

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 697 of 2002

Order reserved on 06.11.2019

Judgment pronounced on 09.01.2020

Arjun S/o Mahesh Lohar, aged about 41 years, occupation
agriculture, R/o Village Arkar, Police Station Gurur, District Durg
(CG) --- **Appellant**

Versus

State of Chhattisgarh through P.S. Special Police Durg, District
Durg (C.G.) --- **Respondent**

For Appellant : Mr. Manoj Kumar Jaiswal, Advocate

For State/Respondent : Mr. Ishan Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

On the basis of report (Ex.P-2) made by victim Shyamlal (PW-2), FIR (Ex.P-1) was registered against the accused/appellant for the offences under Sections 294, 326 IPC and 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred to as the "Special Act") alleging that on 27.08.2000 when he was going towards his enclosure, the accused/appellant met him on the way, started abusing and also caused injuries on various parts of his body with the help of *Tangli* (an implement used for cutting wood). After medical examination of the victim and completion of investigation, *challan* was filed against the accused/appellant under the same Sections. However learned Court below framed the charge against the accused/appellant under Sections 294, 326 IPC and 3(2)(v) of the Special Act.

2. After going through the material on record, the Court below acquitted the accused/appellant of the charge under Sections 294 IPC and 3(2) (v) of the Special Act but convicted him under Section 326 IPC and sentenced him to undergo RI for two years with fine of Rs.3000, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that the conviction of the accused/appellant under Section 326 IPC is contrary to the evidence on record and therefore, liable to be set aside. According to him, even the medical evidence has not been considered by the Court below in its proper perspective.

4. State counsel however supports the judgment impugned holding it to be just and proper.

5. Victim (PW-2) supporting the case of the prosecution has stated that on the date of incident at about 4-5 PM when he was going towards his enclosure, the accused/appellant met him on the way and all of a sudden started attacking him with an iron made instrument meant for cutting woods as a result of which one of his frontal tooth got broken and he also suffered injury on his chest which was bleeding profusely. After assault, the accused/appellant is stated to have left the spot. He is also the witness to seizure of that iron made instrument, one vest, *lungi*, and a scarf made under Ex.P-4. For the injuries he is stated to have been medically examined at Government Hospital Durg. Somnath (PW-3) said to be present at the place of incident has not supported the case of the prosecution and has turned hostile. Birbal (PW-4) has stated about some scuffle between the accused and the victim being seen by him and also supported the seizure of the iron made instrument under Ex.P-4. He has also stated that there was injury in the mouth of the victim. Dental surgeon (PW-6) has also supported the case of the prosecution stating that the central incisor tooth of the victim got uprooted and the said injury was caused by some hard and blunt object. His report is Ex.P-9. PW-9 – the father of the victim has also stated that there was injury on the lips of victim and one of his teeth was broken. According to him, the victim thereafter informed him about being assaulted by the accused/appellant with the help of axe and the injury suffered by him was bleeding. Dr. B.R. Kosariya (PW-10) who medically examined the victim has noticed number

of injuries on lips, jaw and shoulder stating that two incisor teeth were half broken. He however has denied the injuries being caused as a result of fall because they were the cut injuries. He has stated all this in his report Ex.P-8A. Investigating Officer (PW-8) has also supported the case of the prosecution.

6. The aforesaid factual discussion thus establishes the complicity of the accused/appellant in the crime in question where he assaulted the victim with the help of an equipment made of iron as a result of which his tooth was broken and he also suffered injuries on his shoulders. Seizure of that iron made implement made under Ex.P-4 also gets support from the evidence of PW-4, and that the doctor (PW-10) has ruled out the possibility of the injuries being caused to the victim as a result of fall. No illegality is noticeable in the judgment impugned as far as conviction of the accused/appellant is concerned. It is accordingly maintained.

7. However, looking the fact that the incident had taken place in the year 2000 making about 20 years pass by since then and also keeping in mind the fact that the accused/appellant has already suffered a lot by facing a long drawn prosecution and remained behind the bars for about two and half months, this Court does not see any reason in again sending him to the prison and therefore, the sentence imposed on him is reduced to the period already undergone so that the interest of justice is not hampered.

8. With the above, the appeal stands allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge