

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 349 of 2006

- Tejram S/o Devsai, aged about 28 years, Occupation – Farmer, Village – Junapara, Mangari, P.S. - Seetapur, District Surguja (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through: D.M. Surguja (C.G.)

---- Respondent/State

For Appellant	:	Shri Vineet K. Pandey, Advocate
For Respondent/State	:	Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.09.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 28.04.2006 passed by the Sessions Judge, Surguja (C.G.) in Sessions Trial No. 393 of 2005, whereby the appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 324 of Indian Penal Code (for short 'IPC')	R.I. for one year and pay a fine of Rs.500/-, in default of payment to further undergo Additional R.I. for one month

3. Facts of the case in brief are that on 20.08.2005 at about 05:00 am F.I.R. (Ex.-P/5) was lodged by Phoolmani (PW-2) against the appellant informing the police that on 19.08.2005 at about 11:00 pm, her husband Mahesh Lakra (PW-1) came to his house after celebrating the *Rakhi*-festival and was standing outside near the door of his house. At that time appellant came there and told Mahesh Lakra why he (PW-1) abused him (appellant) and assaulted on the chest of PW-1 by means of *barcchi* (spear). On shouting of her husband, she saw that her husband had fallen down unconscious. Hearing the hue and cry, Kesho, Kalinder and Mangta reached there and the

appellant fled from there.

4. After lodging the F.I.R. (Ex.-P/5), the injured/victim (PW-1 Mahesh Lakra) was sent for medical examination to Community Health Centre, Seetapur vide Ex.-P/2A, where PW-1 was medically examined by PW-5 Dr. K.K. Dutta who gave his MLC report (Ex.-P/2) and found incised wound in size of 5 cm x ½ cm x 2/3 cm over left side of chest vertically at mid axillary line at 3rd to 5th ribs. As per Doctor (PW-5), opinion regarding nature of injury can be given after X-ray, therefore, he advised for plain X-ray of chest. The above injury was caused by hard & sharp object.
5. During investigation, spot map (Ex.-P/6) was prepared by R.M. Yadav, Assistant Sub-Inspector and plain soil, blood stained soil & undergarment of PW-1 from the place of occurrence were seized vide Ex.-P/7. Accused/appellant was arrested on 29.08.2005 consequent to which spear (*barcchi*) was recovered at the instance of the appellant vide Ex.-P/1 and the same was sent for examination to Community Health Centre, Seetapur. PW-5 Dr. K.K. Dutta also examined the spear (*barcchi*) vide Ex.-P/4 and opined that the injury found on the body of injured (PW-1) can be caused the said *barcchi*.
6. After recording case diary statements of the witnesses, charge-sheet was filed against the accused/appellant under Section 307 of IPC. While framing charge, the Sessions Judge, Surguja (C.G.) framed the charge against the accused/appellant under Section 307 of IPC which was denied by him, he pleaded innocence and prayed for trial.
7. So as to hold the accused/appellant guilty, the prosecution examined 06 witnesses namely victim-Mahesh Lakra (PW-1), Phoolmani (PW-2), Kesho Lakra (PW-3), Basant Baik (PW-4), Dr. K.K. Dutta (PW-5) and R.M. Yadav (PW-6) in support of its case. Statement of the accused/Appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances

appearing against him in the prosecution case, pleaded innocence and false implication. The appellant stated that on the date of incident at about 06:00 pm Mahesh Lakra and his wife both consumed liquor and he & two-three persons were stopping them and what happened thereafter is not within his knowledge. No defence witness has been examined by the appellant in his support.

8. After appreciation of the evidence available on record, the learned Sessions Judge, Surguja (C.G.) by the impugned judgment, while acquitting the appellant of the charge under Section 307 of IPC, convicted and sentenced the accused/appellant as mentioned in para- 2 of this judgment, hence this appeal.
9. Learned counsel for the appellant submits that no any independent witnesses supported the prosecution case, nor examined by the prosecution. He submits that PW-2 Phoolmani and PW-3 Kesho Lakra are wife and brother of PW-1 Mahesh Lakra. The Sessions Court has not properly appreciated the evidence of appellant that he has been falsely implicated in this case as on the date of incident he had objected to the drinking of liquor by PW-1 and his wife.
10. Lastly, learned counsel for the appellant submits that if this Court finally comes to the conclusion that the appellant has rightly been convicted by the trial Court for offence under Section 324 of IPC, considering the fact that the appellant is the first offender aged about 28 years at the time of incident, the incident took place around 15 years ago and the appellant remained in jail for about six days, he may be given the benefit of Probation of Offender Act and sentenced to the period already undergone by him. In support of his contention reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478.**

11. On the other hand, learned counsel for the State supporting the impugned judgment submits that the Sessions Court has rightly convicted and sentenced the appellant for the above offence which needs no interference by this Court.
12. Heard learned counsel for the parties and perused the evidence available on record.
13. PW-1 Mahesh Lakra is the victim/injured in this case and he stated in his deposition that on the date of incident at night, when he came out from his house to answer the call of nature, at that time appellant Tejram assaulted him on the left side of chest by means of *barcchi* (spear). He also stated that when he shouted, his wife Phoolmani (PW-2) and brother Kesho (PW-3) reached there and he fell unconscious. PW-1 also admitted that the appellant is his nephew.
14. PW-2 Phoolmani is the wife of PW-1 Mahesh Lakra. PW-2 has stated in her deposition that on the date of incident, in the night her husband (PW-1) went out from the house to answer the call of nature, at that time the appellant assaulted him on the left side of his chest as a result of which the blood was oozing and her husband fell unconscious.
15. PW-3 Kesho Lakra is the brother of PW-1 Mahesh Lakra. PW-3 has stated in his deposition that on the date of incident, he was sleeping in his home and in the night his brother Mahesh shouted, when he reached to his brother, he told him that appellant Tejram assaulted him by means of *barcchi* and the blood was oozing from the left side of chest of his brother. Thereafter, he took Mahesh to Seetapur Hospital.
16. PW-5 Dr. K.K. Dutta conducted the MLC of injured Mahesh Lakra (PW-1) and gave his report Ex.-P/2. As per MLC report, Doctor found one incised wound on the left side of chest of the PW-1 as mentioned in para-4 of this judgment and opinion regarding nature of injury can be given after X-ray.

PW-5 Doctor proved his MLC report (Ex.-P/2). Doctor PW-5 also examined the *barcchi* (spear) vide Ex.-P/4 and opined that the injury sustained by Mahesh Lakra (PW-1) can be caused by the said *barcchi* recovered at the instance of appellant vide Ex.-P/1.

17. PW-4 Basant Baik is the witness of seizure of *barcchi* (spear) vide Ex.-P/1 in which he admitted his signature. PW-6 R.M. Yadav, Assistant Sub-Inspector, is the Investigating Officer who registered the F.I.R. (Ex.-P/5), prepared spot map (Ex.-P/6), made seizures (Ex.-P/7 & Ex.-P/1) and has proved the same.

18. Thus, in the totality of facts and circumstances of the case, there is no reason to disbelieve the evidence of Mahesh Lakra (PW-1) which is duly corroborated by the evidence of Phoolmani (PW-2) & Kesho Lakra (PW-3) as well as the medical evidence in the form of MLC Ex.-P/2 and further by the named F.I.R. Ex.-P/5 lodged by Phoolmani (PW-2). Therefore, it stands proved beyond all reasonable doubt that it is the accused/appellant who voluntarily caused hurt by *barcchi* (spear) to PW-1 Mahesh Lakra. Being so, conviction of the appellant under Section 324 of IPC awarded by the Sessions Court appears to be just and proper warranting no interference and the same is affirmed by this Court.

19. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellant was a young offender of 28 years on the date of incident, he has no criminal antecedent, he remained in jail for six days and is on bail, the incident took place around 15 years back, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of *George Pon Paul* (supra) 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 in the present case also no useful purpose would be served in

again sending the appellant back to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him subject to enhancement of the amount of fine from Rs.500/- to Rs.3,000/- with default stipulation under Section 324 of IPC.

20. In the result, the appeal is allowed in part. While confirming the conviction of the appellant awarded by the Sessions Court under Section 324 of IPC, he is sentenced to the period already undergone by him. However, the fine amount of Rs.500/- imposed by the Sessions Court is enhanced to Rs.3,000/- out of which Rs.2,500/- would be payable to victim- Mahesh Lakra (PW-1) as compensation under Section 357 Cr.P.C. by the Sessions Court after due verification. If the fine amount has already been deposited, it shall be adjusted accordingly. Let the enhanced sum be deposited in the Sessions Court failing which the appellant shall be liable to remain in jail for a period of two months. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force of a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge