

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 512 of 2008**

1. Prakash Panjwani, aged about 48 years, S/o Sadhumal Panjwani, By Occupation Labour, R/o Chongel Avaspara, Bhanupratappur, District Kanker (C.G.).

---- Appellant**Versus**

1. State of Chhattisgarh, through Police Station Bhanupratappur, District Kanker (C.G.)

---- Respondent

For Appellant	:	Shri Shalvik Tiwari, Advocate on behalf of Shri Parag Kotecha, Advocate.
For Respondent/State	:	Shri Vikas Shrivastava, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya
Judgment On Board

24/02/2020

- 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 05/05/2008 passed by Special Judge, S.C.S.T. Act, Kanker, District Uttar Bastar, Kanker (C.G.) in Special Case SC & ST Act No. 111/2007; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 294 of Indian Penal Code (in short "IPC")	R.I. for 1 month
U/s. 325 of IPC	R.I. for 6 months and fine of Rs. 1,000/- in default of fine additional R.I. for 2 months.

- 2) Case of the prosecution in brief is that the appellant and the complainant Dayaram Gond were working in Dadi Dhaba at Village Chougel, near Baraksin Pond, P.S. Bhanupratappur, District Kanker. On date of incident i.e. 20/06/2007 at around

03:00 AM after completion of their work when the complainant asked the appellant to go along with him (Dayaram/complainant), the appellant started filthily abusing the complainant saying "Gond, Madarchod, Gandu Sale, Bahan Chod" etc. and intimidated to kill him and also assaulted the complainant by hand and fist on his chest after throwing him down on the floor. Shekhar and Enu came at the place for rescue of the complainant. Due to this assault, complainant Dayaram sustained injury on his left leg. FIR Ex. P-1 was lodged by complainant on 22/06/2007 at about 13:15 PM. At the time of occurrence PW-02 Shekhar and PW-07 Aayturam were present on the spot. Complainant Dayaram was medically examined by Dr. Sumit Dhruw PW-08 vide Ex. P-2 (MLC) wherein he noticed injury on left lower leg of the complainant which was simple in nature and caused by hard and blunt object. He advised for x-ray of the left lower leg from below the left knee and left ankle joint. As per X-Ray report Ex. P-11, fracture below Tibia bone of left leg was noticed. Spot map was prepared as per Ex. P-6 by Patwari PW-06 Ashwini Sahu and Ex. P-7 by PW-05 U.N. Shukla (S.D.O.P.). Ex. P-5 Caste certificate of complainant Dayaram was seized as per seizure memo Ex. P-8. After due investigation charge sheet was filed against appellant/accused for the offence under Sections 294, 323, 325 and 506B of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

- 3) The Trial Court framed charges against accused/appellant under Sections 294, 325 and 506B of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989. The accused/appellant denied the charges and prayed for trial.
- 4) The prosecution in support of its case examined as many as 08 witnesses namely PW-01 Sheetal Sidar (S.I.), PW-02 Shekhar Kumar, PW-03 Dayaram (Complainant), PW-04 G.R. Baghel

(Tehsildar), PW-05 U.N. Shukla (S.D.O.P), PW-06 Aswini Sahu (Patwari), PW-07 Aayturam and PW-08 Dr. Sumit Dhruw. The statement of the accused was also recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. No witness was examined by the accused in his defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above.
- 6) Learned counsel for the appellants submit that prosecution has failed to prove the ingredients of offence under Section 294 of IPC looking to the fact that both appellant and complainant were using filthy language against each other, therefore, the words uttered by the appellant and complainant are common in their society and they usually talk with each other in such abusive language, hence, offence under section 294 of IPC is not made out against the appellant and the trial Court was not justified in convicting and sentencing the appellant under this section.
- 7) He further submits that the appellant and accused are friends and they were working together, they had good relations with each other, on the date of incident both had consumed liquor, no any act with intention or knowledge to cause any hurt to the complainant was done by the appellant. In fact, while the appellant and the complainant were abusing each other as usual, scuffle took place between the two and during that unfortunately complainant fell down himself on the floor which was wet as a result of which he sustained injury in his leg.
- 8) He further submits that for convicting a person under Section 325 of IPC it is required to be proved that he voluntary caused grievous hurt to the victim whereas the said ingredient is missing in this case, therefore, no offence is made out against

the appellant under section 325 of IPC.

- 9) Lastly he submits that at the most, the appellant can be convicted under Section 338 of IPC for causing hurt to the complainant due to his negligent act and further, considering the facts and circumstances of the case, the fact that the incident happened in 2007 i.e. near about 13 years ago, the appellant has no criminal antecedents and he has been on bail since long, he may be given the benefit of Probation of Offenders Act and sentenced to the period already undergone by him.
- 10) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that as per Ex. P-1 FIR, Ex. P-2 MLC and Ex. P-11 X-Ray report, complainant sustained grievous injury and looking to the consistent evidence of the complainant and other prosecution witnesses, the appellant has rightly been convicted and sentenced by the trial Court. Hence no interference in the impugned judgment is required.
- 11) Heard counsel for the parties and perused the material available on record.
- 12) First this Court considers whether offence under section 294 of IPC is made out against the appellant on the basis of evidence available on record. PW-03 Dayaram admitted in para 6 of his evidence that they used to abuse each other as usual and when he pulled the hand of the appellant and told the appellant to go home, the appellant pushed him unintentionally and since the floor of the Daba was wet due to rain, he (complainant) fell down accidentally and suffered fracture of his leg. Thus, no any annoyance was caused to the complainant by the appellant due to use of abusive language. PW-07 also admitted in para 5 & 6 that language used by appellant and complainant is commonly used between both of them and they usually used to talk with each other in abusive language. In view of the above admitted

position, offence under Section 294 of IPC cannot be said to have been made out against the appellant. Therefore, learned Trial wrongly convicted and sentenced appellant under Section 294 of IPC which is liable to be set aside.

- 13) PW-03 Dayaram (complainant) admitted in para 6 of his deposition that when accused and complainant both were using filthy language (Gali) against each other and complainant caught hold of hand of the accused and was forcing him to go with the complainant, the appellant pushed complainant unintentionally as a result of which the complainant fell down on floor which was wet due to rain and he suffered fracture of leg. Except this injury, no other injury was found on the body of the complainant. The said injury has been also duly proved by his MLC report and the evidence of PW-8 Dr. Sumit Dhruv.
- 14) For bringing home charge under Section 325 of IPC, its main ingredients i.e. voluntarily causing grievous hurt is required to be proved. Sections 321 & 322 of IPC read as under:

“321. Voluntarily causing hurt.—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”..”

“322. Voluntarily causing grievous hurt.—Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt.” Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind. Illustration A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which cause Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt. comments Explanation The offence of grievous hurt is not caused unless the offender both causes grievous hurt and intends or knows himself to be likely, to cause grievous hurt”

- 15) Considering the evidence of the complainant wherein he admitted that the appellant did not intentionally cause him injury and it was accidental as he was forcing the appellant to come alongwith him and during that process, the appellant pushed him on account of which he (complainant) fell down on the floor which was wet due to rain, this Court is of the opinion that the main ingredients of the offence under Section 325 of IPC have not been proved by the prosecution. However, in the given facts and circumstances of the case, the manner in which the incident took place and the complainant suffered injury, definitely the act of the appellant makes him liable for conviction under Section 338 of IPC for causing grievous injury to the complainant due to his rash and negligent act.
- 16) So far as sentence is concerned, the sentence prescribed under section 338 is 2 years jail sentence or with fine which may extend to Rs. 1,000/- or with both. Considering the overall facts and circumstances of the case, the genesis of the incident, the manner in which the incident took place, the fact that the accused and complainant had a good relation, both were friend, they had consumed liquor at the relevant time, the appellant has remained in jail for 03 days, the incident took place around 13 years ago, appellant has no criminal antecedents and he has been on bail since long, the age of the appellant, *keeping in view the judgment of Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone*, this Court is of the opinion that the ends of justice would be served if the appellant is sentenced to the period already undergone by him while keeping the fine sentence with default stipulation as imposed by the trial Court intact.

- 17) In the result, the appeal is allowed in part. Conviction of the appellant Prakash Panjwani under Section 294 & 325 of IPC is hereby set aside and instead he is held guilty under Section 338 of IPC and his jail sentence is reduced to the period already undergone by him. The appellant is directed to pay fine of Rs. 1,000/- in default whereof he shall suffer additional R.I. for 2 months. The fine amount already deposited by the appellant shall be adjusted accordingly.
- 18) Since the appellant is reported to be on bail, his 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