

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1302 of 2002

- Tingali @ Titra @ Budhari S/o Kheduram aged about 28 years at present 35 years, R/o village-Pathotiya, P.S. Lalpur, District Bilaspur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh through P.S. Lalpur, District- Bilaspur (C.G.)

---- Respondent/State

For Appellant	:	Ms. Pragiya Pandey, Advocate
For Respondent/State	:	Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

12.12.2019

1. When the matter is called out twice, no one appears on behalf of the appellant even in first round as well as in second round. In these circumstances, this Court is left with no other option but to appoint a counsel through the High Court Legal Services Committee.
2. Ms. Pragiya Pandey, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, she is ready to argue the matter. Therefore, this Court has appointed Ms. Pragiya Pandey, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
3. This appeal arises out of the judgment of conviction and order of sentence dated 12.12.2002 passed by the Second Additional Sessions Judge (FTC) Mungeli, District Bilaspur (C.G.) in Sessions Trial No. 534 of 1998, whereby the Appellant stands convicted and sentence as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 323 of Indian Penal Code (for short 'IPC')	R.I. for three months and pay a fine of Rs.500/-, in default of payment to further undergo additional R.I. for one month.

Under Section 324 of IPC	R.I. for six months and pay a fine of Rs.1,000/-, in default of payment to further undergo additional R.I. for two months.
Under Section 325 of IPC	R.I. for six months and pay a fine of Rs.1,000/-, in default of payment to further undergo additional R.I. for two months.
All the sentences to run concurrently	

4. Facts of the case in brief are that on 13.10.1998 at about 14:30 hours FIR Ex.-P/6 was lodged by Beeram Singh (PW-4) to the effect that on that day at about 12:00 noon, when he was in his field, on previous enmity, appellant Tingali @ Titra came with *tangia* (Axe), said to him (PW-4), "since you (PW-4) sent me jail, I (appellant) will kill you". Then, the appellant gave two axe blows on the head of Beeram Singh as a result of which blood started oozing out of his head and the appellant also assaulted him (PW-4) by club (Tutari) as a result of which Beeram Singh sustained injury on his wrist and other part of the body. Thereafter the accused/appellant fled away.
5. Injured Beeram Singh (PW-4) was medically examined by Dr. G.K. Suryawanshi (PW-7) and he gave his MLC report (Ex.-P/10) and found following injuries on the body of Beeram Singh (PW-4) :
- 1) Lacerated wound in size of 3 inch x ½ inch x ¼ inch on the right parietal bone.
 - 2) Incised wound in size of 5 inch x ½ inch x ¼ inch on the left parietal bone.
 - 3) Swelling and abrasion in size of 4 inch x 2 inch on the left mandible bone.
 - 4) Contusion and swelling in size of 6 inch x 2 inch on the right scapular region.
 - 5) Swelling 2 inch x 2 inch on the left metacarpal bone. The Doctor advised for X-ray.

Those injuries were caused by hard, blunt and sharp object. The Doctor (PW-7) advised for X-ray of skull and left hand. Doctor S. Chatterjee (PW-6) has done X-ray of PW-4 and found fracture of left second metacarpal bone

on left palm with wrist. X-ray report is Ex.-P /7 and X-ray plate is Ex.-P/8.

6. During investigation, plain soil, blood stained soil and white towel stained with blood of Beeram Singh were seized from the place of occurrence under Ex.-P/1. Memorandum statement (Ex.-P/2) of accused/appellant was recorded on 14.10.1998 consequent to which axe was recovered at the instance of the appellant vide Ex.-P/3. Full shirt stained with blood of Beeram Singh was seized under Ex.-P/4. Arrest *panchnama* of accused was prepared vide Ex.-P/5 in the presence of witnesses. Seized axe was sent for medical examination to PHC Mungli vide Ex.-P/11 and report of which is Ex.-P/12. *Nazrinaksha* was prepared vide Ex.-P/13. Case diary statements of witnesses namely Darasran, Shobharam, Ramanuj and Rajendra were recorded. After completion of investigation, charge-sheet was filed against the accused/appellant under Sections 307 and 325 of IPC.
7. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses namely Shobharam (PW-1), Darasram (PW-2), Ramji Sahu (PW-3), Beeram Singh (PW-4), Rajendra Yadav (PW-5), Dr. S. Chatterjee (PW-6), Dr. G.K. Suryawanshi (PW-7) and Pooran Singh (PW-8) in support of its case. Statement of the accused/Appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No any defence witness was examined on behalf of the accused/appellant.
8. After appreciation of the evidence available on record, the learned Second Additional Sessions Judge (FTC) Mungeli (C.G.) by the impugned judgment, while acquitting the appellant of the charge under Section 307 of IPC, convicted and sentenced the accused/Appellant as mentioned in para- 3 of this judgment, hence this appeal.
9. Learned counsel for the appellant submits that due to previous enmity with the appellant, Beeram Singh (PW-4) has falsely implicated the appellant and there is no any independent eyewitness in this case. She submits that PW-2

Darasram has not supported the prosecution case. She also submits that looking to the statement of PW-4 Beeram Singh, it cannot be accepted that the appellant has assaulted Beeram Singh due to previous enmity.

10. On the other hand learned counsel for the State supporting the impugned judgment submits that the statement of PW-4 Beeram Singh is duly corroborated by the medical evidence. Therefore, the trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.

11. Heard counsel for the parties and perused the material available on record.

12. PW-4 Beeram Singh has stated in paras 3 to 5 that when he was working in his field, the accused/appellant came there and gave two axe blows (*tabba*) on his head due to which he fell down. PW-4 has further stated that after being assaulted by the appellant, the appellant again assaulted him (PW-4) by a club (*Tutari*) and PW-4 ran away from there towards the house of Ramprasad, thereafter he fell unconscious. After re-gaining consciousness, PW-4 narrated the story to one Kokwa (brother of Ramprasad) and other persons that accused Tingali has assaulted him. Thereafter, PW-4 reached his home and lodged the report in the police station.

13. PW-1 Shobharam and Darasram (PW-2) have not supported the prosecution case and they have been turned hostile. PW-3 Ramji Sahu is the witness of seizure (Ex.-P/1) of plain soil, blood stained soil and white towel stained with blood of Beeram Singh. PW-8 Pooran Singh is the Investigating Officer.

14. PW-5 Rajendra Yadav has only stated that he does not know about the incident because at the time of incident he was grazing the cow in other field and he does not know as to from where the accused came, but he has only seen accused Tingali who had kept *tangia* in his hand.

15. PW-7 Dr. G.K. Suryawanshi has examined Beeram Singh (PW-4) and has duly proved his MLC report (Ex.-P/10). PW-6 Dr. S. Chatterjee has proved X-

ray report (Ex.-P/7) and he found fracture of second metacarpal on left palm and wrist. Therefore, there is no reason to disbelieve the evidence of Beeram Singh (PW-4).

16. Thus, in the totality of facts and circumstances of the case, the evidence of injured Beeram Singh (PW-4), duly corroborated by the medical evidence in the form of MLC Ex.-P/10, X-ray report Ex.-P/7 of PW-4 and the evidence of the treating Doctors (PW-6 & PW-7) as also corroborated by named F.I.R. Ex.-P/6, it stands proved beyond all reasonable doubt that it is the accused/appellant who voluntarily caused hurt by *tangia* and club (Tutari) to PW-4 Beeram Singh. Being so, conviction of the appellant under Sections 323, 324 & 325 of IPC awarded by the trial Court appears to be just and proper warranting no interference by this Court.

17. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.

18. In the present case, as per report dated 04.12.2019 received from Jail Superintendent, Central Jail Bilaspur (C.G.), accused/appellant Tingali @ Titra @ Budhari S/o Kheduram had been released on 03.02.2003 from jail after extending benefit of remission provided by the State, therefore, there is no requirement for passing any order regarding his arrest, surrender etc. by this Court.

Sd/-
(Gautam Chourdiya)
Judge