

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 892/1999****Reserved on 15-1-2019****Delivered on 5-2-2019**

(Arising out of judgment of conviction and order of sentence dated 19-3-1999 passed by the Sessions Judge, Raigarh, MP (now CG) in Special Case No. 12/1998)

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Naveen Kumar Yadav, son of Bhikharee Yadav, aged about 26 years, Bhidmida Police Station Pushor, District Raigarh (MP) (now CG)

Appellant

VERSUS

State of MP through Station House Officer, Raigarh, District Raigarh (MP) (now CG)

Respondent

 For Appellant : Mr. Afroz Khan, Adv.
 For Respondent : Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 19-3-1999 passed by the Sessions Judge, Raigarh, MP (now CG) in Special Case No. 12/1998 whereby and whereunder he convicted the appellant under Section 326 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced him to undergo Rigorous Imprisonment for 5 years regarding complainants Sahodra Bai and Dukhram.

2. In brief, prosecution case is that appellant is brother of complainant P.W. 2 Sahodra Bai. Complainant P.W. 3 Dukhram is the member of Scheduled Caste. Appellant is neither a member of scheduled caste nor scheduled tribe. P.W. 3 Dukhram and P.W. 2 Sahodra Bai married each other, thus appellant kept enmity with P.W. 3 Dukhram. On 20-3-1998 about 23.00 hour at village Midmida, complainants, P.W. 1 Anjorilal Chouhan along with his family members were sleeping in the house of P.W. 1 Anjorilal Chouhan. Appellant and co-accused Haradhan Yadav reached there, pored some heated substance on the face of said complainants. Said complainants were taken to Raigarh hospital. Next day in the morning P.W. 1 Anjorilal Chouhan went to police station Pusor to lodge report but his report was

not written. On 22-3-1998 P.W. 1 Anjorilal lodged an FIR in police station Kotwali, Raigarh which was registered in '0' number. After completion of investigation a charge sheet was filed against him and co-accused Haradhan under Section 326/34 of the IPC and Section 3(ii)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989 (in brevity 'SCST Act'). The trial Court framed charges against them under Section 326/34 of the IPC and Section 3(ii)(V) of the SCST Act. They abjured the charges levelled against them and faced trial. To bring home the charges against them, prosecution examined as many as 9 witnesses. The defence examined in his defence 2 witnesses. After conclusion of the trial, the trial Court convicted and sentenced the appellant as aforesaid. However, co-accused Haradhan was acquitted of all the charges and appellant was also acquitted of offence under Section 3(ii)(V) of the SCST Act.

3. Being aggrieved, the appellant has preferred this criminal appeal.

4. Mr. Afroz Khan, counsel for appellant submits that trial Court has not appreciated the evidence in proper perspective, there are no ingredients of Section 326 of the IPC on the record. FIR is delayed. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.

5. Mr. Tekam, Panel Lawyer appearing for the State argued that the aforesaid conviction and sentence are based on the sufficient evidence available on record. Thus, no interference is called for.

6. As per alleged MLC report Ex. P-4-A P.W. 8 Dr. P.K. Mishra had examined complainant Sahodra Bai and found multiple charred and burn marks on upper part right side of forehead. There was pungent smell like acid. He opined that the injuries were simple in nature caused by acid like substance.

7. There is no such evidence on record on strength of which it can be said that Ex. P-4-A is not believable. Thus this Court believes on Ex. P-4-A.

8. As per alleged MLC report Ex. P-5-A P.W. 8 Dr. P.K. Mishra had examined said complainant Dukhram and found burn, charred marks

were present over his forehead, upper part of face, both arms and neck. He opined that the injuries were simple in nature caused by acid like substance.

9. There is no such evidence on record on strength of which it can be said that Ex. P-5-A is not believable. Thus this Court believes on Ex. P-5-A.

10. P.W. 2 Sahodra Bai says in para 1 of her statement given on oath that she saw that appellant was present in the courtyard. He pored some liquid substance contained in a bucket on P.W. 2 Dukhiram.

11. P.W. 3 Dukhiram says in para 1 of his statement given on oath that in the night he saw the appellant in the Courtyard. He pored some liquid substance on him contained in a bucket.

12. P.W. 1 Anjorilal Chouhan who is brother of complainant Dukhiram says in para 2 of his statement given on oath that when he reached on the spot, he heard the sound of save, save, P.W. 3 Dukhiram had told that appellant had pored some substance on his face.

13. P.W. 4 Sukhlal who is brother of the complainant Dukhiram says in para 2 of his statement given on oath that in the hospital said complainant had told him that appellant had pored some substance on him kept in a bucket.

14. D.W. 1 Narsingh Gupta says in para 1 of his statement given on oath that after one week of Holi in 1998, he, some other persons, and the appellant were busy in psalm of God from 8.00 pm to 12.00 in night.

15. As per Ex. D-3-C, complainant Sahodra Bai had met with appellant in District Jail, Raigarh on 25-9-1998.

16. In '0' numbered FIR Ex. P-1 it has been mentioned that appellant had pored some heated substance on the face of complainant Dukhiram.

17. Ex. P-1 has been lodged on 22-3-1998 at PS Kotwali Raigarh after the alleged incident dated 20-3-1998. It is unequivocal from Ex. P-1 that firstly complainants had been taken hospital at Raigarh for treatment, next day P.W. 1 Anjorilal Chauhan had gone to lodge the report in PS Pusor where the report was not recorded.

18. P.W. 1 Anjorilal Chauhan, says in para 2, P.W. 2 Sahodrabai, P.W. 3 Dukhiram, say in para 1 that P.W. 3 Dukhiram had been brought to the hospital at Raigarh. P.W. 1 Anjorilal Chauhan says in para 1 that on the next day morning he had gone to lodge the report at police station Pusor.

19. In the matter of **State of H.P. -v- Shree Kant Shekari [(2004) 8 SCC 153]**, Hon'ble Supreme Court has held in para 18 as under :-

“18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspects were highlighted in *Tulshidas Kanolkar v. State of Goa* [(2003) 8 SCC 590 : 2004 SCC (Cri) 44] .”

20. The relevant portion of para-13 in **Puran Chand -v- State of H.P.** [(2014) 5 SCC 689] wherein the Hon'ble Supreme Court has made some observation is quoted below :-

“13.The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross-examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR thus

stands fully explained.”

21. There is no such evidence on record on strength of which it can be said that aforesaid facts of Ex. P-1, aforesaid statements of para 2 of P.W. 1 Anjorilal Yadav, para 1 of P.W. 2 Sahodra Bai and P.W. 3 Dukhiram are not believable, thus, this Court believes on them. Thus, this Court finds that delay in lodging Ex. P-1 has been sufficiently explained by the prosecution. Thus, looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Shree Kant Shekari (supra)** and **Puran Chand (Supra)**, this Court finds that delay in lodging Ex. P-1 is not fatal to the prosecution case because delay has been satisfactorily explained.

22. There is no such evidence on record on strength of which it can be said that Ex. P-1 was lodged without occurring of alleged incident only because there was inimical relation between appellant and complainant Dukhiram.

23. Looking to the above mentioned facts and circumstances of the case this Court finds that Ex. P-1 is simple, natural and normal.

24. D.W. 1 Narsingh Gupta says in para 3 during his cross-examination that this is true that they were busy in psalm of God. He does not know who was coming and who was going. In these circumstances it cannot be said that it was impossible for appellant to reach on alleged place of occurrence at the time of incident.

25. There is no such evidence on record on strength of which it can be said that P.W. 1 Anjorilal Chauhan, P.W. 2 Sahodra Bai, P.W. 3 Dukhiram, P.W. 4 Sukhlal had made aforesaid statements only because appellant had refused to give the land to complainant Sahodra Bai.

26. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 1 Anjorilal Chauhan, P.W. 2 Sahodra Bai, P.W. 3 Dukhiram, P.W. 4 Sukhlal are not simple, not natural, not normal.

27. Looking to the above mentioned facts and circumstances of the case, this Court finds that, appellant does not get any help from the aforesaid statement of para 1 of D.W. 1 Narsingh Gupta and from Ex. D-3.

28. Looking to the above mentioned facts and circumstances of the case, this Court believes on aforesaid statements of para 2 of P.W. 1 Anjorilal Chauhan and Para 1 of P.W. 2 Sahodra Bai, P.W. 3 Dukhiram, para 2 of P.W. 4 Sukhlal.

29. P.W. 1 Anjorilal Chouhan, P.W. 2 Sahodra Bai, P.W. 3 Dukhiram, P.W. 4 Sukhlal do not say that appellant allegedly had pored heated substance on the face of P.W. 2 Sahodra Bai.

30. After appreciation of the evidence discussed herebefore this Court finds that prosecution has failed to prove charge punishable under Section 326, IPC regarding complainant Sahodra Bai and Dukhiram but succeeded to prove the charge punishable under Section 324, IPC regarding complainant Dukhiram. Thus, trial Court has committed illegality in convicting the appellant for the offence punishable under Section 326, IPC regarding complainant Dukhiram and Sahodra Bai. Thus, aforesaid conviction of appellant is hereby set aside. Appellant is convicted for the offence punishable under Section 324 of the IPC regarding only complainant Dukhiram.

31. At the time of the alleged incident, no minimum imprisonment was provided under Section 324, IPC. The appellant has remained in jail from 3-4-1998 to 19-3-1999 i.e. for about a year. Near about 21 years have passed from the date of incident. At the time of alleged incident the appellant was 26 years old. Now he is 47 years old. Now he is in mainstream of society. Sending him jail would disturb his as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 21 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 he is sentenced to the period already undergone by him for the offence punishable under Section 324, IPC for complainant Dukhiram with a suitable fine sentence.

32. Consequently, the appeal is partly allowed. The appellant is sentenced for imprisonment already undergone by him for offence punishable under Section 324, IPC, regarding complainant Dukhiram with a fine of Rs. 10,000/- (Rupees ten thousands), in default of

payment of fine, he shall further undergo RI for 4 months. Out of fine amount of Rs. 10,000/- if deposited by the appellant, Rs. 5,000/- (Rupees five thousand) be given to the complainant Dukhiram as compensation after the expiration of prescribed period of the further legal remedy available to the parties.

33. The appellant is granted two months time from today for depositing the fine amount in the trial Court,

34. Appellant is reported to be on bail. His bail and bond shall continue for a further period of six months as per requirement of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge