

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 282 of 2004**

1. Kalesh Ram S/o Jagannath, aged about 33 years, R/o Village Kaskattee, Kusmulee, P.S. Takhatpur, District Bilaspur (CG.)

---- Appellant**Versus**

1. State of Chhattisgarh, through – Station House Officer, Thana Thakhatpur, District Bilaspur (CG.).

---- Respondent

For Appellant	:	Shri Mirza Kaiser Baeg, Advocate.
For Respondent/State	:	Shri Vikas Shrivastava, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****05/12/2019**

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 24/02/2004 passed by 1st Additional Session Judge, Bilaspur (C.G.) in Session Trial No. 118/2003; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 338 of Indian Penal Code (in short "IPC")	R.I. for 1 year
Under Section 25 of Arms Act, 1959	R.I. for 1 year
(Both the sentences were directed to run concurrently)	

- 2) Case of the prosecution in brief is that on the date of incident i.e. on 07/08/2002 around 01:00 PM accused/appellant in drunken condition reached the house of complainant Ramshankar PW-03 carrying *Tabbal* and saying that he would kill the Sarpanch. At that time Kumari Kavita, aged about 5 years, daughter of complainant Ramashankar was present there. The Accused/appellant was wielding *Tabbal* which hit Kumari Kavita as a result of which she fell down unconscious and the

accused/appellant ran away from the spot. Kumari Kavita was taken to hospital and on information being given by the hospital staff about incident, the same was entered in Rojnamchasanha on 07/08/2002 itself at Police Station Kota. Injured Kumari Kavita was medically examined by PW-07 Dr. S. Chaterjee vide Ex. P-4. The Doctor noticed incised wound on her forehead and advised for X-Ray of the skull. On X-Ray being conducted, fracture of right frontal bone was found vide Ex. P-5 and Ex. P-6 (X-Ray plate). On query being sent by the Police, PW-12 Dr. D.R. Patle opined that the injury of fracture in the skull was grievous in nature and further opined vide Ex. P-8 that for want of timely treatment there was possibility of her death. Vide Ex. P-1, one Tabbal was seized from the accused/appellant. After medical examination of the injured, FIR under Section 326 of IPC was registered against the appellant/accused on 02/09/2002 vide Ex. P-11. After due investigation charge sheet was filed against the appellant/accused for the offence under Sections 307 and 506 of IPC and Section 25 of Arms Act.

- 3) The Trial Court framed charges against the accused/appellant under Section 307 of I.P.C. and Section 25 of Arms Act. The accused/appellant denied the charges and prayed for trial.
- 4) The prosecution in support of its case examined as many as 15 witnesses namely PW-01 Raghubardas Vaishnav, PW-02 Kumari Kavita (injured), PW-03 Ramashankar (father of injured), PW-04 Vishram, PW-05 Shyamlal, PW-06 Sangeeta, PW-07 Dr. S. Chaterjee, PW-08 Dukhwaram, PW-09 Ganeshiya Bai, PW-10 Ramkumari Bai, PW-11 Prabhakar Yadav (Head Constable), PW-12 Dr. D.R. Patle, PW-13 Udayraj Singh, PW-14 R.N. Tiwari (S.I.) and PW-15 J. Toppo (I.O.). The statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. Defence witness DW-01 Rekhrum was examined by the accused in his defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned in Para 1 of this judgment.
- 6) Learned counsel for the appellant submits that the Trial Court has not properly appreciated the evidence available on record. He submits that the appellant is convicted under Section 338 of IPC and under Section 25 of Arms Act, but no arms was produced before the Court nor exhibited. No evidence has been adduced by the prosecution to prove the length and width of the weapon, whether it was sharp edged or blunt etc. Therefore, the appellant cannot be held guilty for the offence under Section 25 of the Arms Act.
- 7) Learned counsel for the appellant further submits that the eye witnesses of this case are relative of injured PW-02 Kumari Kavita and since PW-03 Ramshankar father of the injured was having enmity with the accused/appellant, he has been falsely implicated in this case.
- 8) He submits that even if the prosecution case is taken as it is, it appears that the injuries sustained by Kumari Kavita were not caused by the accused/appellant intentionally but accidentally while he was wielding Tabbal, the same hit the injured. Normally in villages Tabbal is carried by almost every villager for agricultural purposes. Therefore, in the given facts and circumstances of the case, no offence is made out against the accused/appellant and he deserves to be acquitted of the charges leveled against him.
- 9) Lastly he submits that if this Court ultimately maintains the conviction of the appellant, then considering the fact that the incident occurred on 07/08/2002 i.e. around 17 years back, that the appellant has no criminal antecedent, he has been on bail since March 2004 and never misused the liberty granted to him till date, he has already remained in jail for about 27 days, the jail sentence may be reduced to the period already undergone by the appellant.

- 10) On the other hand learned counsel for the respondent/State supporting the impugned judgment and submits that the independent witness PW-09 Ganeshiya Bai and other eye witnesses PW-04 Vishram, PW-06 Sangeeta and PW-08 Dukhwaram proved this fact that accused/appellant was having a Tabbal in his hand and wielding the same which hit PW-02 Kumari Kavita. The case of the prosecution is not only supported by the eye witness account but also medical evidence of the Doctor PW-07 Dr. S. Chaterjee and PW-12 Dr. D.R. Patle. Therefore, there is no illegality or infirmity in the impugned judgment of the Trial Court calling for any interference by this Court.
- 11) Heard counsel for the parties and perused the material available on record.
- 12) PW-02 Kumari Kavita, victim, is a minor girl aged about 07 years. Since she was not able to answer to the general questions put to her by the Court her evidence could not be recorded. But the eye witnesses PW-04 Vishram, PW-06 Sangeeta and PW-09 Ganeshiya Bai independent witness have proved this fact that due to that Tabbal/Tangiya being wielded by the accused/ appellant Kumari Kavita who was playing there sustained injury on her head. As per PW-07 Dr. S. Chaterjee, he found one incised wound on the forehead of victim and as per Ex. P-5 the said injury was grievous in nature and fracture was found on frontal bone of the forehead. Therefore, prosecution has proved beyond all reasonable doubt that the accused was wielding his Tabbal and due to that Tabbal injuries were caused to victim Kumari Kavita and that injury is grievous injury as per the medical report. The learned Trial Court considering unrebutted evidence of the eye witnesses duly supported by the medical evidence has rightly convicted the appellant under 338 of IPC for causing grievous hurt to PW-01 Kumari Kavita by his rash and negligent act.

- 13) So far as offence under Section 25 of the Arms Act is concerned true it is that Tabbal is usually carried by villagers for agricultural purposes. However, from the eye witness account it is true that on the date of incident accused/appellant holding Tabbal reached the house of the PW-03 Ramashankar to threaten him and while wielding said Tabbal Kumari Kavita who was playing there sustained injury over her head. As per Ex. P-1 one iron Tabbal was seized from the accused/appellant in presence of witnesses Raghubardas PW-01 Vaishnav and Surendra Kumar Soni. PW-01 Raghubardas Vaishnav has duly proved the said seizure of Tabbal from the accused/appellant. The said Tabbal was sent by the Police to the doctor vide Ex. P-15 for examination and opinion whether the injury suffered by Kumari Kavita would be caused by the said Tabbal. In the document of Ex. P-15 the length and width of the Tabbal has been specifically mentioned as 6½ and 3 inches respectively, this apart PW-15 J. Toppo (I.O) in para 3 has also specifically stated about the length and width of the Tabbal. The evidence of PW-15 J. Toppo to above effect remained uncontroverted in cross examination. Thus, the act committed by the accused/appellant is covered by Section 25(1B)(b) of the Arms Act.
- 14) Though the minimum sentence prescribed for the offence under Section 25(1B)(b) of the Arms Act is 1 year but the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year. In the present case considering the facts and circumstances of the case, giving rise to the incident, the manner in which the incident took place, the age of the appellant at the time of the incident i.e. 33 years and at present i.e 50-52 years, the incident occurred around 17 years back, the fact that only one injury was suffered by victim Kumari Kavita with Tabbal which is normally carried by villagers for agricultural purposes and the judgment of the Hon'ble Supreme Court in the matter of ***George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478*** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of

time, the accused was sentenced to the period already undergone, this Court is of the opinion that ends of the justice would be served if the jail sentence under this Section is reduced to the period already undergone by him and he is directed to pay fine of Rs. 5,000/- with default sentence of 3 months R.I.

- 15) Similarly, considering the reasons assigned above for reducing the sentence under the Arms Act as also the fact that the appellant is a young offender having no criminal antecedents, he has been on bail since March 2004 and did not misuse the liberty granted to him till date, this Court is of the opinion that the ends of justice would be served if the appellant is sentenced to the period already undergone by him under Section 338 of IPC and he is directed to pay fine of Rs. 1,000/- with default sentence of 1 month R.I. On fine amounts being deposited by the appellant, the same shall be disbursed as compensation under Section 357 of Cr.PC. to the victim PW-02 Kumari Kavita or her guardian.
- 16) In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 338 of IPC and Section 25 of Arms Act, his jail sentence is reduced to the period already undergone by him. He is directed to pay a fine of Rs. 5,000/- under Section 25 of Arms Act, in default of payment of fine to undergo R.I. for 3 months and is further directed to pay fine of Rs. 1,000/- under Section 338 of IPC, in default of which he shall suffer additional RI for 1 month. The amount so deposited by the appellant shall be disbursed to the victim PW-02 Kumari Kavita or their guardian as compensation under Section 357 of Cr.P.C. after due verification by the Trial Court. Since the appellant is reported to be on bail, his bail bond shall remain in force for a period of six months from today in view of provision of Section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge