

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 375 of 2004

Somar Sai, son of Late Ransai, Caste Nageshiya, aged about 28 years, resident of Village Askala, Police Station Bataoli, District Sarguja.(CG.)

---- Applicant

Versus

The State of Chhattisgarh through Police Station Bataoli, District Sarguja(C.G.)

--- Respondent

For Applicant : Shri T.R. Chandrakar, Advocate

For State/Respondent : Shri I. Lakra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

30/01/2019

In the FIR (Ex. P-1) lodged by victim Phoolsai (PW-1) it is alleged that on 06.05.1993 when he was plucking mango, the accused/applicant objected to it and caused injury with a wooden log on his chest. It is further alleged that after he fell down, the accused/applicant again caused injury over his right knee. Thereafter when he tried to get up, the accused/applicant inflicted injury on his knee with the edge side of the axe as a result of which bleeding started. On the basis of this report an offence under Section 326 IPC was registered against the accused/applicant. The victim thereafter was taken to hospital where he remained admitted for treatment for a considerable period. After completion of investigation, *challan* was filed under Section 326 IPC and after conclusion of trial he has been convicted accordingly vide order dated 19.10.2002 passed by Judicial Magistrate First Class, Abmikapur in Criminal Case No.257/1997. Finding so recorded by learned Magistrate have been affirmed vide judgment impugned herein dated 13.07.2004 passed by Additional Sessions Judge, Ambikapur in Criminal Case No.122/2002.

2. Counsel for the accused/applicant submits that at this stage he is not pressing conviction part of the judgment impugned and would confine

his prayer only to the sentence part thereof keeping in view the fact that the accused/applicant has already remained in jail for about a month and the incident being of the year 1993 is quite old and no useful purpose would be served in subjecting him to remain in detention anymore. State counsel however supports the judgment impugned and submits that as the material collected by the prosecution shows the involvement of the accused/applicant in causing grievous injuries to the victim (PW-1), no illegality or infirmity can be said to be there in the well reasoned findings recorded by both the Courts below.

3. Victim Phoolsai (PW-1) has duly supported the case of the prosecution and states that on a trivial dispute arising on account of plucking of mangoes the accused/applicant inflicted club injuries on his thigh and thereafter axe injury on his knee. According to him, for medical treatment he remained hospitalized for 36 days. PW-2 is also stated to have been informed by victim (PW-1) that the accused/applicant had caused injuries to him on his leg. He is also the witness of seizure of axe made under Ex. P-2. PW-2 is also stated to have noticed a cut wound on the ankle of the victim. Similar is the statement of PW-5 where he has stated that he saw the victim suffering cut injury on his ankle. Dr. J.K. Bhutani (PW-13) who medically examined the victim has also noticed number of injuries such as cut wound on right ankle, abrasion on left side of the chest and pain being complained by him on the ribs and knee. He has opined that the said injuries could have been caused by some hard and blunt object vide Ex. P-7. Evidence of PW-7 also shows that he noticed dislocation and fracture on the right ankle joint of the victim vide report Ex.P-4. Though medical evidence is silent about the axe injury yet some of the prosecution witnesses have mentioned the same. Furthermore, the hospitalization of the victim which according to the doctor comes to 3 weeks and according to the victim it was 36 days, the seriousness of the injuries can be deciphered very well. The prosecution

has thus collected sufficient material to show that the accused/applicant caused grievous injuries to the victim (PW-1). Thus no illegality or infirmity is seen in the well reasoned finding by both the Courts below convicting the applicant under Section 326 IPC. Conviction is accordingly maintained.

4. As regards sentence, keeping in mind the fact that the incident had taken place in the year 1993 and that the accused/applicant has already remained in jail for about a month, this Court does not see any reason to again send him to jail and thereby disturb his well settled family life. Accordingly, the jail sentence imposed on accused/applicant is reduced to the period already undergone. He however is directed to pay an amount of Rs.5,000/- as compensation in terms of Section 357 of the Code of Criminal Procedure to be paid to the victim (PW-1). Let this be done within a period a 3 months from today by depositing the amount as directed, in the trial Court. If the applicant fails to deposit the said amount, this order shall not be available to him.

5. Revision thus succeeds but in part.

Sd/-
(Vimla Singh Kapoor)
Judge

vyotishi/ajay