW1) categorically stated that he was assaulted by the applicant with Axe and he sustained injury on his scapular region. His statement is duly corroborated by Sunil (PW2), Gansu (PW3) and Mhadeen (PW5). All the above witnesses were remained firm during their cross-examination also. From the statement of Dr. Preetam Ram (PW4) and as per report Ex.P4, it is also clear that one injury 7X1 cm

muscle deep was found on the scapular region of the complainant. Doctor, Preetam has opined that the injury was caused by hard and sharp object. Though, Doctor, Preetam Ram has opined that the nature of injury was grievous, but on what basis he gave this opinion is not clear. There is no X-ray report available on record which shows that the injury sustained by Mahaan (PW1) is grievous in nature.

11. As per statement of complainant also, he remained in hospital for about 12 days only for his treatment.
12. In these circumstances, there is nothing on record on the basis of which it can be said that the injury sustained by the complainant was of grievous in nature and which falls in the definition of Section 320 of the IPC. Therefore, I am of the opinion that the applicant should have been convicted under Section 324 of the IPC instead of Section 326 of the IPC.
13. So far as sentence for the offence under Section 324 of the IPC is concerned, the applicant has remained in custody for about 13 months. He is facing the *lis* since 2011. He has no known criminal antecedent. Therefore, I am of the view that ends of justice would be served if he is sentenced with the period already undergone by him.
14. Consequently, the revision is allowed in part to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge