

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 687 of 2011

1. Shankar Sethia S/o Sonadhar Sethia, aged about 30 years, R/o Village Nalpound Patelpara, Chowki Bakavand, P.S. Nagarnar, District Bastar (C.G.).

---- Appellant

Versus

1. State of Chhattisgarh, Through Police Station Nagarnar, District Bastar (C.G.).

---- Respondent

For Appellant	:	Shri Pravin Kumar Tulsyan, Advocate.
For Respondent/State	:	Shri Vimlesh Bajpai, Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya

Judgment On Board

23/09/2020

- 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 07/09/2011 passed by Sessions Judge (Atrocities) Bastar Place Jagdalpur (C.G.) in Session Trial No. 118/2010; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 324 of Indian Penal Code (in short "IPC")	R.I. for 1 year and 6 months.

- 3) Case of the prosecution in brief is that on the date of incident i.e. on 10/08/2010 at around 07:30 PM at village Nalpawand Patelpara the accused appellant came near the house of the complainant Hariram PW-07 and was talking about the inflation, on which the complainant told the appellant that he (appellant) values money only. Thereupon, the accused appellant took out a

note of Rs. 500/- from his pocket and threw the same and moved away. Thereafter, the complainant picked up the said note and gave it to his companion Budhram. After some time the accused appellant met the complainant, assaulted him with knife on his right arm and right side of chest by filthily abusing him and saying as to why he picked up the money thrown by him. The incident was witnessed by PW-08 Budhram and other witnesses. Complainant Hariram was examined by PW-03 Dr. D.K. Krishan vide MLC (Ex. P-4) where he found the following injuries:-

- (i) incised wound of size 1.5cmx1/2cm over upper side of right lateral side of right arm.
- (ii) incised wound of size 2x1x3cm over right side of chest below right clavicular region.
- (iii) incised wound of size 5x3x3cm over front of right side of chest.

According to Doctor, these injuries were caused by sharp object. Injury No. (i) was simple in nature, injury No. (ii) & (iii) were grievous in nature. The injured was referred to Medical College Hospital, Jagdalpur for X-Ray of the chest and treatment. He advised for X-Ray of the chest. As per X-Ray report, no bony injury was found on the chest. However, as per query report Ex. P-5 PW-03 Dr. D.K. Krishan opined that though no bony injury has been found on the chest of the injured as per X-Ray report, since injuries No. 2 & 3 on chest were wide and deep and internal blood vessels were cut leading to excessive bleeding, these injuries were grievous in nature.

FIR was initially lodged by complainant Hariram on same day as per Ex. P-10 at 10:45 PM at Nagarnar Thana, Chowki Bakavand which was registered under crime No. 0/2010 and later numbered FIR was lodged vide Ex. P-9 under crime No. 176/1010 for the offence under Sections 294, 323 & 506 of IPC. During investigation as per Ex. P-1 memorandum of accused was recorded and one knife was seized in consequence of memorandum vide Ex. P-2. Accused was arrested vide Ex. P-3.

Spot map was prepared as per Ex. P-7. After due investigation charge sheet was filed against the appellant/accused for the offence under Sections 294, 323, 506 and 326 of IPC and under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

- 4) The Trial Court framed charges against the accused/appellant under Sections 294, 506(B) & 326 of I.P.C. under 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.
- 5) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Tulsi Bisoi, PW-02 Dharamdas, PW-03 Dr. D.K. Krishan, PW-04 Shiv Bhajan Rana (Head Constable), PW-05 Ritu Hemnani (Tahsildar), PW-06 Vijay Kumar Mishra (Head Constable), PW-07 Hariram (complainant), PW-08 Budhram, PW-09 Rame and PW-10 Gayatri Singh (City S.P.). 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 no independent witness supported the prosecution case and therefore the learned Trial Court has wrongly convicted and sentenced the appellant under Section 324 of IPC. In this case memorandum witness and eye witness have not supported the prosecution case and only on the basis of evidence of PW-07 Hariram, complainant, learned Trial Court

wrongly convicted appellant.

- 8) He lastly submits that if this Court ultimately confirms the conviction of the appellant, considering the facts and circumstances of the case, the fact that the incident took place in 2010, around 10 years back, the appellant is the first offender having no criminal antecedents, his age at the time of incident i.e. 30 year and he has spent in jail 1 year and 7 days, he be sentenced to the period already undergone by him.
- 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-07 Hariram has stated in paras 2 & 3 of his depositions that at about 06:00 PM he was talking with Budhram PW-08 near his house when the appellant came there in drunken condition and threw a note of Rs. 500/-. When the complainant picked up the said note and gave to it to the appellant, the appellant having taken that money moved away threatening them that "he will see them". When he (complainant) alongwith Budhram was going towards the house of Budhram, all of a sudden the appellant came from behind with knife in his hand and assaulted him as a result of which he sustained injuries on right arm and right side of the chest. On being called, his father Rame reached the spot and the appellant fled from there. He states that he lodged FIR Ex. P-10 at Police Thana Bakavand.
- 12) PW-08 Budhram, eye witness of the incident, while supporting the evidence of PW-07 Hariram has also stated that it is the accused appellant who assaulted upon the complainant with knife and on cry being raised by the complainant, his father

Rame reached the spot and the appellant fled from there. PW-09 Rame, father of the complainant has stated that upon hearing the voice of his son Hariram when he reached the spot he saw that his son Hariram had sustained injuries on right arm and right side of chest from which blood was oozing. He states that on being asked, his son informed him that he was assaulted by the appellant with knife.

- 13) PW-03 Dr. D.K. Krishan medically examined the complainant vide MLC (Ex. P-4) and noticed as many as 3 incised wounds as mentioned in the preceding paragraphs and has proved the same. Though as per X-Ray report available on record, no bony injury was found on the chest of the complainant but as per query report Ex. P-5 the injuries suffered by the complainant on the chest resulted in cutting of internal blood vessels and excessive bleeding and were grievous in nature. This report of Ex. P-5 has been duly proved by PW-03 Dr. D.K. Krishan.
- 14) PW-07 Hariram has categorically stated as to the manner in which he was assaulted by the appellant with knife, the defence not been able to elicit anything from him in the cross-examination to make his evidence doubtful or untrustworthy. This apart, eye witness to the incident PW-08 Budhram has also supported the prosecution case and stated that it is the appellant who caused injuries with knife to the complainant. There is no reason to disbelieve the statement of this eye witness who is an independent witness. The evidence of the injured complainant also gets corroboration from the evidence of PW-09 Rame, the promptly lodged FIR Ex. P-9 by the complainant and MLC Ex. P-4 and query report Ex. P-5 proved by PW-03 Dr. D.K. Krishan. Though witnesses to the memorandum and seizure PW-01 Tulsi Bisoi and PW-02 Dharamdas have not supported the prosecution case but they have admitted their signatures on the said documents. Looking to the entire evidence of the prosecution, ocular and medical evidence, as discussed above, even if the witnesses to the memorandum and seizure have not

fully supported the prosecution case, it does not affect the credibility of the prosecution case. The prosecution has successfully proved its case beyond all reasonable doubt against the appellant under Section 324 of IPC and as such conviction of the appellant under the said section by the Trial Court is hereby affirmed.

- 15) So far as the sentence part is concerned, considering the facts and circumstances of the case, the fact that the incident took place 10 years back, the age of the appellant at the time on incident i.e. 30 years, he has remained in jail for more than 1 year and 7 days during trial and pendency of this appeal, the trivial issue giving rise to the incident, 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.
- 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. 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**