

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1004 of 2002**

- Gurudatt, S/o. Brahmaswaroop Sharma, aged about 27 years, R/o. Narayanpur, Distt. Bastar, (Chhattisgarh).

---- Appellant**Versus**

- State of Chhattisgarh, Through : District Magistrate, District Bastar Jagdalpur (C.G.).

----Respondent

For Appellant : Shri Keshav Dewangan, Advocate on behalf of Shri Prafull N. Bharat, Advocate.

For Respondent : Shri Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board**01.07.2020**

The matter is heard through video conferencing.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 26th August, 2002, passed by Special Judge {Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Bastar at Jagdalpur in Sessions Trial No. 99/2002, whereby the appellant/accused stands convicted & sentenced as under:

Conviction	Sentence
Under Section 452 of Indian Penal Code	Rigorous imprisonment for one year with fine of Rs. 300/-, in default of payment of fine, to further undergo rigorous imprisonment of two months.
Under Section 323 of Indian Penal Code	Rigorous imprisonment for three months with fine of Rs. 400/-, in default of payment of fine to further undergo rigorous imprisonment of one month.
Under Section 506, part I of Indian Penal Code	Rigorous imprisonment for six months with fine of Rs. 300/-, in default of payment of fine to further undergo rigorous imprisonment of one month. All the sentences were ordered to run concurrently.

(2) Case of the prosecution in brief, that on 11.01.1999, appellant entered into the house of Budhi Prakash Bangde & Ranjeet Prasad Gond and thus committed the offence of house trespass. The accused/appellant has entered into the house of both of the complainant, threatened to kill them and voluntary caused simple injuries. Further case of the prosecution is that at the relevant point of time, Budhi Prakash Bangde & Ranjeet Prasad Gond were working in State Bank of India whereas the accused was the customer of the said Bank and since entry was not made in his pass-book and his pass-book was missing as a

result of which appellant got angry and committed the aforesaid offence. Thus, FIR (Ex. P/3) was lodged by Budhi Prakash to this effect. Thereafter, Budhi Prakash (PW-3) was medically examined by Dr. R. K. Dewedi (PW05), who noticed one contusion over right palm in the size of 2"x1", which appears to be caused by hard & blunt object vide MLC report Ex. P/5.

(3) After recording the statement of Budhi Prakash Bangde, who belongs to Scheduled Caste community, charge-sheet under Sections 452, 294, 506-B & 323 of the Indian Penal Code (hereinafter referred to as "IPC") was filed against the accused/appellant. Thereafter, learned trial Court framed charges under Sections 452, 506 part -II, 323 of the IPC and Section 3(1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act, 1989") which were denied by him(accused) and he prayed for trial.

(4) So as to hold the accused/appellant guilty, the prosecution examined as many as 5 witnesses namely- Radheshyam Dewangan (PW-1), Krishna Kumar Gupta (PW-2), Budhi Prakash (PW-3), Ranjit Prasad (PW-4) & R.K. Dwivedi (PW-5). 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. However, two defence witnesses namely Loknath & Sundar Singh were examined as DW-1 and DW-2 respectively on

behalf of the accused/appellant.

(5) From perusal of the record of the trial Court, it appears that on 12.06.2002, complainant namely Budhi Prakash Bangde filed an application for compromising the matter with the accused/appellant before the trial Court and, on the basis of which, the trial Court acquitted the accused/appellant of the offence under Sections 323 & 506 part II of the IPC but rejected the same with regard to the offences under Section 452 of the IPC and Section 3(1)(x) of the Act, 1989 with regard to complainant Budhi Prakash Bangde. So far as complainant namely Ranjeet Prakash is concerned, accused/appellant has been convicted and sentenced for the offences as mentioned in opening paragraph of the judgment.

(6) The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment.

(7) Learned counsel for the accused/appellant submits that in the instant case, no any independent witness was supported the prosecution case and merely on the basis of evidence of Ranjeet Prasad (PW-4), which is partly supported by complainant Budhi Prakash Bangde (PW03), accused/appellant was convicted and sentenced as aforementioned. He also submits that as per

statement of defence witnesses Loknath (DW-1) & Sundar Singh (DW02), no dispute arose between the accused and complainant party and, therefore, the Special Court has erred in convicting the accused/appellant as aforementioned. He further submits that offence under Section 506 part I of the IPC is not made out against the accused/appellant as no threatening was given by the accused/ appellant to complainants to cause death or grievous hurt. Alternatively, he submits that appellant was 27 years of age at the time of incident and now he is above 47 years and looking to the fact that incident happened on 11.01.1999, near about 21 years were lapsed, the appellant has no criminal antecedents, it is prayed that the appellant may be given benefit of Probation of Offenders Act and may be sentenced to the period already undergone by him as the appellant remained in jail for about one month & fifteen days.

(8) On the other hand, learned counsel for the State while supporting the impugned judgment submits that after appreciating the material available on record, the Special Court has rightly convicted and sentenced the accused/appellant as aforementioned, which does not call for any interference.

(9) I have heard learned counsel appearing for the parties and perused the impugned judgment.

(10) It is not disputed by learned counsel for the parties that

dispute arose between the appellant and complainant on account of the fact that pass-book of the appellant, who was the customer of the Bank in which the complainants were working at the relevant point of time, was missing and the entries in the said pass book were not made.

Thereafter, the accused reached at the house of complainants- Budhi Prakash Bagde (PW-3) and Ranjeet Prasad (PW04) with club and assaulted them, as a result thereof, they sustained simple injuries.

(11) Budhhi Prakash (PW-3) has stated in his evidence that dispute arose between the accused & him & Ranjeet Singh (PW-4), due to the fact that pass-book of the appellant was missing and entry was also not made therein. Appellant/accused entered the home of the complainants as they both resided together and assaulted him with the help of club, as a result thereof, he sustained simple injuries. Ranjeet Prasad (PW04) had intervened between them to pacify the matter. He also stated in his evidence that on 12.06.2002 he preferred an application for compromising the matter with the accused/appellant before the trial Court.

(12) Ranjeet Prasad (PW-04) has stated in his evidence that when he was trying to intervene in the dispute between Budhi Prakash and the accused, he (accused) assaulted him and used filthy language.

(13) Looking to the injuries found on the body of Budhi Prakash (PW-3) as mentioned in MLC report (Ex. P/5), the promptly lodged FIR by Budhi Prakash Bangde (PW-3) and the evidence of Ranjeet Prasad (PW-4), this Court finds no reason to disbelieve the evidence of the injured witnesses (PW-3 & PW-4). From the evidence it is found that the accused firstly assaulted Budhi Prasad Bangde with the help of club and thereafter also assaulted Ranjeet Prasad (PW04) when he intervened in the matter. However, from the evidence it is not found that during the quarrel any such threatening was given by the accused/ appellant to complainant party amounting to offence under Section 506 Part-I of IPC. The accused has only stated that "*He will see*", which does not come within the purview of Section 506 part I of the IPC. Therefore, in my opinion, no offence under Section 506 Part I of the IPC is made out against the accused appellant. Furthermore, the evidence on record clearly goes to show that the accused/appellant entered the house of complainants namely Budhi Prakash Bangde and Ranjit Prasad with club with intention to beat them and assaulted Budhi Prasad (PW-3), thus he committed the offence of house trespass and of causing simple hurt to Budhi Prasad (PW-3). As such, in my considered opinion, offence under Sections 452 and 323 of the IPC are made out against the accused appellant. Since defence witness Loknath (DW-1) was not present at the place of occurrence, therefore, his

statement has no substance.

(14) So far as the sentence part of the appellant under Section 323 & 452 of the IPC is concerned, considering the fact that the incident occurred way back in the year 1999, the appellant is facing trial since 1999, the matter relating to offence under Section 323 & 506 Part I of IPC has already been compromised with one of the complainant namely- Budhi Prakash who sustained injuries as per MLC (Ex. P/5) and the other complainant- Ranjeet Prasad did not suffer any visible injuries, the age of the appellant at the time of incident i.e. 27 years and the fact that the appellant has already remained in jail for one month and 15 days, he has no criminal antecedents 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 keeping the fine amount with default sentence imposed by the trial Court intact.

(15) In the result the appeal is allowed in part, conviction of the appellant under Section 506 Part I and sentence therein are hereby set aside. While maintaining the conviction of the appellant

under Sections 323 & 452 of IPC, his jail sentence to the period already undergone by him, however, the fine amount imposed the aforesaid sections by the Trial Court shall remain intact. The fine amount relating to the offence under Section 506 Part I of IPC if already paid by the appellant, is directed to be refunded to him.

(16) 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