

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1992 of 2000**

1. Kubercharan Naik, S/o Ramlal Naik, aged about 35 years, R/o Chhichhpani, Police Station Sarangarh, District Raigarh (M.P.) now (C.G.).
2. Kushram S/o Nanki Soura, aged about 45 years, R/o Damra, Police Station Baremkela, District Raigarh (M.P.) now (C.G.)

**---- Appellants****Versus**

1. State of M.P. now Chhattisgarh, through P.S. Baremkela, District Raigarh (M.P.) now (C.G.)

**---- Respondent**


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|----------------------|---|--------------------------------------|
| For Appellants       | : | Shri Roop Naik, Advocate.            |
| For Respondent/State | : | Shri Pawan Kesharwani, Panel Lawyer. |

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**Hon'ble Justice Shri Gautam Chourdiya****07/11/2019****Judgment On Board**

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 07/07/2000 passed by 1<sup>st</sup> Additional Session Judge, Raigarh in Session Trial No. 31/1998; whereby the appellants Kubercharan Naik and Kushram stand convicted and sentenced as under:-

| <b>Name of accused</b> | <b>Conviction</b>                              | <b>Sentences</b>                                                                              |
|------------------------|------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Kubercharan Naik       | U/s. 325 of Indian Penal Code (in short "IPC") | R.I. for 1 and ½ years & fine of Rs. 1,000/- in default of fine additional R.I. for 3 months. |
|                        | U/s. 323 of IPC                                | R.I. for 6 months & fine of Rs. 500/- in default of fine additional R.I. for 1 month.         |
| Kushram                | U/s. 325/34 of IPC                             | R.I. for 1 and ½ years & fine of Rs. 1,000/- in default of fine additional R.I. for 3 months. |

|                                                    |                 |                                                                                       |
|----------------------------------------------------|-----------------|---------------------------------------------------------------------------------------|
|                                                    | U/s. 323 of IPC | R.I. for 6 months & fine of Rs. 500/- in default of fine additional R.I. for 1 month. |
| (Both sentences were directed to run concurrently) |                 |                                                                                       |

- 2) Case of the prosecution in brief is that there was a land dispute between complainant Anirudha Kumar Patel and the accused persons on account of which on 12/10/1997 at around 12 noon accused persons namely Kubercharan, Kushram and Trilokinath (who died during the course of trial) assaulted Minketen Patel PW-02, maternal grand father of Anirudh Kumar Patel, with club and stone. Hearing the cries of Minketen Patel, when complainant Anirudha Kumar Patel reached the spot he saw appellant Kubercharan assaulting Minketan Patel with stone on his head and Kushram with club. On being intervened by the complainant, he too was assaulted by the accused persons with club. The said incident was witnessed by Pyarilal PW-03 and Dorilal PW-04. On report FIR Ex. P-1 being lodged by the complainant, the investigation was set into motion. During investigation injured victims Minketen Patel PW-02 and Anirudha Kumar Patel PW-01 were medically examined vide Ex. P-7 and Ex. P-8 respectively. The Doctor also advised for X-Ray of the injured and as per Ex. P-9 fracture on left frontal bone of skull of Minketen Patel PW-02 was found whereas no fracture was found in the skull of Anirudha Kumar Patel. As per Ex. P-2 one full Shirt and one white Lungi of victim Anirudha Kumar Patel PW-01 having stains like blood was seized. Likewise from victim Minketen Patel PW-02 Banyan having stains like blood was seized Ex. P-3. Spot map Ex. P-4 was prepared by Patwari Baldev Prasad PW-07. As per Ex. P-6 one stone weighing 6 Kg having stains like blood allegedly used for assault was seized from the place of incident in presence of witnesses. From accused/appellant Kushram one club was seized vide Ex. P-11 and as per Ex. P-12 one club was also seized from accused/appellant Kubercharan. The seized articles were sent for chemical examinations to FSL and as per report Ex. P-16A blood was found on articles A, B1, B2 and D i.e. Banyan seized from

Minketan, Shirt and Lungi seized from Anirudha Kumar Patel and club seized from Kushram/appellant. However, no blood was found on the stone seized from the place of incident and the club seized from appellant Kubercharan. Statements of the witnesses were recorded by the Police and after completion of usual investigation charge-sheet was filed against the accused persons for the offence punishable under section 294, 323, 506(B) and 307/34 of IPC.

- 3) The Trial Court framed charges under sections 307 and 323/34 of IPC against the accused/appellant Kubercharan whereas accused Kushram and Trilokinath were charged under sections 323 & 307/34 of IPC and during course of trial accused Trilokinath expired on 16/02/1999 and therefore, the trial was conducted only against the present accused/appellants i.e. Kubercharan and Kushram. The accused persons abjured their guilt and prayed for trial.
- 4) The prosecution in support of its case examined as many as 11 witnesses namely PW-01 Anirudh Kumar Patel, PW-02 Minketan Patel, PW-03 Pyarilal, PW-04 Dorilal, PW-05 Bhagwan Das, PW-06 Dr. G. Sahu, PW-07 Baldev Prasad, PW-08 Govindram, PW-09 Sajanalal Sahu, PW-10 D.R Bare and PW-11 Dr. B.S. Thakur. The statement of the accused 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. In their defence they examined one Ramdas as DW-01.
- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above in para 1 of this judgment.
- 6) Learned counsel for the appellants submits that due to typographical error name of appellant No. 2 has wrongly been mentioned in the memo of appeal as Kuwaram whereas his name is Kushram as is evident from the impugned judgment and

the relevant documents available on record. Therefore, he may be permitted to make amendment in the memo of appeal to the above extent.

- 7) On due consideration, the prayer made by learned counsel for the appellants appears to be bonafied and reasonable and hence it is allowed. He is permitted to make necessary amendment in the memo of appeal today itself in the Court.
- 8) Learned counsel for the appellants submits that the Trial Court has not properly appreciated the evidence available on record. In fact it is the complainant party who was aggressor and opened assault on the accused/appellants and in their self defence the appellants assaulted the complainant party. There was no voluntary injury caused by the appellants to the complainant party. Though a counter case was also instituted against the complainant party but unfortunately the documents of the said counter case could not be produced before the Trial Court. He submits that the incident occurred over a very trivial issue of installing a pole on the field of complainant Anirudha and since there was an old land dispute between the complainant party and the accused persons, taking advantage of the situation the complainant party has falsely implicated the appellants in the crime in question.
- 9) He submits that if this Court ultimately comes to the conclusion that the conviction of the appellants is just and proper, considering the age of the appellants, the fact that the incident took place around 22 years ago, there is no criminal antecedents of the appellants, they may be given the benefit of Probation of Offender Act and constantly there sentence may be reduced to the already undergone by them.
- 10) On the other hand learned counsel for the respondent/State supporting the impugned judgment and submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellants 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-01 Anirudha Kumar Patel and PW-02 Minketan Patel are injured witnesses in this case. They have categorically stated in their depositions before the Court as to the manner in which the incident took place where all the accused persons assaulted Minketan Patel with stone and clubs and when Anirudha Kumar Patel PW-01 tried to pacify the disputes, he too was assaulted by the accused persons. FIR Ex. P-1 was lodged by Anirudha Kumar Patel PW-01 naming the accused persons as assailant. There is no major contradiction or omission in the statements of PW-01 Anirudha Kumar Patel and PW-02 Minketan Patel as compared to the FIR Ex. P-1.
- 13) PW-06 Dr. G. Sahu medically examined injured PW-02 Minketan Patel and PW-01 Anirudha Kumar Patel. As per MLC Ex. P-7 of injured Minketan Patel Doctor noticed the following injuries:-
  - i) lacerated wound, 5cmx1/2cm bone deep over head.
  - ii) Bruise 3cmx2 cm over right arm.
  - iii) Bruise 2 ½ cm x1cm over back side.

All these injuries were caused by hard and blunt object and for injuries on head the Doctor advised for X-Ray. As per X-Ray Ex. P-9 fracture of left parietal bone of skull of injured Minketan was found.
- 14) Vide Ex. P-8 i.e. MLC of injured Anirudha Kumar Patel the Doctor noticed the following injuries:-
  - i) Lacerated wound, 4cmx1/2cm bone deep over head.
  - ii) lacerated wound 1/2cmx1/2cm into bone deep over forehead.
  - lii) Bruise 2cmx1cm over base of right thumb.

Doctor opined that all these injuries were caused by hard and blunt object.

- 15) The oral evidence of injured witnesses PW-01 Anirudha Kumar Patel and PW-02 Minketan Patel finds due support from the evidence of PW-03 Pyarilal and PW-04 Dorilal who also witnessed the incident. This apart, the evidence of the injured witnesses and the eye witnesses also find due corroboration from the medical evidence in the form of MLC Ex. P-7 & X-Ray report Ex. P-9 of injured Minketan and Ex. P-8 of injured Anirudha Kumar Patel which have been duly proved by the treating Doctor PW-06 Dr. G. Sahu and also corroborated by prompt FIR Ex. P-1.
- 16) Thus, in the totality facts and circumstances of the case, the eye witness account rendered by PW-01 Anirudha Kumar Patel, PW-02 Minketan Patel, PW-03 Pyarilal and PW-04 Dorilal, duly corroborated by medical evidence in the form of MLC Ex. P-7 and Ex. P-8. X-Ray Report Ex. P-9 and the evidence of the treating Doctor PW-06 Dr. G. Sahu it stands proved beyond all reasonable doubt that it is the accused/appellants who with common intention voluntarily caused grievous hurt to PW-02 Minketan Patel and also voluntarily caused hurt to PW-01 Anirudha Kumar Patel. Being so, conviction of appellant Kubercharan under sections 325 and 323 of IPC and that under sections 325/34 and 323 of IPC of appellant Kushram appears to be just and proper warranting no interference by this Court.
- 17) So far as the quantum of sentence is concerned considering the facts and circumstances of the case, the manner in which the incident occurred over trivial issue of installing of pole in the field of PW-01 Anirudha Kumar Patel, the incident took place around 22 years back, age of the appellants (Kubercharan 35 years and Kushram 22 years at the time of incident), the fact that there is no criminal antecedent of the appellants, they have already remained in jail for above 20 days and are on bail since 2000, this Court is of the opinion that no useful purpose would be served in sending them back to jail at this stage and ends of justice would be served if they are sentenced to the period already suffered by them while maintaining the fine amount as

awarded by the Trial Court with default stipulation.

- 18) In the result the appeal is allowed in part. While maintaining the conviction of the appellant Kubercharan under sections 325 and 323 of IPC and that of appellant Kushram under sections 325/34 and 323 of IPC is hereby maintained. However, their jail sentence is reduced to the period already undergone by them while keeping the fine amount with default stipulation as imposed by the Trial Court intact. Since the appellants are reported to be on bail, therefore, their bail bonds shall remain in force for a period of six months from today in view of provision of section 437A of Cr.P.C.

**-Sd/-  
(Gautam Chourdiya)  
Judge**

Chandrakant