

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 796 of 2002**

1. Md. Milan S/o Md. Israil, aged about 22 years, R/o Camp-2, Gandhi Chowk, Near Janta School, P.S. Chaaoni, Bhilai, District Durg (C.G.).
2. Md. Nasim @ Pappoo, S/o Nazir Ahmed, aged about 21 years, R/o Gandhi Chowk, Camp-2, Near Janta School, P.S. Chhaoni, Bhilasi, District Durg (C.G.).

---- Appellants**Versus**

1. State of Chhattisgarh.

---- Respondent

For Appellants	:	Miss Pragya Pandey, Advocate.
For Respondent/State	:	Shri Vikas Shrivastava, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**02/12/2019****Judgment On Board**

- 1) This appeal is filed under section 374 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 20/02/2002 passed by 3rd Additional Sessions Judge, Durg (C.G.) in Session Trial No. 54/2001; whereby the appellants Md. Milan and Md. Nasim @ Pappoo stand convicted and sentenced as under:-

Conviction	Sentence
U/s. 324/34 of Indian Penal Code (in short "IPC")	R.I. for 6 months and fine of Rs. 500/- to each accused/appellant, in default of payment of fine additional R.I. for 1 month.

- 2) None appeared on behalf of the appellants for arguing this appeal despite repeated calls. In the given facts and circumstances of the case, in particular the long pendency of the appeal, this Court feels it appropriate to appoint a counsel in this

case from the High Court Legal Services Committee for arguing the appeal on behalf of the appellants.

- 3) Miss Pragya Pandey, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, she is ready to argue the matter. Therefore, this Court appoints Miss Pragya Pandey, Advocate to argue the matter on behalf of the appellants. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
- 4) Case of the prosecution in brief is that on the date of incident i.e. on 10/09/2000 at around 09:15 AM both the accused reached the place of incident Camp-2, Gandhi Chowk near Janta School and started abusing complainant Kashiram. Appellants abusing the complainant told that "you are doing leadership in area" and thereafter they assaulted upon complainant Kashiram by hands and fists. Accused Milan assaulted the complainant by means of Sword as a result of which complainant sustained injury. Complainant Kashiram was examined by PW-07 Dr. V.K. Sao, he found injury as mentioned in Ex. P-10 MLC report as follows:-
 - I) incised wound frontal area of scalp – 5" away from the nasal bone oblique – 2.5"x1/2" upto deep bone bleeding.
 - ii) incised wound over left forearm – 2"x1" upto deep muscle bleeding finger movement normal.

According to Doctor, these injuries were caused by hard and sharp object and he advised for X-Ray of the skull. As per X-Ray report Ex. P-11, no bony injury was found on the skull.

Immediately FIR was lodged by complainant Kashiram on same day within an hour as per Ex. P-3 at 09:40 AM. During investigation as per Ex. P-4 blood stained shirt of Kashiram/complainant was seized. Spot map was prepared as per Ex. P-5. The incident was witnessed by Rekchand, Raju Sinha, wife and daughter-in-law of Kashiram/complainant. After due investigation charge sheet was filed against the appellants/ accused for the

offence under sections 341, 294, 506B, 324, 307/34 of IPC.

- 5) The Trial Court framed charges against both the accused/appellants under sections 341, 294 and 307/34 of I.P.C. The accused/appellants denied the charges and prayed for trial.
- 6) The prosecution in support of its case examined as many as 08 witnesses namely PW-01 Khemlal Sinha, PW-02 Ranjeet Kumar Sahu, PW-03 Abhayram, PW-04 Kashiram Sahu (complainant/victim), PW-05 Rekhchand Sahu, PW-06 Ravindra Kumar Upadhyay, I.O., PW-07 Dr. V.K. Sao and PW-08 S.N. Sao, S.I. 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 and pleaded innocence and false implication. No witness was examined by the accused in their defence.
- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellants as mentioned above.
- 8) Learned counsel for the appellants submits that the Trial Court has not properly appreciated the evidence available on record. He further submits that in this case only the relatives of Kashiram Sahu complainant were produced as eye witness. PW-01 Khemlal Sinha and no any independent eye witness supported the prosecution case. Looking to the previous dispute between the appellants and complainant, appellants are falsely implicated in this case. As per statement of PW-04 Kashiram Sahu, accused Md. Nasim @ Pappoo has not committed any offence against the complainant, therefore, learned trial court wrongly considered the evidence of the interested witness of the prosecution and convicted the appellants.
- 9) He lastly submits that the accused were in the age group of 20-22 years and were the young offender at the time of incident but benefit of Probation of Offender Act has not been given by the

learned Trial Court. Looking to the age of the accused/appellants, benefit of Probation of Offender may be given to the appellants/accused.

- 10) On the other hand learned counsel for the respondent/State supporting the impugned judgment 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-04 Kashiram is the victim in this case and as per PW-04 he stated in his deposition that in the morning of 10/09/2000 at around 09:15 AM while he was returning from his shop, both accused were standing on the door of his house and accused Milan abused the complainant and told that "*you are doing leadership in area*" and he caught hold of his collar and assaulted by fist. At that time complainant was crying for help head which was warded off by him through left hand as a result of which his left hand, wrist got cut thereafter Milan again assaulted with sword on his head. Accused Pappoo also caught hold of the complainant and threw him on the place of occurrence and both the accused fled from the place of incident. He also proved Ex. P-3 report lodged by the complainant and as per Ex. P-4 shirt seized from Kashiram. There is no major contradiction and omission in his statement and PW-05 Rekhchand Sahu also supported the statement of PW-04 Kashiram. As per PW-05 Rekhchand Sahu he has also seen the incident. When he heard cry of his father Kashiram and sisters-in-law, he reached the place of occurrence, accused Milan assaulted upon the complainant by Sword and accused Pappoo caught hold of complainant and fell him down. Therefore, there is no reason to disbelieve PW-04 Kashiram and PW-05 Rekhchand Sahu, no any major contradiction and omission was made in

their deposition. As per PW-07 Dr. V.K. Sao also proved the MLC Ex. P-10 and he found the cut injury in his head as mentioned above.

- 13) Looking to the nature of injury and the evidence of PW-04 complainant which is also supported by the eye witness of the incident PW-05 Rekhchand Sahu, though PW-01 Khemlal Sinha is not an eye witness of the case but he heard the cry and reached the place of occurrence and found that injury sustained by Kashiram PW-04, this Court is of the opinion that the prosecution has proved its case is beyond reasonable doubt against accused Milan and Pappoo. Thus, the Trial Court has rightly convicted the appellants under Section 324/34 of IPC.
- 14) As regards the sentence, considering the facts and circumstances of the case giving rise to incident, the nature and extent of injury suffered by the complainant the fact that the incident occurred around 19 years ago i.e. in the year 2000 the age of the appellants at that time i.e. 22 & 21 years, the appellants have no criminal antecedent, they have been on bail since 2002 and did not misuse the liberty granted to them till date, this Court is of the opinion that no fruitful purpose would be served by sending the appellants back to jail at this stage and the ends of justice would be served if the appellants are sentenced to the period already undergone by them i.e. 16 days of accused Milan and 21 days of Pappoo. While keeping the fine amount of Rs. 500/- with default stipulation imposed by the Trial Court shall remain intact and directing for payment of the said fine amount to the complainant as compensation under Section 357 of Cr.P.C.
- 15) In the result the appeal is allowed in part. While maintaining the conviction of the appellants under Sections 324/34 of IPC, their jail sentence is reduced to the period already undergone by them. However, the fine amount of Rs. 500/- imposed on each of the appellants with default stipulation by the Trial Court shall

remain intact. The amount so deposited by the appellants shall be paid to the complainant PW-04 Kashiram as compensation under Section 357 of Cr.P.C. after due verification by the Trial Court. Since the appellants are reported to be on bail, their bail bonds shall remain in force for a period of six months from today in view of provision of section 437-A of Cr.P.C.

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

Chandrakant