

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 451 of 2008

Order reserved on 08.01.2019

Order pronounced on 22 .01.2019

1. Raju Ongar son of Guruwaru, aged about 26 years, R/o Danteshwari Ward, Baila Bazar, Jagdalpur, District Bastar, CG

--- Applicant

Versus

1. State of Chhattisgarh through Police Station Bodhghat, District Bastar, CG

--- Respondent

For Applicant	-	Ms. Vaishali Mahilong, Advocate.
For Respondent/State	-	Mrs. M. Asha, Panel Lawyer

CAV Order by Hon'ble Smt. Vimla Singh Kapoor, J.

Judgment under challenge in this revision petition is dated 27.06.2008 passed by Sessions Judge, Bastar at Jagdalpur in Criminal Appeal No. 19/2008 whereby the findings recorded by Judicial Magistrate First Class, Jagdalpur convicting the accused/applicant under Section 326 IPC and sentencing him to undergo RI for two years with fine of Rs. 1000/- plus default stipulation, have been affirmed.

2. Facts of the case, in short, are that on 05.08.2005 at about 10 PM the accused/applicant herein is alleged to have asked the victim namely Ishaq (PW-1) to provide liquor to him. It is further

alleged that when the victim expressed his inability for fulfilling the said demand, the accused/applicant inflicted injury to him with the help of a weapon commonly known as *Gagra* – an instrument for cutting coconut. On medical examination, the victim is said to have suffered injury on his cheek and left elbow. On x-ray being taken, mandible bone of the victim was found to be fractured. On the report lodged by the victim (Ex.P-3), offence under Section 324 IPC was registered against the accused/applicant and on his memorandum (Ex.P-6) seizure of *Gagra* was effected under Ex. P-2. However, after completion of investigation, charge-sheet under Section 326 IPC was laid by the police in the Court of concerned Chief Judicial Magistrate leading to framing of charge and commencement of trial.

3. After examining the material available on record and the evidence of the witnesses, the trial Court convicted and sentenced the accused/applicant as described above. The findings recorded by the trial Court have subsequently been affirmed by the lower Appellate Court by the judgment impugned and it is that which is under challenge in this revision.

4. Counsel for the accused/applicant submits that he is not pressing this revision as far as conviction part of the judgment challenged therein is concerned, and would confine his argument to its sentence part only. He submits that as the incident had taken place in the year 2005, that he has remained in jail for fourteen days and that the victim got recovered within a very short period, the sentence imposed on him may be reduced to the period already undergone.

5. On the other hand, counsel for the respondent/State supports the judgment impugned as a whole.

6. Having heard counsel for the parties and perused the material available on record including the evidence of injured Ishaq (PW-1), his father (PW-2), Dr. K. Vinay Kumar (PW-3) who medically examined the victim and gave his report Ex. P-1 as well as Dr. Govind Singh (PW-4) – the radiologist who took x-ray of the victim vide report Ex. P-7, it becomes crystal clear that on the date of incident when the victim showed his inability to fulfill the demand of liquor made by the accused/applicant, he lost his temper and opened assault at him with the help of *Gagra* – an instrument meant for cutting coconut. Evidence of PW-3 – the doctor who medically examined the victim and gave his report Ex. P-1 shows that he noticed an injury on the left mandible in the size of 4 x 2 cm caused with a sharp cutting weapon and also an injury caused by the similar weapon on his left hand in the size of 2 x 1 inch. Even the radiologist vide his report Ex. P-7 has opined the left mandible bone of the victim to be fractured. Seizure witness namely Sushil Guruwara has also admitted his signature on the seizure memo Ex. P-2. Verbal feud between the accused and the victim is clear even from the evidence of defence witness namely Lekhraj DW-1. Overall evidence thus establishes that on account of trivial dispute picked up first by the accused himself, he opened an assault on the victim causing injuries referred to above by a sharp cutting weapon and therefore, his conviction under Section 326 IPC is maintained.

7. As regards sentence, keeping in mind the fact that the incident had taken place in the year 2005 thereby leading to passage of 14 long years since thereafter; that the applicant has already remained in jail for about fourteen days and that by now he must be under the burden of family responsibilities, this Court thinks it just and proper and in the interest of justice to reduce the same to the period already undergone. The applicant is however directed to pay an additional amount of Rs. 5000/- to the victim as compensation provided in Section 357 of the Code of Criminal Procedure. Let this amount be deposited by the accused in the trial Court within a period of three months from the date of receipt of copy of this order, and this order shall be available to him only after the amount as directed is deposited. Order accordingly.

8. Revision thus allowed in part.

Sd/-

(Vimla Singh Kapoor)
Judge