

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 256 of 2005**

1. Jai Kumar @ Guddu Verma, S/o Seetaram Verma, aged about 24 years, R/o Village Koliha, P.S. Kasdol, District Raipur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through : SHO, Police Station Kasdol, District Raipur (CG.)

---- Respondent

For Appellant	:	Shri Y.C. Sharma, Advocate.
For Respondent/State	:	Shri Anand Verma, Dy. Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****26/06/2020**

- 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 14/03/2005 passed by 1st Additional Sessions Judge, Baloda-Bazar (C.G.) in Session Trial No. 345/2004; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 324 of Indian Penal Code, 1860 (in short "IPC")	R.I. for 1 year

- 3) Case of the prosecution in brief is that on 22/08/2004 at around 01:00 PM when complainant Vijay Kumar Verma was passing by the house of the accused appellant, due to old enmity accused appellant assaulted by Axe and caused injury to the complainant on his forehead and other parts of the body. On the same day of incident Dehalti Nalisi Ex. P-5 was lodged by Police and

thereafter FIR Ex. P-9 also recorded and complainant was sent for medical examination. PW-11 Dr. R.A. Joshi found one cut injury and two abrasion on the body of the complainant Vijay Kumar Verma as per Ex. P-6. During investigation as per memorandum Ex. P-2 one Axe and one club was seized from accused vide Ex. P-3. Blood stained shirt of the complainant was also seized vide Ex. P-1. Spot map was prepared as per Ex. P-8. FSL report Ex. P-16 confirms the blood on the shirt seized from the complainant and Axe seized from the accused. After due investigation charge sheet was filed against the appellant/accused for the offence under Section 307 of IPC.

- 4) The Trial Court framed charge against the accused/appellant under Section 307 of I.P.C. The accused/appellant denied the charge and prayed for trial.
- 5) The prosecution in support of its case examined as many as 18 witnesses namely PW-01 Vijay Kumar, PW-02 Ashok Kumar, PW-03 Garib Lal, PW-04 Devsari Bai, PW-05 Rudrashankar, PW-06 Ganeshram, PW-07 Gayatri Verma, PW-08 Tosh Kumar Kurmi, PW-09 Shankar, PW-10 Surendra Jaiswal, PW-11 Dr. R.S. Joshi, PW-12 Janak Kumar Lehre (Patwari), PW-13 M. R. Sinha (ASI), PW-14 Subhas Das (SI), PW-15 Vishnu Prasad Verma (Constable), PW-16 D. K. Sharma (Inspector), PW-17 Dr. S.N. Madriya and PW-18 Subhas Dadsena (Head Constable). 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.
- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in Para-2 of this judgment.
- 7) Learned counsel for the appellant submits that the Trial Court

has not properly appreciated the evidence available on record. He further submits that appellant has not committed any crime and complainant Vijay Kumar has stated two stories, firstly that he fell down from the tree and secondly the accused assaulted the complainant Vijay Kumar, therefore PW-01 statement is not trustworthy. No eye witness of the incident proved this fact. The appellant has been falsely implicated by the complainant as the sister of the appellant informed him (appellant) about rape being committed with her by the complainant. Therefore, the learned Trial Court has wrongly convicted the appellant under section 324 of IPC.

- 8) Alternatively, he submits that the accused was 24 years of age at the time of incident which took place in the year 2004 i.e. near about 16 years back, he has no criminal antecedent, he has been on bail since long and never misused the liberty and the appellant has already spent in jail approximate 119 days, therefore, he may be extended the benefit of Probation of Offender Act.
- 9) 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 appellant by the impugned judgment which calls for no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) PW-01 Vijay Kumar has stated that on the date of incident while he was passing by the house of the appellant at about 01:00 in the noon, on the request of the sister of the appellant he went to her house for marking important question in her book. At that time the appellant reached his house, therefore on the request of sister of the appellant he hid himself under a caught. However, the appellant caught him and assaulted him by means of club as well Tangiya (Axe) as a result of which he sustained injuries. The

evidence of PW-01 Vijay Kumar is supported by medical evidence Ex. P-6 and prompt lodged Dehati Nalisi Ex. P-5 and FIR Ex. P-9. There is no major omission and contradiction in the statement of the complainant.

- 12) PW-02 Ashok Kumar also stated when they were taking Vijay Kumar to hospital, he informed that Jai Kumar was assaulted him by means of Axe.
- 13) PW-04 Devsari Bai also stated the same fact that Vijay Kumar informed her that Jai Kumar assaulted upon him and she found injury on the body of the Vijay Kumar.
- 14) PW-05 Rudra Shankar, also stated that Vijay Kumar informed him that Jai Kumar assaulted him by means of Axe. The injury found on the body of the victim was cut injury incised wound as mentioned in Ex. P-6 and on the memorandum of the appellant Axe was seized from him. This fact is proved by PW-03 Ganeshram and PW-14 Subhas Das. As per FSL report Ex. P-16 blood found on the full shirt of the complainant and the Axe seized from the appellant. In this case the sister of appellant was not mentioned as a witness by the prosecution nor examined by the appellant in his defence as she died due to burn injuries after two days of the incident. No report against the complainant for making sexual assault on the sister of the appellant was lodged either by the appellant or her sister or any of there family member. Therefore, the complainant Vijay Kumar committed any sexual assault on the sister of the appellant is not proved. Further this Court finds no substance in the defence of the appellant that the complainant sustained injuries while he was running away from his house as no such injury was found on the body of the complainant. In these circumstances, I am of the opinion that the Trial Court did not commit any illegality in convicting the appellant under section 324 of IPC.
- 15) So far as sentence part is concerned, considering the facts and circumstances of the case, the manner in which the incident

occurred, the fact that the incident took place around 16 years ago, the age of the appellant at the relevant time i.e. 24 years, he has no criminal antecedent, during pendency of this appeal the appellant was on bail since 2005 and did not misuse the liberty granted to him, 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 no fruitful purpose would be served by sending the appellant back to jail at this stage and the ends of justice would be served if the appellant is sentenced to the period already undergone by him i.e. 119 days and is directed to pay a fine of Rs. 2,000/- which shall be payable to the complainant as compensation under Section 357 of Cr.P.C.

- 16) In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 324 of IPC, his jail sentence is reduced to the period already undergone by him. However, the appellant shall pay a fine of Rs. 2,000/-. If the appellant fails to deposit the said fine amount, he shall suffer additional R.I. for 2 months. The fine amount deposited by the appellant shall be payable to the complainant (PW-01 Vijay Kumar Verma) as compensation under Section 357 of Cr.P.C. after due verification by the Trial Court. Since the appellant is reported to be on bail, his bail bond 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