

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.464 of 2009**

1. Babua @ Mahendra Singh Rajput S/o Ramashankar Singh, Aged about 35 years, R/o Nandini Road, Subhash Nagar, Power House, Bhilai, Durg (CG)
2. Raj Singh @ Rajesh S/o Ramashankar Singh, aged about 28 years, R/o Nandini Road, Subhash Nagar, Power House, Bhilai, Durg (CG)

---- Appellants

Versus

- State Of Chhattisgarh through Station House Officer, Police Station Chhawani, Distt. Durg (CG)

---- Respondent

AND**Criminal Appeal No. 382 of 2009**

- Murli, S/o. Mohan Rao, Aged about 20 years, R/o. Sector 2, Street No.14, Block 4, Room No.4, Bhilai District Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through The P.S. Chhawani, Distt.-Durg CG

---- Respondent

For the appellants : Shri Praveen Dhurandhar, Shri CR Sahu
and Shri MK Bhaduri, Advocates

For the State : Shri Raghavendra Verma, Govt. Advocate
and Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****06.02.2019.**

1. Since both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

2. Both the appeals are directed against judgment dated 04.5.2009 passed by Twelfth Additional Sessions Judge (FTC), Durg (CG) in Session Trial No.107/2008 wherein the said Court convicted all three appellants for the charges under Sections 307 read with 34 and 324 read with 34 of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for eight years and to pay fine of 100/- each and RI for two years with default stipulations with a direction to run the sentences concurrently.

3. In the present case, two persons namely Pramod Kashyap and Bhole Sahni are the victims. It is alleged that all the appellants gathered on the spot on 18.02.2005 at about 9.45 pm with common intention to cause fatal injury to Pramod and Bhole Sahni. While appellant Raj Singh @ Rajesh inflicted injury to Bhole Sahni by sharp weapon (ustara), other appellants namely Babua @ Mahendra Singh and Murli inflicted injury to Pramod by some sharp object. As per the report of the medical expert, injury sustained by Pramod was grievous in nature while injury sustained by Bhole was simple in nature. The matter was reported and the appellants were charge sheeted and convicted as mentioned above.

4. Learned counsel for appellants Babua @ Mahendra Singh and Raj Singh @ Rajesh submit as under:

(i) Injuries sustained by Pramod were simple in nature as per the report of Dr. RR Barle (PW-14), though another medical expert namely BD Panda (PW-16) deposed that injuries were grievous in nature. But looking to the contrary opinion it is

safe to conclude that the injuries were simple in nature, therefore, offence under Section 307 IPC is not made out.

(ii) There is material contradictions and omissions in the statements of Pramod and Bhole, therefore, charges levelled against the appellants are not established.

(iii) The trial Court has not evaluated the evidence in its true perspective and the same is liable to be set aside.

5. Learned counsel for appellant Murli submits that when there is no evidence against said appellant having any object with him to cause injury, case of the prosecution is based on his inflicting by fist and blow on Bhole, therefore, at the most it is a case under Section 323 IPC.

6. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

7. I have heard learned counsel for the parties and perused the record of the Court below.

8. From the statement of Bhole Sahni (PW-1) it is established that appellant Raj Singh @ Rajesh inflicted injury on his neck by sharp object (ustara). He deposed that appellant Murli caused injury to him by fight i.e. by fists. As per the version of Pramod (PW-2), appellant Babua inflicted injury on his neck, face and head by some sharp object. Dr. RR Barle (PW-14) who examined victim Pramod deposed that the injuries sustained by him were simple in nature. Dr. BP Panda (PW-16), who examined victim

Pramod opined that the injuries sustained by him were grievous in nature. Again this witness examined Bhole and opined that injuries sustained by him were simple in nature though wounds were incised in nature. The trial Court recorded a finding that the injuries sustained by Bhole were incised wounds caused by sharp object and simple in nature, therefore, charge under Section 324 IPC is made out. After reassessing the entire evidence, this Court has no reason to record a contrary finding.

9. It is not the statement of Bhole Sahni that appellants Murli and Babua had knowledge about possession of ustara by appellant Raj, therefore, causing injury to Bhole by appellant Raj is his independent act without intention and knowledge of Murli and Babua, therefore only appellant Raj is responsible for the act against Bhole. Other appellants are not responsible for his act. Therefore, charge under Section 324 IPC for causing simple injury by sharp object is established only against appellant Raj.

10. As per the version of Bhole, appellant Murli gave him fists blow. Looking to the evidence of this witness, it is established that appellant Murli caused simple injury to Bhole by fists which is an offence under Section 323 IPC.

11. Victim Pramod (PW-2) deposed before the trial Court that appellant Babua inflicted injury in his body by some sharp object. Looking to the evidence of the medical expert who examined this victim it is established that he sustained grievous injury by sharp cutting object. The act of Babua @ Mahendra Singh falls within the mischief of Section 326 IPC. It is not the evidence of this victim that Murli and Raj had knowledge about possession of

some sharp object by Babua, therefore their intention or knowledge cannot be gathered for committing offence against Pramod by appellant Babua. After reassessing the entire evidence, conviction of the appellants is liable to be modified.

12. Accordingly, appellant Babua is convicted for the offence under section 326 IPC, appellant Raj @ Rajesh is convicted for the offence under Section 324 IPC and appellant Murli is convicted for the offence under Section 323 IPC.

13. Heard on the point of sentence.

Appellant Babua has suffered jail sentence during the trial for 264 days and again he suffered jail sentence after conviction from 04.5.09 to 29.10.2010 and total comes to two years two months and nineteen days. Considering all the facts and circumstances of the case this Court is of the opinion and that ends of justice would be served if the sentence awarded by the Trial Court to appellant Babua is reduced to the period already undergone by him. Accordingly, the appellant is sentenced to the period already undergone by him for the offence under Section 326 IPC.

Appellant Raj has not been granted bail by this Court and he is in jail since 04.5.2009. Again he suffered jail sentence for 189 days during trial. He is sentenced for two years for offence under Section 324 IPC. Looking to his detention period he be set at liberty forthwith if not required in any other case.

Appellant Murli was in jail during trial for 36 days and again he was in jail from 04.5.2009 to 02.7.2009 total comes to about three months. Considering all the facts and circumstances of the

case this Court is of the opinion and that ends of justice would be served if the sentence awarded by the Trial Court to appellant Murli is reduced to the period already undergone by him. Accordingly, the appellant is sentenced to the period already undergone by him for the offence under Section 323 IPC.

14. With these modifications the appeals are allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**