

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 757 of 2008

1. Anjor Das, S/o Parshuram Satnami, aged about 37 years
2. Muniram, S/o Parshuram Satnami, aged about 32 years

Both are R/o Village- Khujha (Jhulna), Police Station- Mungeli, District Bilaspur (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, through District Magistrate, Bilaspur, District Bilaspur (C.G.)

---- Respondent/State

For Appellants : Smt. Indira Tripathi, Advocate

For Respondent/State : Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

18.09.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 31.07.2008 passed by the Additional Sessions Judge, Mungeli, District Bilaspur (C.G.) in Sessions Trial No. 58/2007, whereby, the appellants stand convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentences</u>
<u>Appellant No.1 – Anjor Das:</u> Under Section 326 of Indian Penal Code (for short 'IPC')	Rigorous imprisonment for three years and pay a fine of Rs. 1,000/- and in default of payment to further undergo simple imprisonment for three months
<u>Appellant No.2 – Muniram:</u> Under Section 323 of IPC	Simple imprisonment for six months and pay a fine of Rs.500/- and in default of payment to further undergo simple imprisonment for thirty days

3. Prosecution case in brief is that on 03.10.2006 at about 08:00 am shegoat of

complainant Kartik Ram entered the field of accused persons namely Anjor Das and Muniram, and due to this reason, both accused persons scolded Kartik Ram and his son Balla Ram using filthy language. At that time accused Anjor Das was having a crowbar (*tabbal*) and assaulted with it on the face of Balla Ram as a result of which Balla Ram became unconscious. Accused Muniram also assaulted upon Kartik Ram by means of club (*lathi*) due to which he sustained injury on his body. Thereafter, both accused persons fled from the place of occurrence.

4. F.I.R. (Ex.-P/21) was lodged by Kartik Ram on the same day i.e. 03.10.2006 at about 11:00 am just after two hours of the incident against the accused/appellants. During investigation spot map (Ex.-P/22) was prepared by the police. Another spot map (Ex.-P/17) was prepared by the Patwari. Plain soil & blood stained soil were seized vide Ex.-P/4. One shirt stained with blood of injured Balla Ram was seized from Kartik Ram vide Ex.-P/18. The accused/appellants were arrested on 04.10.2006 vide arrest memos Ex.-P/19 & Ex.-P/20 and their memorandum statements were recorded vide Ex.-P/2 & Ex.-P/3 consequent to which *tabbal* was seized from the possession of appellant Anjor Das and *lathi* was seized from the possession of appellant Muniram vide Ex.-P/6 & Ex.-P/7. One shirt and one full-pant were also seized from appellant Anjor Das vide Ex.-P/5. Seized articles were sent for FSL examination.
5. Kartik Ram and Balla Ram were medically examined by PW-3 Dr. Ameet Lal and he gave his reports (Ex.-P/9 & Ex.-P/10) and found following injuries on the bodies of Kartik Ram and Balla Ram:-

As per MLC report (Ex.-P/9) of injured Kartik Ram, there was one contusion in size of 5 cm x 2 cm on the right side of shoulder which was present above the scapula. The injury was caused by hard & blunt object. Doctor advised for X-ray of chest and referred the patient to CIMS

Hospital, Bilaspur for further treatment and opinion to Radiologist.

As per MLC report (Ex.-P/10) of injured Balla Ram, there was incised wound in size of 15 cm x 2 cm on the right side of face and suspected of frontal bone & maxillary bone. The injury was caused by hard & sharp object. Doctor advised for X-ray of skull and referred the patient to CIMS Hospital, Bilaspur for further treatment and opinion to Radiologist.

6. After recording case diary statements of the witnesses, the charge-sheet was filed against the accused/appellants under Sections 294, 323, 307 read with Section 34 of IPC and while framing the charges, the Additional Sessions Judge, Mungeli framed the charge under Sections 294, 323/34 & 307/34 of IPC against the accused/appellants which was denied by them, they pleaded innocence and prayed for trial
7. So as to hold the accused/appellants guilty, the prosecution examined thirteen witnesses namely PW-1 Baldew, PW-2 Dukalah, PW-3 Dr. Ameet Lal, PW-4 Dr. Anil K.P. Singh, PW-5 Daniram, PW-6 Phalit Ram Bhandhekar, PW-7 Tikaram, PW-8 Kartik Ram, PW-9 Archana Singh, PW-10 Laxmi Prasad Rathore, PW-11 Pramod Naidu, PW-12 Balla Ram and PW-13 D.K. Sao. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. They pleaded that when shegoat of Balla Ram entered the field of Ridhram and destroyed the pulse crop, they were complaining about the same to Kartik Ram & Balla Ram, then Kartik Ram & Balla Ram started abusing them filthily and assaulted upon them. Thereafter, hearing this, Puttu reached the place of occurrence and attempted to assault Muniram with *tabbal*, however, in this process Ballaram accidentally suffered injuries of *tabbal*. Appellants further stated that they have not assaulted the complainant party and were not

using filthy language against the complainant party. They also lodged a report against the complainant party in Mungeli Police Station on the same day. Appellants examined one defence witness namely Jogiram Bhargava as DW-1 in their support.

8. After appreciation of the evidence available on record, the learned Additional Sessions Judge, Mugeli (C.G.) by the impugned judgment, while acquitting the accused/appellants of the charges under Sections 294 & 307/34 of IPC, convicted and sentenced them as mentioned in para- 2 of this judgment, hence this appeal.
9. Learned counsel for the appellants submits that in this case both the appellants have not committed any offence against the complainants (Kartik Ram and Balla Ram). She submits that complainant party were quarreling with the appellants as shegoat of Ballaram had destroyed pulse crop of the appellants which was complained by the appellants and one Puttu reached there and tried to assault appellant Muniram from the handle of *tabbal* and which accidentally hit Balla Ram. She further submits that on the same day, appellant No.2 Muniram lodged the report (Ex.-D/1) in Mungeli Police Station against Balla Ram, Puttu Sahu & Bula. She also submits that as per F.I.R. incident happened on 03.10.2006 and on the same day X-ray of Balla Ram was taken, but no bony injury was found on his skull. Thereafter, on 25.11.2006 after 1 ½ months without medico-legal reference Ballaram was present for CT scan. She submits that one CT scan report (Ex.-P/24) of Balla Ram was given by PW-9 Archana Singh in which fracture of left frontal bone was found and PW-9 also stated that the CT scan was taken by the technician, not taken by her and she admitted in her deposition that callus starts coming within 15 days and within one month fracture can be cured depending upon the nature of fracture and condition of the patient. Learned counsel for the appellants submits that without any medico-legal reference

on the MLC report (Ex.-P/10), CT scan of Balla Ram was taken on 25.11.2006 after 1 ½ months. She also submits that as per bed-head-ticket of injured Balla Ram, he was admitted in CIMS Hospital, Bilaspur on 03.10.2006 and was discharged from the hospital on 11.10.2006 vide Ex.-P/35 whereas CT scan report (Ex.-P/24) of Balla Ram was prepared on 25.11.2006. She also submits that as per evidence of injured Balla Ram, he has admitted in para-13 that his CT scan was not done and therefore, CT scan report of Balla Ram is doubtful. Looking to the X-ray report (Ex.-P/16) of Balla Ram, no bony injury was found on skull, therefore, the offence under Section 326 of IPC was not made out against appellant No.1 Anjor Das.

10. Lastly, learned counsel for the appellants submits that if this Court finally comes to the conclusion that the appellants have rightly been convicted by the trial Court for offence under Sections 326 & 323 of IPC respectively, considering the fact that the appellants are the first offenders aged about 37 and 32 years at the time of incident, the incident took place around 14 years ago, they be given the benefit of Probation of Offender Act and sentenced to the period already undergone by them. In support of her 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 trial Court by the impugned judgment has rightly convicted and sentenced the appellants which needs no interference by this Court.

12. Heard learned counsel for the parties and perused the evidence available on record.

13. PW-3 Dr. Ameet Lal, Medical Officer, examined Katrik Ram on the date of incident i.e. 03.10.2006 and found one contusion in size of 5 cm x 2 cm on the right side of shoulder which was present above the scapula which was

caused by hard & blunt object and has duly proved his report Ex.-P/9. On the same day PW-3 also examined Balla Ram and found incised wound in size of 15 cm x 2 cm on the right side of face and suspected of frontal bone & maxillary bone which was caused by hard & sharp object. Doctor advised for X-ray of skull and has duly proved his report Ex.-P/10.

14. On 03.10.2006 PW-4 Dr. Anil K.P. Singh had taken X-ray of head and right shoulder of injured Balla Ram and as per X-ray report (Ex.-P/16), no bony injury was found on the X-ray plate. But in the said report (Ex.-P/16) PW-4 Doctor also advised for CT scan of head of injured Balla Ram.

15. PW-8 Kartik Ram, injured, has stated in his deposition that on the date of incident, Anjor Das and his brother Muniram came hurting filthy language and Anjor Das had kept *tabbal* and Muniram kept *lathi*. PW-8 has stated that Anjor Das assaulted his son Balla Ram (PW-12) by means of *tabbal* on his face and Muniram also assaulted him (PW-8) on right shoulder by means of *lathi* and both PW-8 and his son became unconscious. Thereafter, PW-8 lodged the F.I.R. (Ex.-P/21). There is no reason to disbelieve the evidence of PW-8 which was also supported by the evidence of Balla Ram (PW-12). As per medical report (Ex.-P/9) of Dr. Ameet Lal, injured Kartik Ram sustained simple injury on the right side of shoulder above the scapula and the contusion was found. As per medical report (Ex.-P/10), injured Balla Ram sustained incised wound on the right side of his face and that fact is also supported by the prompt F.I.R. (Ex.-P/21) lodged on the same day.

16. It is also proved that on the same day of incident i.e. 03.10.2006, appellant Muniram had also lodged the F.I.R. (Ex.-D/1) informing the police that the dispute arose between the appellants and the complainant party as shegoat of Balla Ram had destroyed the crop of Muniram and some quarrel and *marpit* took place between the parties in which Muniram also sustained simple injury. The offence was cognizable, therefore, Ex.-D/1 was lodged

and informed to Muniram.

17. Definitely eyewitness has been examined by the prosecution. PW-1 Baldeo, PW-2 Dukalah, PW-5 Daniram have not supported the prosecution case and they have turned hostile.
18. PW-6 Phalit Ram Bhandhekar, Patwari, has prepared spot map (Ex.-P/17) in presence of witnesses namely Kartik Ram (PW-8) and Daniram (PW-5) and has duly proved the same.
19. PW-7 Tikaram has supported the prosecution case. He has stated that Anjor Das and Muniram has assaulted Balla Ram by means of *tabbal*. He has stated that Anjor Das had kept *tabbal* in his hand and Muniram has kept the *lathi*. He has stated that appellant Anjor Das had assaulted Balla Ram by means of *tabbal*. He has further stated that before assaulting Balla Ram, the appellants were using filthy language against Balla Ram and Kartik Ram.
20. PW-10 Laxmi Prasad Rathore, Head Constable, has registered the F.I.R. (Ex.-P/21). PW-11 Pramod Naidu, Inspector has recorded the memorandums of the appellants vide Ex.-P/2 & Ex.-P/3 and seized the articles which he were duly proved by him. PW-13 D.K. Sao, Assistant Professor in CIMS, Hospital, Bilaspur, has proved the admission & discharge of injured Balla Ram.
21. PW-9 Archana Singh, Radio-Diagnosis, admitted in her deposition in para-4 that the injured Balla Ram was referred through MLC No. 746 for CT scan, but no any referral was mentioned on the report Ex.-P/24, but only mentioned to be referred by Kujara Mungeli. In MLC report (Ex.-P/10) of Balla Ram, no such number was mentioned, nor any Doctor has referred the injured for CT scan from Mungeli. PW-3 Dr. Ameet Lal only referred Balla Ram for X-ray of skull vide MLC report Ex.-P/10 on 03.10.2006. As per MLC report (Ex.-P/10), no any advice was given for CT scan of Balla Ram. PW-9 admitted in para-4 that no radiologist has referred the injured and therefore,

she is unable to disclose the name of the Doctor of Mungeli who had referred the injured. PW-9 admitted in para-5 that the CT scan was taken by the technician and she also admitted that callus starts coming within 15 days. From the above, it is evident that the CT scan was taken after one month & 22 days of the incident and no name of the person was mentioned who referred injured Balla Ram on 25.11.2006 for CT scan. PW-4 Dr. Anil K.P. Singh has stated in para-3 of his deposition that he has taken the X-ray of injured Balla Ram which was done on his (PW-4) instruction, but at the time of taking X-ray, he was not present. PW-4 has further stated that the report was prepared after seeing the X-ray plate in which no bony injury was found, but, for confirmation, he advised for CT scan on 03.10.2006, but no any referral document is available on record. PW-4 is the Lecturer in Radiology Department, CIMS Hospital. As per bed-head-ticket (Ex-P/35) which was proved by the prosecution, injured Balla Ram was admitted in hospital on 03.10.2006 and was discharged from there on 11.10.2006.

22. Therefore, looking to the evidence of PW-12 Balla Ram where he has denied that his CT scan was done, the fact that CT scan report was prepared on 25.11.2006 i.e. after one month and 22 days of the incident and there is nothing on record to show as to on whose reference the CT scan was conducted, the CT scan report (Ex.-P/24) being not proved by the prosecution in accordance with law becomes doubtful. However, considering the evidence of injured Balla Ram (PW-12) and Kartik Ram (PW-8) where they have categorically stated as to the manner in which appellants assaulted them by means of *tabbal* and *lathi*, the prompt lodged F.I.R. (Ex.-P/21), the medical evidence in the form of MLCs (Ex.-P/9 & Ex.-P/10) and the deposition of Dr. Ameet Lal (PW-3), this Court is of the opinion that the trial Court has rightly convicted accused/appellant Muniram under Section 323 of IPC for voluntarily causing hurt to Kartik Ram (PW-8), but, has fallen

in error by holding accused/appellant Anjor Das guilty under Section 326 of IPC whereas the act committed him and proved by the prosecution, makes him liable for conviction under Section 324 of IPC. Accordingly, conviction of appellant Anjor Das under Section 326 of IPC is set aside and instead he has held guilty under Section 324 of IPC. However, conviction of appellant Muniram under Section 323 of IPC is hereby affirmed.

23.As regards the sentence, considering the facts and circumstances of the case, the fact that the appellants were the young offenders of 37 & 32 years respectively on the date of incident, they have no criminal antecedent, they have remained in Jail for 26 days respectively and are on bail, the incident took place around 14 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 appellants back to jail at this stage and the ends of justice would be served if they are sentenced to the period already undergone by them while imposing fine of Rs.3,000/- on appellant Anjor Das under Section 324 of IPC and maintaining the fine sentence imposed on appellant Muniram under Section 323 of IPC by the trial Court.

24.In the result, the appeal is allowed in part. While maintaining the conviction of appellant Muniram under Section 323 of IPC, his jail sentence is reduced to the period already undergone by him. However, the fine amount imposed on him with default stipulation by the trial Court shall remain intact. The said fine of Rs.500/- be deposited by appellant Muniram, shall be payable to injured Kartik Ram (PW-8) as compensation under Section 357 Cr.P.C.

While acquitting appellant Anjor Das of the charge under Section 326

of IPC, he is held guilty under Section 324 of IPC and is sentenced to the period already undergone by him. However, appellant Anjor Das is directed to pay fine amount of Rs.3,000/-, failing which he shall have to undergo simple imprisonment for three months. On depositing the fine amount of Rs.3,000/-, a sum of Rs.2,500/- shall be payable to injured Balla Ram (PW-12) as compensation under Section 357 Cr.P.C. by the trial Court after due verification. If the fine amount of Rs.1,000/- imposed under Section 326 of IPC upon appellant Anjor Das by the trial Court has already been deposited, it shall be adjusted accordingly. The appellants are reported to be on bail, therefore, their bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge