

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1226 of 2002**

Shrawan Kumar S/o Dashram Satnami, aged about 28 years, by caste Satnami R/o Village Tarekela, Police Station Basna, Tehsil Basna, District Mahasamund (C.G).

---- Appellant**Versus**

State of Chhattigarh through its District Magistrate, Mahasamund, District Mahasamund (C.G.).

---- Respondent

For Appellant	:	Mr. Anand Gupta, (Adv. Through Legal Aid) & Mrs. Indira Tripathi, Advocate
For Respondent	:	Mr. Ajay Kumbrani, PL

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board**15/01/2020**

1. This appeal has been preferred against the judgment dated 30/11/2002 passed in Sessions Trial No. 358/2001 by the First Additional Sessions Judge, Mahasamund (C.G.), whereby the Appellant has been convicted under Section 326 of the IPC and sentenced to undergo RI for 5 years and to pay fine of Rs. 5000/- with default stipulation.
2. Facts of the case are that on 29/10/2000, co-accused Dasha Ram (acquitted) had thrown dust of groundnut in front of the house of Injured Bhanumati (henceforth 'the Injured'). When, the Injured raised objection, other co-accused Rathiram (acquitted) and the Appellant started to quarrel with her. At that time, the Appellant caused one

Tangiya blow to the Injured resulting to grievous injuries to her. The matter was reported by Itwarin Bai, neighbor of the Injured. During course of investigation on the basis of memorandum statement of the Appellant, one axe has been seized from his possession. Statement of the witnesses under Section 161 of the Cr.P.C were recorded. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges against the Appellant under Section 307 of the IPC. The said Court has further framed charges against acquitted accused namely Dasha Ram and Rathi Raj under Section 307/34 of the IPC. To prove the guilt of the Appellant, the Prosecution has examined as many as 7 witnesses. No defence witness has been examined. Statements of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has acquitted Dasha Ram and Rathi Raj from the charges framed against them, however, the said Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial Court has wrongly convicted the Appellant without there being sufficient evidence available on record. The trial Court, without any material available on record, presumed that the injury whatsoever found on the Injured, is grievous in nature. The doctor has not confirmed about fracture, therefore without any sufficient material, the conviction under Section 326 of the IPC cannot be sustained. He further submits that if the entire case of the prosecution is taken as it

is, yet offence under Section 324 of the IPC can be made out against the Appellant. He further submits that the Appellant has already undergone about 17 days, he is facing the *lis* since 2000 and he has no criminal antecedent, therefore, he may be sentenced to the period already undergone by him.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. Injured Bhanumati (PW2) has deposed that on the date of incident, the Appellant had committed Marpeet with her by a Tangiya, due to which she sustained injuries on her both hands. In Para 9 of her cross-examination, she further deposed that the Appellant had assaulted her from the sharp side of Tangiya. The incident was witnessed by Shobharam (PW3) and Itwarin Bai (PW6). Both have supported the above statement of the Injured and have categorically stated that in front of them, the Appellant had assaulted the Injured. All the above witnesses were remained firm during their cross-examination. Thus, from the statement of the above witnesses, it is well established that the Injured was assaulted by the Appellant by an axe.
8. Bhanumati (PW2) was medically examined by Dr. Jai Shri Sahu (PW1) who found following injuries on the body of the Injured:-
 - i. *Lacerated wound on the right hand, size 1.2 cm.*
 - ii. *Lacerated wound behind the right hand, size 1.2X0.5 cm.*

- iii. *Lacerated wound having swelling in right hand thumb, size 1 cm.*
- iv. *Swelling on left hand wrist joint.*
- v. *Having pain in stomach.*

According to him, injuries 2 to 4 might have fracture. He opined that injuries 2 to 5 were of grievous nature. He further deposed that the Injured was referred for further treatment and X-ray to Medical college, Raipur. This witness has categorically admitted that he had not seen the X-ray report and looking to the condition of the Injured, it was presumed by him that the Injured might have sustained fracture. Thus, from the above admission made by this witness, it is clear that without being examination of any X-ray report, he had given his opinion that injuries 2 to 5 were of grievous nature. Since the opinion given by him was without assessing X-ray report, therefore, it cannot be concluded that the injuries were of grievous nature. Therefore, offence under Section 326 of the IPC is not proved against the Appellant and offence under Section 324 of the IPC should be made out against him.

9. Accordingly, the conviction of the Appellant under Section 326 is set-aside. He is acquitted from the charge framed against him under Section 326 of the IPC. However, he is convicted under Section 324 of the IPC.
10. As submitted by the counsel for the Appellant that the Appellant has already undergone about 17 days and there is no criminal antecedent against him, therefore, considering the above facts and circumstances of the case, I am of the view that while affirming the conviction of the Appellant under Section 324 of the IPC, he is sentenced to the period

already undergone by him, and he is sentenced with the fine of Rs. 30,000/- under Section 324 of the IPC. Ordered accordingly. The fine amount shall be payable within 1 month from the date of receipt of a copy of this order. In default of payment, the Appellant shall be liable to undergo RI for 6 months. If any amount towards fine has already been deposited under Section 326 of the IPC, the same shall be adjusted in the amount of fine imposed today under Section 324 of the IPC.

11. Consequently, the appeal is partly allowed to the extent indicated above.
12. It is reported that the Appellant/accused is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.
13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge