

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 743 of 2003

- Jhalak Ram, S/o Puru Ram, aged 20 years, Occupation Telring, R/o Gayatri Nagar, Occupation – Telring, Dundera, PS Utai, District Durg (CG) ----- **Appellant**

Versus

- State Of Chhattisgarh, through PS Utai, District Durg (CG) ----- **Respondent**

For Appellant	:	Mr. D. N. Prajapati, Advocate
For Respondent	:	Ms. Richa Shukla, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

29.06.2020

As per the case of prosecution on 27.05.2002 at about 9:30 AM the accused was erecting a wall close to the wall of the PW-1 and PW-2 and when PW-2 asked the accused to stop doing so, the accused/appellant picked up a verbal dispute with him. Thereafter, the local Corporator namely Lomeshwar (PW-4) was called to settle the matter but his efforts also did not fetch any result. When the compromise efforts failed and the dispute continued to soar, the accused/appellant went to his tailoring shop, brought a pair of scissors and hurling abuses dealt blows with it on his head and chest. It is alleged that when Mithlesh (PW-1) came to the rescue of PW-2 he too was inflicted a scissors blow on his abdomen. The incident is said to have been seen by the Corporator (PW-4), Birauji Bai (PW-9) and one Hemlal (not examined). FIR (Ex.P-2) was lodged by victim PW-2 on the basis of which offences under Sections 294, 323, 324 and 307 IPC were registered against the accused/appellant. Both the victims underwent medical examination,

and after completion of investigation charge-sheet was filed followed by framing of charge under Sections 294, 324 and 307 IPC.

2. Learned Court below vide judgment impugned dated 19.06.2003 passed in Sessions Trial No.195/2002 acquitted the accused under Sections 294 and 307 but held him guilty under Section 324 IPC, and sentenced to undergo rigorous imprisonment for two years with fine of Rs.500/- plus default stipulation, on two counts. Hence this appeal.

3. Counsel for the accused/appellant submits that conviction of accused/appellant under Section 324 IPC is not in conformity with the evidence of the witnesses and therefore, liable to be set aside. He submits that PW-9 being the mother and grandmother of the victims is but natural to support the case of the prosecution and that is what she has done in this case by not resorting to truth. According to him, the prosecution has not proved its case beyond all reasonable doubt and for this reason only the accused has been acquitted under Sections 294 and 307 IPC.

4. State counsel, on the other hand, supports the judgment impugned and submits that apart from PW-9, there is another independent eye witness namely Lomeshwar Chandrakar (PW-4) who has described the manner in which the compromise was first tried but failed leading the accused pick up scissors from his tailoring shop and inflict blows on various parts of bodies of PW-1 and PW-2. According to her, the medical evidence also supports the case of the prosecution.

5. Heard counsel for the parties and perused the material on record including the evidence of the witnesses.

6. Gopal (PW-2) – one of the victims has categorically stated that as the accused did not listen to him and continued erecting the wall close to his house, the Corporator (PW-4) was called but all his efforts for compromise failed. Thereafter, the accused went to his tailoring shop, got back with scissors and inflicted 3-4 blows on his chest and one on head. He has stated that when his son Mithlesh (PW-1) came to intervene in the matter, he too was dealt a scissors blow on his abdomen. Mithlesh (PW-1) has also corroborated the version of PW-2 stating that when the compromise efforts made by PW-4 failed, the accused came back from his shop with scissors in his hand and dealt 3-4 blows on the chest of his father and one on his head. He has further stated that when he tried to save his father, the accused/appellant caused scissor injuries on his abdomen also. PW-9 – another eyewitness to the incident has also supported the case of the prosecution stating the same things as has been put forth by PW-1 and PW-2. Dr. M.K. Singh who first medically examined the victim Mithlesh has vide his report Ex.P-9 noticed two incised wounds on right lumbar region in the size of 2x1x muscle deep. He has stated that the wounds were bleeding also, but the injuries were simple in nature though caused by hard and sharp edged object. Dr. I. K. Waghvani (PW-7) who medically examined Gopal (PW-2) and gave his report Ex.P-8 has stated that he noticed four incised wounds – on forehead, right chest, abdomen and right forearm but they were not fatal to life in the ordinary course of nature. However, looking to the injuries, PW-7 referred PW-2 to District Hospital Durg where Dr. S. Mukopadhyay (PW-12) has corroborated the injuries noticed by PW-7 and did not state anything extra. One thing which emerges from the testimony of PW-7, PW-10

and PW-12 is that though the injuries to PW-1 and PW-2 were caused by hard and sharp edged object yet none of them has found even a single injury to be grievous in nature. Of course, the weapon used in commission of offence being scissors was a dangerous one but as the injuries have been opined to be simple in nature, the approach of the Court below in acquitting the accused under Section 307 IPC is just and proper. Likewise, since the abuses said to have been hurled have not been described, acquittal of the accused/appellant under Section 294 IPC is also justified. However, there is ample evidence to the effect that the accused/appellant voluntarily caused hurt to the victims being PW-1 and PW-2 with a dangerous instrument such as scissors used by a tailor for cutting the clothes seized under Ex.P-4. This way, the conviction of the accused/appellant under Section 324 IPC on two counts is fully justified and does not call for any interference in this appeal. It is thus maintained.

7. However, looking to the incident being above 18 years old, and that by now the accused/appellant has already suffered a lot by facing a long drawn litigation, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone, which in this case comes to be about a month. Order accordingly. Sentence of fine however remains as it is.

8. Appeal is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge