

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 186 of 2006

1. Jhitru S/o Ratan Bhatra, aged about 55 years,
 2. Maniram S/o Jhitru, aged about 34 years,
- Both are R/o Paurbel, P.S. Nagarnar, District Bastar (C.G.).

---- Appellants

Versus

1. State of Chhattisgarh, through the District Magistrate Bastar, Jagdalpur (C.G.)

---- Respondent

For Appellants	:	Shri Kanwaljeet Singh, Advocate appears on behalf of Ms. Sharmila Singhai, Advocate.
For Respondent/State	:	Shri Sameer Sharma, Dy. Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya

Judgment On Board

14/10/2020

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 30/12/2005 passed by 4th Additional Session Judge (Fast Track Court) Bastar, Place at Jagdalpur (C.G.) in Session Trial No. 409/2005; whereby the appellants stand convicted and sentenced as under:-

Accused	Conviction	Sentence
Jhitru	U/s. 324 of Indian Penal Code (in short "IPC")	R.I. for 1 year and fine of Rs. 200/- in default of fine additional R.I. for 2 months
Maniram	U/s. 324/34 of IPC	R.I. for 1 year and fine of Rs. 200/- in default of fine additional R.I. for 2 months

- 3) Case of the prosecution in brief is that on 29/05/2005 at around 06:30 AM when complainant Laikhen was sowing the field received by her mother in partition, in presence of Chaitan, Chintaman, Bali, Mandu, Dalim and Singh, at that time his maternal uncle (appellant) Jhitru and his son Maniram reached the said field and objected to sowing of paddy. Jhitru having battle axe (Farsi) and accused Maniram having a club in his hand assaulted upon complainant Laikhen. Accused Maniram also assaulted by hand. As a result of this, complainant Laikhen sustained injury. Immediately on the same day on 29/05/2005 at around 09:30 PM FIR (Ex. P-1) under zero number was registered at Out Post Bakavand, Police Station Nagarnar, District Bastar against Jhitru and Maniram under Section 324 & 34 of IPC and later it was registered (Ex. P-4) under Crime No. 98/2005 at Police Station Nagarnar, District Bastar against the said accused. Spot map was prepared vide Ex. P-2 by Santosh Kumar Singh (Assistant S.I). One Farsa (axe) was seized from the possession of accused Jhitru vide Ex. P-5. Accused Maniram was arrested vide Ex. P-6 and accused Jhitru was arrested vide Ex. P-7. As per Ex. P-3 the complainant was medically examined by Dr. S.R. Korram PW-05 who noticed swelling, pain and oozing blood over left knee of size 3"x1.5" skin deep of the complainant. According to the Doctor, the said injury was caused by hard and sharp cutting object. Injury was simple in nature. Statements of the witnesses were recorded and after completion of the investigation charge sheet was filed against the appellants/accused for offence under Section 324/34 of IPC.
- 4) The Trial Court framed charge against the accused/appellant Jhitru under Section 324 of I.P.C. and against the accused/appellant Maniram under Section 324/34 of IPC. The accused/appellants denied the charge and prayed for trial.
- 5) The prosecution in support of its case examined as many as 09 witnesses namely PW-01 Laikhen (complainant), PW-02 Chitaman, PW-03 Chetan, PW-04 Singh, PW-05 Dr. S.R. Korram

(Medical Officer), PW-06 Johncrus Toppo (Head Constable), PW-07 Santosh Kumar Singh (A.S.I.), PW-08 Manoj Singh (Up-Sarpanch) and PW-09 Champa Bai (Kotwar). The statements of the accused/appellants 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. DW-01 Patiram was examined by the accused/ appellants in their defence.

- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para 2 of this judgment.
- 7) Learned counsel for the appellants submits that in this case no any independent witness has supported the prosecution case. He submits that in fact the complainant Laikhen was the aggressor, he entered in the field of the accused appellants and assaulted upon them. A counter case was registered at the instance of the accused appellants against the complainant. However, the Trial Court without properly appreciating the evidence on record, ignoring the fact that the complainant was the aggressor and a counter case was registered against him, has wrongly convicted and sentenced the appellants by the impugned judgment. The Trial Court has also failed to see that the seizure witness PW-08 Manoj Singh has not supported the prosecution case. In these circumstances, the impugned judgment is liable to be set aside.
- 8) On the other hand, learned counsel for the respondent/State supporting the impugned judgment submits that the evidence of injured eye witness is duly supported by the prompt FIR and medical evidence, no counter FIR documents was proved in this case, therefore, evidence of defence witness has no substance in this case. He 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.

- 9) Heard counsel for the parties and perused the material available on record.
- 10) PW-01 Laikhen, the injured complainant, has categorically stated in paras 1 to 3 of his deposition that when he was cultivating field at around 06:30 AM at village Paurbel, accused Jhitru and Maniram reached at the place and both were saying that they are not permitted to cultivate the field and would be killed. Accused Jhitru assaulted near his knee by means of battle axe (Farsa) and accused Maniram, who was having club, also assaulted on his cheek by hand. PW-01 Laikhen immediately informed the Kotwar PW-09 Champa Bai and lodged Ex. P-1 (FIR) and spot map was prepared in his presence vide Ex. P-2. The evidence of PW-01 Laikhen is supported by PW-02 Chintaman and there is no reason to disbelieve the evidence of PW-01 Laikhen and PW-02 Chintaman. PW-03 Chetan and PW-04 Singh, the other eye witnesses have also supported the prosecution case as stated by PW-01 Laikhen in his deposition.
- 11) PW-05 Dr. S.R. Korram found the injury on the person of the complainant as stated by PW-01 Laikhen and other eye witnesses vide MLC Ex. P-3 and proved the same.
- 12) PW-08 Manoj Singh also partly proved Ex. P-5 seizure memo by which one battle axe was seized from accused Jhitru. PW-9 Champa Bai has also proved the fact as stated by PW-01 Laikhen that just after the incident he informed the village Kotwar PW-09 regarding the quarrel between the complainant and accused. She also saw the injury on the body of the complainant PW-01 Laikhen.
- 13) Looking to the entire evidence both accused was with common intention reached at place of occurrence and assaulted upon complainant PW-01 by means of battle axe by accused Jhitru and Maniram by hand and fist.

- 14) DW-01 Patraim has stated that on the date of incident while he alongwith his brother was ploughing his field, he saw that the complainant Laikhen, Manglu, Chetan, Chintaman, Baliram, Madhu and Dalim were assaulting appellant Jhitru in the agriculture field of Jhitru by means of axe and club as a result of which appellant Jhitru fell unconscious and assailant fled from the spot. However, the defence has not filed and proved any document to show that any counter case was registered against the complainant party at the instance of the accused/appellants and also there is no medical report in favour of the accused/appellants on record.
- 15) Thus, considering the overall evidence available on record, ocular and documentary evidence it stands proved beyond all reasonable doubt that it is accused Jhitru who voluntarily caused injury to the complainant PW-01 Laikhen by a dangerous sharp and cutting weapon i.e. battle Farsa and accused Maniram also took active part in commission of the said crime with common intention of causing injury to the complainant. Being so the impugned judgment of the Trial Court is based on proper evidence on record and is hereby affirmed.
- 16) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. As per jail report dated 31/08/2020 submitted by Deputy Jail Superintendent, Central Jail, Jagdalpur, the appellant Jhitru has been released from jail on 05/06/2009 and appellant Maniram has been released from jail on 16/06/2009 after remission and completion of the sentence including the fine sentence. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellants.

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