

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 3313 of 1999****Judgment Reserved on 24.10.2019****Judgment Delivered on 15.11.2019**

- State of Madhya Pradesh, Through P.S. Torawa, Bilaspur. (Now C.G.)

----Appellant**Versus**

1. Kriparam Mahar S/o Pardesi Ram Mahar, aged 40 years, R/o Bapu UP Nagar.
2. Manoj Kumar Mahar S/o Kriparam Mahar, aged 10 years, R/o Bapu UP Nagar.

---- Respondents

For Appellant/State
For Respondents

Shri Pawan Kesharwani, P.L.
Shri C.K. Kesharwani, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**C A V Judgment**

1. This appeal has been filed by the State against the judgment dated 30.11.1998 passed by the Judicial Magistrate First Class, Bilaspur, in Criminal Case No. 468/96 whereby the respondent/accused Kriparam has been acquitted of the charges under Sections 326, 323 read with 34 of IPC and 25 of the Arms Act and respondent/accused Manoj Kumar has been acquitted of the charges under Sections 326/34 and 323 of IPC.
2. Case of the prosecution in brief is that on the date of incident i.e. 10.05.1996 at 5:00 pm, complainant Munna had gone to the lane

for fetching water from the tap where dispute arose between the complainant and the accused persons in respect of taking water from the tap and the accused persons threw away the bucket of the complainant. On objection being raised by the complainant, accused Kriparam assaulted the complainant with sword like weapon, as a result of which the complainant sustained injuries over the dorsum of left hand and started bleeding. Soon after the incident, the complainant lodged a report against the accused persons in the police station, Torba.

3. As per MLC of complainant vide Ex.P-5, the complainant suffered incised wound 5cm x 2.5cm x 2 cm over dorsum of left hand tenderness of index and middle finger and Dr. G.L. Arora (PW-7) advised for X-ray of the left hand. As per X-ray report of the complainant Munna Ex.P-3, he suffered fracture of left second and third metacarpal bone. It is alleged during the scuffle, the accused Manoj also assaulted the complainant by stick on his back. During investigation, as per Ex.P-1 one T-shirt of the complainant torn at the time of incident having stains like blood was seized. Spot map was prepared vide Ex.P-2. From the possession of accused Kriparam, one sword was seized vide Ex.P-8. Likewise, from the possession of accused Manoj Kumar one hockey stick was seized vide Ex.P-10. Seized sword was sent to the Doctor for examination by the Police and as per Ex.P-6, Dr. G.L Arora (PW-7) after examination of the said weapon opined that the injuries suffered by the complainant can be caused by this article. After completion of the said

investigation, charge sheet was filed against accused persons for the offence punishable under Sections 326/34 of IPC and 25 of the Arms Act. The trial Court framed charges under Sections 326, 323/34 of IPC and 25 of the Arms Act against accused Kriparam whereas accused Manoj Kumar was charged under Sections 326/34 and 323 of IPC. The accused persons abjured their guilt and prayed for trial.

4. So as to hold the accused persons guilty, the prosecution has examined as many as 11 witnesses in all i.e. PW-1 Munna @ Guddu, PW-2 Nirmala, PW-3 Sheikh Salim, PW-4 Sheikh Kareem, PW-5 Baby Bai, PW-6 Dr. S. Chhatterjee, PW-7 J.L. Arora, PW-8 Sanju, PW-9 Mehatru, PW-10 B.B. Mishra and PW-11 Jogiram. Statement of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by them in their defence.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment acquitted the respondents/accused of all the charges levelled against them.
6. Learned counsel for the appellant/State submits that soon after the incident the complainant lodged a report with the concerned police station which was recorded in the roznamcha vide Ex.P-9 and accordingly the FIR was registered against the accused

persons. The version of the complainant finds due support from the medical evidence in the form of his MLC Ex.P-5 in which the treating Dr. G.L. Arora (PW-7) noticed incised wound over the dorsum of left hand and tenderness of index and middle finger. Further, on X-ray of the complainant being done vide Ex.P-3, it was found that the second and third metacarpal bone of the left hand was fractured. He submits that the eyewitness to the incident PW-3 Sheikh Salim, PW-4 Sheikh Kareem and PW-5 Baby Bai have also supported the prosecution case. PW-1 Munna, complainant has specifically stated that he was assaulted by Kriparam with sword in the FIR as well as in the Court statement, however, the trial Court considering the minor discrepancies in the statements of the witnesses, the fact that the witnesses being relative are interested witnesses, the fact that the seizure witness has not supported the prosecution case and further considering that PW-11 Jogiram, who recorded the Roznamcha has admitted in cross-examination that the complainant stated to have been assaulted by a sword like weapon whereas from the possession of deceased Kriparam a sword has been seized, has acquitted the accused persons of the charges. In these circumstances, the judgment of the trial Court is liable to be set aside and the respondents be held guilty of the charges levelled against them.

7. On the other hand, learned counsel for the respondents while supporting the impugned judgment submits that there is discrepancy in the statement of the witnesses in relation to place

of occurrence, the important witnesses of the prosecution namely PW-3 Sheikh Salim, PW-4 Sheikh Kareem and PW-5 Baby Bai being relatives of the complainant are interested witnesses and there is major contradiction in their Court statements as compared to their statements recorded under Section 161 of Cr.P.C. Though, it is alleged that the accused Manoj Kumar assaulted the complainant with a stick on his back, however, no such injury was found on the person of the complainant. He submits that the complainant sustained injury over his hand with the chain cover of the bicycle while accused Kriparam was trying to pacifying the dispute between the complainant and accused Manoj. In support of his argument that the complainant suffered injuries incidentally from the chain cover of the bicycle, he refers to the evidence of PW-7 Dr. G.L. Arora, who has though stated earlier in his deposition that the injury found on the person of the complainant cannot be caused by the chain cover but on being examined again on 26.10.1998, the Doctor has admitted the suggestion that such injury can be caused by the chain cover. The prosecution has also failed to prove the offence under Section 25 of the arms Act against the accused Kriparam in accordance with law. Thus, from the over all material available on record, it is clear that the trial Court has not committed any illegality in recording the finding of acquittal in favour of the accused persons which needs no interference by this Court.

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

9. It is not disputed that the complainant sustained injury incised wound as per Ex.P-5 over dorsum of his left hand and tenderness in index and middle finger. It is also not in dispute that as per Ex.P-3, the complainant suffered fracture of second and third metacarpal bone. Both these medical reports have been duly proved by the respective Doctors i.e. PW-7 G.L. Arora and PW-6 Dr. S. Chhatterjee.
10. PW-1 Munna has stated that on the date of incident while he was fetching water from the public tab in front of his house, his bucket was thrown away by accused Manoj and on objection being raised by him, accused Manoj slapped him and, therefore, he also slapped accused Manoj and thereafter returned to his house. After some time when he (this witness) came out of his house, accused Kriparam assaulted him with sword, as a result of which he sustained injury on dorsum of his left hand, his finger got cut and fractured. Thereafter, while he was running away, accused Manoj assaulted him with a stick on his back on which he fell down. Immediately after the incident, he rushed to the police station and lodged the report and was sent for medical examination by the police. The version of the complainant finds due support from the medical reports Ex.P-3 and Ex.P-5 so far as it relates to assault on the complainant by accused Kriparam. In the cross-examination, the defence could not elicit anything material from this witness which could render his evidence untrustworthy or doubtful. The complainant has specifically denied the suggestion by the defence that during the scuffle the

complainant suffered injuries from the chain cover of the bicycle while Kriparam was trying to pacify the dispute. He has reiterated that it is accused Kriparam, who assaulted him by sword.

11. PW-4 Sheikh Kalim has also supported the statement of the complainant and stated that after the incident of quarrel between the complainant and accused Munna, when the complainant had returned to his house, the accused persons came to their house, Kriparam was carrying sword and it is Kriparam, who assaulted the complainant with sword and accused Manoj assaulted with a hockey stick. He has further stated that accused Kriparam also assaulted him with sword, as a result of which he suffered simple injury but he did not get it medically treated. Though, there is minor contradiction in his statement as per to his diary statement Ex.D-3 but he remained consistent while stating that it is an accused Kriparam, who assaulted the complainant with sword. Similar is the statement of PW-5 Baby Bai, who has also supported the version of the complainant and he stated that it is accused Kriparam, who assaulted the complainant with sword, as a result of which the complainant suffered injuries over his hand. She states that accused Manoj also assaulted the complainant with a hockey stick on his back.

12. PW-9 Mehtru, the seizure witness has not supported the prosecution case and has been declared hostile.

13. PW-10, B.B. Mishra, Investigating Officer has duly supported the prosecution case.

14. So far as culpability of accused Kriparam is concerned, considering the unrebutted evidence of the complainant PW-1 Munna, which finds due corroboration from the eyewitness account rendered by PW-4 Sheikh Kareem and PW-5 Baby Bai and further from the medical evidence of PW-7 G.L. Arora and PW-6 Dr. S. Chhatterjee and the medical reports Ex.P-3 and Ex.P-5, it is evident that during the quarrel between the complainant on the one side and the accused persons on the other, it is accused Kriparam, who assaulted the complainant with sword which hit his hand, as a result of which second and third metacarpal bone of the dorsum of left hand got fractured. Thus, the accused Kriparam is held guilty under Section 326 of IPC.

15. As regards the involvement of accused Manoj in the crime in question is concerned, though there is evidence that initially there was dispute between the complainant and accused Manoj over fetching of water from the public tap where both of them slapped each other, however, no report was lodged regarding the said incident by any of them. It is alleged against accused Manoj that he assaulted the complainant over his back with a hockey stick as stated by the complainant and other witnesses but no such injury was found on the person of the complainant. This part there is nothing on record to show that while accused Kriparam was assaulting the complainant, the accused Manoj was sharing common intention with accused Kriparam or was provoking accused Kriparam for assaulting the complainant.

16. So far as the offence under Section 25 of the Arms Act is concerned, though the police seized sword from the accused Kriparam as per seizure memo Ex.P.1, however, the same was not produced before the trial Court, there is nothing on record to show the length, width etc. of the said article and as such the offence under Section 25 of the Arms Act cannot be said to be proved against accused Kriparam by the prosecution beyond all reasonable doubt.

17. On the basis of aforesaid discussions, this Court is of the opinion that the prosecution has been able to prove its case against accused Kriparam under Section 326 of IPC only but has failed to prove its case against accused Manoj beyond all reasonable doubt in respect of the charges levelled against him.

18. As regards the sentence, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 22 years ago, that at the time of incident accused Kriparam was 40 years of age and at present he must be 61-62 years of age, the fact that he has already remained in jail for a period of 69 days, this Court is of the opinion that no fruitful purpose would be served in sending the accused Kriparam back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him and is further directed to pay fine of Rs.2,000/- which shall be disbursed to the complainant as compensation under Section 357 of Cr.P.C.

19. In the result, the appeal is allowed in part. While maintaining acquittal of respondent/accused Manoj under Sections 326/34 and 323 of IPC and that of accused Kriparam under Section 323 read with 34 of IPC and 25 of the Arms Act, accused Kriparam is held guilty under Section 326 of IPC and he is sentenced to the period already undergone by him. He is further directed to pay a fine of Rs.2,000/- which shall be disbursed to the complainant as compensation under Section 357 of Cr.P.C. If the fine amount is not deposited by the accused Kriparam, he shall have to suffer additional imprisonment for a period of 15 days.

Sd/-
Gautam Chourdiya
Judge

Akhilesh