

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 368 of 2007**

1. Hitendra Kumar, son of Bali Ram Sahu, aged about 20 years, resident of Milan Chowk, Krishna Nagar, Bhilai, Police Station – Supela, Bhilai, Distt. Durg (CG)
2. Tejeshwar Sahu, son of Bansi Lal Sahu, aged about 18 years, resident of Ramnagar Muktidham Shivaji Marg, Bhilai, Police Station – Supela, Bhilai, Distt. Durg (CG)
3. Tikam @ Timanlal Sahu, son of Bali Ram Sahu, aged about 32, resident of Milan Chowk, Krishna Nagar, Police Station – Supela, Bhilai, Distt. Durg (CG)
4. Ajay Pandey, son of Gangadhar Pandey, aged about 22 years, resident of Chandranagar Kotka, Tehsil and District-Durg (CG).

---- Appellants**Versus**

- State Of Chhattisgarh through District Magistrate, Durg, Distt. Durg (CG)

---- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Shri Sameer Sharma, Dy. Govt. Adv.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****30/09/2020**

01. The appeal is heard through video conferencing.
02. This appeal arises out of the judgment of conviction and order of sentence dated 24th April, 2007 passed by 11th Additional Sessions Judge (FTC), Durg, Distt. Durg (CG) in ST No.274/2003 convicting each of the accused/appellants under Section 324/34 of IPC and sentencing them to undergo R.I. for six months and pay a fine of

Rs.1000/-, in default thereof to undergo SI for two months.

03. Case of the prosecution, in brief, is that on 18th August, 2003 at 7.10 pm FIR (Ex.P/3) was lodged by Ram Kumar at Police Station – Supela to the effect that on the same day at about 6.30 pm he was in his home at Krishna Nagar, Milan Square, Supela, and Uttam Chandel, son of his maternal aunt and advocate by profession, also resides in his home. When Uttam Chandel came out of his home, all the four accused persons Tikam Sahu, Hitendra Sahu, Ajay Pandey and Tejeshwar Sahu, all of a sudden reached there carrying club, sticks and sickle in their hands and started assaulting Uttam Chandel by filthily abusing him saying that he (Uttam Chandel) eve-teases sister of the appellants. As a result of this assault, Uttam Chandel suffered injuries over his head and right hand. However, on his (Ram Kumar) intervention, the accused/appellants fled from the spot threatening the injured. The incident was witnessed by the persons of the vicinity. On this report, offence under Sections 294, 506B, 323, 34 of IPC was registered against the all the accused/appellants.

04. On the same day i.e. 18.8.2003, Uttam Chandel (PW-4) was medically examined by PW-1 Dr. Lal Mohammad vide Ex.P/1 wherein he noticed contusion, 3 x 3 cm on left side forehead, 6 x 4 cm over right parietal of skull, which were simple in nature, caused within 12 hours and could heal within 14 days if no complication arises. He also noticed laceration 6 x 1 x 1 cm over right side posterior of skull and 6 x 1 x 1/4 cm over left parietal anterior of skull which were simple in nature, caused within 12 hours and could heal within seven days if no complication arises.

05. Spot map Ex.P/5 was prepared by the Patwari PW-9 Satyanarayan Prasad whereas spot map of Ex.P/7 was prepared by the investigating officer PW-8 Mahadev Tiwari. As per seizure memo of Ex.P/6, discharge ticket (Ex.P/2) of injured Uttam Chandel of Chandulal Memorial Hospital, Bhilai was seized wherein date of admission is mentioned as 18.8.2003 and date of discharge as 28.8.2003. During investigation, one vest, handkerchief, fullshirt worn by injured Uttam Kumar at the time of incident bearing bloodstains, were seized from Pilaram Chandel vide Ex.P/8. On the memorandum of accused/appellant Hitendra Kumar (Ex.P/9), one club was seized vide Ex.P/10.

06. After recording statements of the witnesses and completion of investigation, charge sheet was filed against the accused persons under Sections 294, 323, 506B, 307, 34 of IPC. The trial Court framed charges under Section 307/34 of IPC. The accused persons denied the charges, pleaded innocence and prayed for trial.

07. So as to hold the accused persons guilty, the prosecution examined 10 witnesses in all. 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. In defence, they examined one Sohanlal as DW-1.

08. 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 appellants as mentioned in para 2 of this judgment.

09. Learned counsel for the appellants submits that in this case injured Uttam Chandel (PW-4) is an advocate by profession and by taking undue advantage of his status, he has falsely implicated the appellants as one complaint was lodged against Uttam Chandel under Section 354 of IPC for outraging the modesty of sister of appellant Tikam. This fact is also mentioned in the FIR that dispute arose between the parties on account of eve-teasing of sister of appellants by Uttam Chandel. No injury was caused by the appellants to Uttam Chandel and in the FIR it is not mentioned as to which of the accused caused which injury to the injured. Injured Uttam Chandel was discharged from the District Hospital on the same day considering the nature of his injuries which were simple. However, the injured was got admitted in Chandulal Memorial Hospital, Bhilai again for giving false colour to the incident and making the offence graver and for creating evidence against the appellants. He submits that the appellants had also lodged a complaint under Section 354 of IPC against Uttam Chandel for outraging modesty of sister of appellant Tikam.

10. Learned counsel submits that looking to the injuries found on the person of the injured, it is clear that all the injuries are simple in nature, not caused by any deadly or dangerous sharp edged or cutting instrument or weapon, therefore, the basic ingredients of offence under Section 324 of IPC have not been proved by the prosecution against them and at the most, they can be held guilty under Section 323 of IPC. Considering the facts and circumstances of the case, the fact that the appellants have no criminal antecedents, they were young offenders of 20, 18, 32 & 22 years of age at the time of incident, they deserve to be given the benefit of Probation of Offenders Act and

sentenced to the period already undergone by them. Reliance has been placed on the decision of the Hon'ble Apex 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 looking to the injuries found on the person of the injured, there is no reason to disbelieve his evidence. The injured was admitted in Chandulal Memorial Hospital for further treatment as in the government hospital, he was not being properly treated by the doctors. In the promptly lodged FIR, the injured has specifically stated about the role of each of the accused persons in assaulting him. The evidence of the injured is duly supported by the FIR, MLC and the discharge ticket. There is no reason or evidence adduced by the appellants to prove that they have been falsely implicated by the injured in this offence. The trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court.

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

13. Injured PW-4 Uttam Chandel has admitted in para 10 of his cross-examination that appellant Tikam had lodged a report against him under Section 354 of IPC for outraging the modesty of his sister and that criminal case is pending against the injured. This fact is also mentioned in the FIR (Ex.P/3) that dispute arose between the parties as the injured was eve-teasing the sister of the appellants. From paras 1 to 4 of his deposition, the injured has stated that when he came out

from his home, all the four accused persons, who were having stick, club and sickle in their hands, started assaulting him by filthily abusing him. Accused Tikam assaulted him by hockey stick on his head whereas accused Hitendra assaulted by stick on back of his head from behind. Accused Tejeshwar assaulted by stick on his head and accused Ajay also assaulted on his head by sickle and club. Thereafter, Ramkumar and Pawan reached the place of occurrence and pacified the dispute. FIR was lodged by Ramkumar and injured Uttam Chandel was medically examined. Spot map Ex.P/5 was prepared and bedhead ticket was seized vide Ex.P/6.

14. PW-5 Ramkumar has also supported the evidence of PW-4 Uttam Chandel by stating that all the four accused persons were present at the time of incident and they assaulted upon Uttam Chandel by means of stick and club. In the FIR promptly lodged by this witness, name of all the four accused/appellants are mentioned and it is also stated that all the appellants assaulted upon the injured as he (injured) was eve-teasing the sister of the appellants. PW-1 Dr. Lal Mohammad medically examined injured Uttam Chandel on 18.8.2003 and gave his MLC (Ex.P/1) wherein he noticed certain injuries as mentioned in the preceding paragraph which were simple in nature.

15. DW-1 Sohanlal states that he is an advocate by profession and that on the date of incident, accused Ajay Pandey was with him. Having heard about the incident, when he along with Ajay Pandey reached the place of occurrence, no body was there and injured Uttam Chandel was being taken to police station. This witness also admits that Uttam Chandel suffered injuries in the incident which took place on 18.8.2003 but denies the involvement of accused Ajay Pandey in the

said crime. However, from the un rebutted evidence of injured PW-4 Uttam Chandel, which finds due corroboration from the evidence of PW-5 Ramkumar, the FIR (Ex.P/3) and the MLC (Ex.P/1) duly proved by PW-1 Dr. Lal Mohammad, the evidence of DW-1 Sohanlal does not inspire confidence of the Court, and the complicity of all the appellants in the crime in question stands proved beyond all reasonable doubt.

16. Now this Court has to see whether conviction of the appellants under Section 324/34 of IPC is sustainable in the given set of evidence or they are liable to be convicted for any lesser offence.

17. PW-1 Dr. Lal Mohammad has admitted this fact that he did not refer injured Uttam Kumar for treatment to Chandulal Memorial Hospital but the injured himself decided for his treatment in Chandulal Memorial Hospital. As per MLC (Ex.P/1) of the injured, all the injuries suffered by him were simple in nature.

18. PW-2 Dr. R.Tiwari has admitted that the injured was hospitalized in Chandulal Memorial Hospital on 18.8.2003 and discharged on 28.8.2003 vide Ex.P/2. In para 2 he admits that all the injuries found on the body of injured were simple in nature and no any serious injury was found on his body.

19. Thus, considering the fact that only one club was seized vide Ex.P/10 on the memorandum of accused Hitendra Kumar, no other weapon whatsoever was seized or produced before the Court, all the injuries found on the person of the injured were simple in nature; no any dangerous or deadly weapon was used while making assault on the injured which was likely to cause his death and that all the injuries

were caused by hard and blunt object; only four injuries (two contusion & two laceration) were found on different parts of the body caused by four accused persons over some old dispute with the injured for having outraged the modesty of sister of accused Tikam, this Court is of the opinion that conviction of the appellants under Section 324/34 of IPC is not sustainable as the basic ingredients for attracting the said offence are completely missing in this case. However, looking to the manner in which the injured was assaulted by the appellants and the nature of injuries found on his person, the appellants are definitely liable for conviction under Section 323/34 of IPC.

20. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellants are the first offender of 20, 18, 32 & 22 years of age at the time of incident, appellants Hitendra Kumar & Tejeshwar Sahu have remained in jail for 98 days whereas accused Tikam Sahu & Ajay Pandey have remained inside for four days, the incident took place about 17 years ago, keeping in view of 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 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 maintaining the fine amount as awarded by the trial Court with default stipulation for this offence.

21. In the result, the appeal is allowed in part. The impugned judgment is hereby modified to the extent that the appellants are acquitted of the charge under Section 324/34 of IPC and instead, held guilty under Section 323/34 of IPC. They are sentenced to the period already undergone by them. However, the fine amount of Rs.1,000/- imposed on each of them with default sentence by the trial Court shall remain intact for the above offence. The fine amount already deposited by the appellants shall be adjusted accordingly. On fine amount being deposited, a sum of Rs.1,000/- shall be paid to the victim/injured PW-4 Uttam Chandel as compensation under Section 357 of CrPC by the trial Court after due verification.

The appellants are reported to be on bail, therefore, their bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/
Gautam Chourdiya
Judge

Khan