

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1208 of 2002**

Tejbali Panika S/o Ram Khelawan Panika, Aged about 27 years, Occupation Cultivation R/o Dhawalpur, Thana-Pondi, Distt. Korla (C.G.)

---- Appellant**Versus**

State of Chhattigarh, through Police Station, Thana Adim Jati kalyan, Ambikapur Surguja (C.G.)

---- Respondent

For Appellant	:	Mr. Pramod Shrivastava, Advocate
For Respondent	:	Mr. Sushil Sahu, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**29/11/2019**

1. This appeal has been preferred against the judgment dated 27/09/2002 passed in Special Sessions Trial No. 49/2000 by the Special Judge, Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, Surguja (C.G.), whereby the Appellant has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo RI for 5 years and to pay fine of Rs. 2000/- with default stipulation.
2. Facts of the case are that on 13/09/1997 at about 6:00 pm, one Aamir Singh had gone to look after his field. He saw that a portion of the crops standing thereon was grazed and nearby the Appellant Tejbali was grazing his cows and bullocks whereas Bhoglal was grazing buffaloes. Suspecting that Tejbali and Bhoglal were responsible for

grazing his crops, Amirsai questioned them as to why they had done so. Both of them denied the allegation. Thereafter, Amirsai started abusing them. Hearing the dispute his mother Montora Bai also arrived on the spot. At that time Bhoglal was armed with an axe. The Appellant was armed with a stick. Bhoglal caught hold Amir and felled him on the ground and assaulted him with the back of the axe, due to this he sustained grievous injuries. Appellant Tejbali struck him by his stick on the head of Aamir, due to which he sustained injuries on his head. The incident was witnessed by Indrapal. On 14/09/1997 at about 7:00 pm, Amir Singh along with his mother came to the police station and lodged an FIR. After completion of investigation, a charge-sheet has been filed against the Appellant under Section 307/34 of the IPC read with Section 3 (I) (x) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act. Since Bhoglal belonged to Gond caste, therefore, a separate charge-sheet has been filed against him in competent court. Trial Court framed the charges against the Appellant under the aforementioned sections. As many as 12 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial Court has wrongly convicted the Appellant without there being any sufficient evidence available on record. There was no previous enmity

between the parties and in a sudden quarrel, the incident took place. He further submits that total 8 injuries were sustained by the Victim in which four injuries are on his head and remaining are on his leg. The injury on his leg is of grievous nature. He further submits that looking to the injuries sustained by the Injured, only offence under Section 325 of the IPC is proved. The Appellant has already undergone about 2 months, therefore, he prays treating the offence under Section 325 of the IPC, the Appellant may be sentenced to the period already undergone by him.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. In his Court statement, Injured Amir Singh has stated that on the date of incident, he was returning from his field. The Appellant and Bhoglal had some dispute with him on the matter of grazing their cattle. At that time, Bhoglal assaulted him by a Tangiya on his leg and the Appellant assaulted him by a Lathi, due to which he sustained injury on his leg and head. Her mother tried to intervene. On the next day, he made a report in the police station. Mantora Bai (PW2) and Indrapal Singh (PW3) have supported the above statement of the Complainant. All these three witnesses remained firm during their cross-examination. The Injured/Complainant was medically examined by Dr. A.K. Agrawal (PW5). According to MLC report of the complainant, total 8 injuries were sustained by him. Injuries No. 1 to 4 were caused on head and

the nature of injuries are simple in nature. Injury No. 5 has been caused on his leg and injury No. 8 has been caused on back side. Those injuries are also of simple nature. Injury No. 7 has been caused in leg which caused fracture to the Complainant. The said injury was of grievous nature.

8. From the evidence available on record, it is clear that there was no previous dispute between the parties and in a sudden quarrel which was occurred on the matter of grazing of cattle, the dispute took place. The Injuries sustained by the Injured on head is simple in nature. Only injury No. 7 is of grievous nature. There is no opinion of the doctor that the injuries were dangerous to life of the Complainant. Looking to the above, in my considered opinion, no offence under Section 307 of the IPC is proved and the Appellant should be convicted under Section 325 of the IPC.
9. Accordingly, the Appellant is convicted under Section 325 of the IPC instead of 307 of the IPC.
10. Since the Appellant has already undergone about 2 months, he is facing the *lis* since 1997 and there is no criminal antecedent against him, I am of the view that the ends of justice would be met if, while convicting the Appellant under Section 325 of the IPC, the jail sentenced awarded to him is reduced to the period already undergone by him and he is directed to pay fine of Rs. 25,000/- under Section 325 of the IPC. Ordered accordingly. The above fine amount shall be payable within 2 months. In default of payment, the Appellant shall be liable to undergo RI for 1 year.

11. Consequently, the appeal is partly allowed to the extent indicated above.
12. It is reported that the Appellant/accused is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.
13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge