

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1114 of 2007**

- Nazir Khan Son of Vaseer Khan, aged about 35 years, Resident of Village Kandri, Police Station Chando, District Surguja (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh, Through : The Station House Officer, Police Station Chando, District Surguja (C.G.)

---- Respondent

For appellant	: Ms. K. Radhika, Advocate on behalf of Mr. V.K. Pandey, Advocate.
For Respondent/State	: Mr. Mateen Siddiqui, Dy. Advocate General.

Hon'ble Shri Justice Gautam Chourdiya**Judgment On Board****29/06/2020**

The matter is heard through video conferencing.

02 This appeal arises out of the judgment of conviction and order of sentence dated 07.12.2007, passed by Special Judge, Special Sessions Court {constituted under the provision of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989}, Sessions Division at Ambikapur, District Surguja in Special Sessions Case No. 179/2000 convicting the accused/appellant under Section 325 of Indian Penal Code (henceforth "IPC") and sentencing him to undergo rigorous

imprisonment for six months with fine of Rs. 2,000/-, in default of payment of fine, to further undergo rigorous imprisonment of four months.

03. Case of the prosecution, in brief is that on the basis of complaint made by complainant- Vinod Kumar on 6.3.1999, FIR (Ex.P/4) was lodged by Uttam Lal Dewangan, Constable alleging that on 02.03.1999 at about 6.00 pm accused/appellant, who is not the member of scheduled caste community, assaulted the complainant, who is the member of Schedule Caste Community by means of club in his wrist, legs and other parts of the body, as a result of which, he sustained multiple injuries including fracture in his body. The incident was witnessed by Parsuram (PW-4) & Naresh (PW-5). Spot map (Ex. P/8) was prepared & proved by M. M. Mishra (PW07). Complainant Vinod Kumar was examined by Dr. S.P. Vaishya (PW01) on 06.03.1999 and he noticed following injuries on his body :-

- (i) Swelling in the size of 3"x3" in his left hand.
- (ii) Abrasion in the size of 1" x ½ " in his left leg.
- (iii) Contusion in the size of 3" x 1/2" in his right scapular region.

Also found bony injuries vide Ex.P/1 & P/2.

04. After usual investigation, charge-sheet under Section 325 of the IPC & Section 3 (1) (x) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth "SC/ST Act) were filed against the accused/appellant. The trial Court framed charges under Section 325 of IPC & Section 3(1)(x) of the SC/ST Act, which were denied by him and he prayed for trial.

05. Prosecution examined as many as 8 witnesses namely Dr. S.P.

Vaishya (PW-1), Uttam Lal (PW-2), Vinod Kumar (PW-3), Parsuram (PW-4), Naresh (PW-5), S.N. Kapoor (PW-6), M.M. Mishra (PW-7) and Islam Ansari (PW-8). The statement of accused under Section 313 of Cr. P.C. has also been recorded in which he denied the circumstances appearing against him and the defence has been taken by him that since he had given the statement against the friend of complainant in one rape case, therefore, he has been falsely implicated in the instant case on account of previous enmity. No defence witness has been examined on behalf of the accused/appellant.

06. The Special Judge (SC & ST Act), after appreciating the oral and documentary evidence available on record, acquitted the accused/appellant of the offence under Section 3(1)(x) of the SC/ST Act whereas convicted and sentenced him for the offence punishable under Section 325 of the IPC as aforesaid. .

07. Learned counsel for the appellant submits that the Special Judge has convicted and sentenced the accused/appellant only on the basis of the statement of the complainant. In the instant case, independent witnesses have not supported the case of the prosecution and turned hostile. She also submits that due to some previous enmity between the appellant & complainant, he has been falsely implicated in this case as there is no evidence available on record to prove the involvement of the accused/appellant in the crime in question. Alternatively she submits that considering the facts and circumstances of the case, the manner in which the offence is said to have been committed, and the fact that the appellant was aged about 35 years at the time of incident and now he is near about 55 years of age, and

considering the detention period, he may be sentenced to the period already undergone by him.

08. On the other hand, counsel for the State, while supporting the impugned judgment, would submit that the trial Court after appreciating the oral and documentary evidence available on record convicted and sentenced the accused/appellant for the aforesaid offence, which does not call for any interference in the instant appeal.

09. I have heard learned counsel appearing for the parties and perused the material available on record including judgment impugned.

10. Complainant- Vinod Kumar (PW-3) has stated in paragraph 1 to 4 of his deposition that on the date of incident accused assaulted the complainant with the help of club on his legs, wrist and back, as a result thereof, he sustained multiple injuries including fracture and thereafter he informed the police about the incident. There is no reason to disbelieve the statement of Vinod Kumar (PW03) which remains uncontroverted in his cross-examination. The statement of this witness is also supported by the medical evidence i.e. statement of Dr. S. P. Vaishya (PW01) and MLC (Ex. P/1).

11. Dr. S.P. Vaishya (PW-1) conducted the MLC (Ex. P/1) and X-ray Ex. P/2 of the accused and found swelling in the size of 3"x3" in his left hand, abrasion in the size of 1" x ½ " in his left leg and contusion in the size of 3" x 1/2" in his right scapular region.

12. Parsuram (PW-4) & Naresh (PW-5), who are independent witnesses of the case have not supported the case of the prosecution and turned hostile.

13. Spot map (Ex. P/8) was prepared & proved by M. M. Mishra

(PW07). In presence of Islam Ansari (PW-8) seizure memo (Ex. P07) was prepared and he signed the said document whereby one club has been seized.

14. Thus, from the perusal of the record it is seen that it is the accused/appellant who assaulted the complainant by means of club on his legs wrist and back as a result of which he sustained grievous injuries including fracture. The statement of the complainant is fully supported by the medical evidence in the form of deposition of Dr. S.P. Vaishya (PW-1), MLC report (Ex. P/1) and X-ray (Ex. P/2). After the incident, FIR (Ex. P/4) was lodged by the complainant naming the appellant as the assailant which has been duly proved by Uttam Lal (PW02). Though other prosecution witnesses- Parsuram (PW-4) & Naresh (PW-5) have not supported the prosecution case but it is clear from their deposition that they were not present at the time of incident. Therefore, considering the overall evidence available on record this Court is of the opinion that the trial Court has rightly convicted the appellant under Section 325 of IPC.

15. So far as the sentence of the appellant under Section 325 of the IPC is concerned, considering the fact that the incident occurred way back in the year 1999, the appellant is facing trial near about 21 years and the fact that the appellant has already remained in jail for 59 days (near about two months) and at present he is on bail, keeping in view the judgment of the 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 he is sentenced to the period already undergone by him while enhancing the amount of fine from Rs. 2,000/- to Rs.10,000/-. If the enhanced amount of fine shall not be deposited, the appellant shall suffer 6 months additional R I.

16. Resultantly, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 325 of the IPC, his jail sentence is reduced to the period already undergone by him. However, the fine amount from Rs. 2,000/- as imposed by the trial Court is enhanced to Rs.10,000/-, out of which Rs. 4,000/- shall be paid to the complainant as compensation Under Section 357 of Cr. P. C. after due verification by the trial Court. In case the fine amount is not deposited, he shall suffer RI for six months.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge