NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 329 of 2004

1. Mukesh Kumar S/o Shri P.N. Pilley, aged about 19 years, Caste – Madrasi, Occupation – Labour (**Died on 16/10/2013**),

2. Nohar Kenwat S/o Shri Dukaluram Kenwat, Caste - Kanwat, aged about 20 years, Occupation - Labour,

3. Dewa alias Devsharan Dubey, aged about 22 years, S/o Chandrika Prasad Dubey, Caste - Bramhan, Occupation – Labour under Contractor,

All are resident of Shankarpara Station Maroda, P.S. Newayee, District Durg (C.G.)

---- Appellants

Versus

1. State of Chhattisgarh, through P.S. Newayee, District Durg (C.G.)

---- Respondent

For Appellants	:	Shri Uttam Pandey, Advocate.
For Respondent/State	:	Shri Rahul Jha, Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya
Judgment On Board

19/10/2020

1) The matter is heard through video conferencing.

2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 09/03/2004 passed by Special Judge & Additional Sessions Judge, Durg (C.G.) in Special Case No. 123/2003; whereby the appellants stand convicted and sentenced as under:-

Conviction	Sentence
U/s 452 of Indian Penal Code (in short “IPC”)	R.I. for 6 months and fine of Rs. 500/-, in default of fine additional S.I. for 3 months (each)
U/s 325/34 of IPC	R.I. for 6 months and fine of Rs. 1,500/-, in default of fine additional S.I. for 3 months (each)

3) Appellant No. 1 Mukesh Kumar S/o Shri P.N. Pilley has died as per the report received from Special Judge, Durg on 16/10/2013 and as per report submitted by SHO, Thana, Newai, District Durg on 23/04/2016. Death certificate of Mukesh has also been submitted. Since appellant No. 1 Mukesh Kumar has died on 16/10/2013 and no application has been filed by the legal hairs of the deceased to prosecute this appeal, this appeal stands abated in respect of appellant No. 1.

4) Case of the prosecution in brief is that on the date of incident i.e. 12/09/2003 at about 07:30 PM the prosecutrix with her husband Akhilesh Pandey was at home. At that time the accused persons came to her home with club and bamboo sticks, started abusing her filthily, assaulted both of them with club and bamboo sticks and also damaged their home, against which the report Ex. P-3 was lodged at Police Station Newai. The prosecutrix was medically examined by PW-03 Dr. Lal Mohammad vide Ex. P-5 according to which she sustained abrasion over right palm of size of 1x1cm. Injured Akhilesh was also medically examined by PW-04 Dr. P.C. Deshmukh vide Ex. P-6 where the Doctor noticed :-

i. Lacerated wound over vertex scalp, 2.5x1cmx muscle deep.

ii. Lacerated wound over left parietal region, 3x0.5cm muscle deep.

iii. Lacerated wound over right upper lip, 2x1cm.

iv. Three lacerated wounds around the right eye.

v. Abrasion over left shoulder, 2x2cm.

vi. Bluish mark over left side of chest.

vii. Abrasion over left side of hip.

viii. Multiple bluish mark on the back of the chest of 3x5cm.

Doctor advised for X-Ray of various parts of the body. Injured Akhilesh was referred to Medical College, Raipur where X-Ray of his chest and skull was taken in which fracture was

found and right mandible vide X-Ray plate Ex. P-24 and report Ex. P-28.

5) From accused Mukesh one club was seized vide Ex. P-7. Caste certificate (Ex. P-9) of the prosecutrix was seized vide Ex. P-8. Blood stained clothes of injured Akhilesh and the broken tiles were seized vide Ex. P-10 from the prosecutrix Durgin Bai. Caste conversion certificate of injured Akhikesh and caste certificate of prosecutrix were seized vide Ex. P-11, Ex. P-12 and Ex. P-13. Spot map was prepared vide Ex. P-15. One club was seized from accused Nohar. After recording statements of the witnesses and completion of investigation, charge-sheet was filed against the accused/appellants for the offence punishable under Sections 452, 294, 506B, 323, 325, 427, 34 of IPC and under Section 3(1)(x) of SC/ST Act. Since one of the accused was juvenile, separate charge sheet in respect of him was filed before Juvenile Justice Board.

6) The Trial Court framed charges under Sections 452, 294, 506(B), 427, 323, 323/34, 323, 323/34, 325, 325/34 of IPC and Section 3(1)(x) of SC/ST Act against the all accused/appellants. The accused/appellants abjured their guilt and prayed for trial.

7) The prosecution in support of its case examined as many as 13 witnesses namely PW-01 Dr. Surya Prakash Saxena (Surgeon), PW-02 R.P. Yadav (A.S.I.), PW-03 Dr. Lal Mohammad (Medical Officer), PW-04 Dr. P.C. Deshmukh (Senior Medical Officer), PW-05 A.R. Verma (Inspector), PW-06 Akhilesh Pandey, PW-07 Roshan Lal, PW-08 Durgin Bai (complainant), PW-09 Hemant Kumar (D.S.P.), PW-10 K.B. Singh (A.S.I.), PW-11 Samaru Ram Yadav, PW-12 Santosh Kumar and PW-13 Dr. A.K. Sahu (Medical Officer). The statements of the accused 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. No witness was examined by them in their defence.

8) Learned Trial Court considering the material available on record

by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para 2 of this judgment.

9) Learned counsel for the appellants submits that in this case no independent witness supported the prosecution case nor examined by prosecution and on the evidence of family members of Durgin Bai and Akhilesh Pandey, learned Trial court wrongly convicted the appellants for offence as mentioned above. No offence is made out against the appellants and looking to the previous enmity, appellants were falsely implicated in this case.

10) He submits that if this Court ultimately confirms the conviction of the appellants, considering the facts and circumstances of the case, the fact that the incident took place around 17 years back, the appellants are the first and young offender having no criminal antecedents, their age at the time of incident i.e. 20 & 22 year respectively, they may be given the benefit of Probation of Offenders Act. Reliance has been placed on the decision of Hon'ble Supreme Court of ***Nasir Vs. State of Uttar Pradesh reported in 2010 (13), SCC 251*** whereas the Hon'ble Supreme Court considering the fact that the appellant was sentence to 5 years imprisonment under Sections 399 and 402 of IPC, occurrence took place 29 years ago, the appellant remained in custody for period of 6 months, appeal allowed in part and reduced the sentence to the period already undergone by the appellant.

11) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.

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

13) PW-01 Dr. Surya Prakash Saxena has proved the bed head

ticket Ex. P-1 and discharged ticket Ex. P-2 of Akhilesh Pandey and that evidence is un-controverted in cross-examination.

14) PW-02 R.P. Yadav (A.S.I.) has proved the FIR Ex. P-3 lodged by PW-08 Durgin Bai and there is no any delay in FIR. PW-08 Durgin Bai also proved the fact that she lodged FIR at Police Station. PW-03 Dr. Lal Mohammad found one abrasion on right palm of PW-08 Durgin Bai of size 1x1cm, he proved the MLC report vide Ex. P-5. PW-04 Dr. P.C. Deshmukh found injury on the body of PW-06 Akhilesh Pandey vide Ex. P-6 as mentioned above. His evidence remains un-controverted in cross-examination.

15) PW-13 Dr. A.K. Sahu has duly proved X-Ray examination of injured Akhilesh vide Ex. P-23 to Ex. P-28.

16) Thus considering the above medical evidence which remains un-controverted in the cross-examination by the defence, the injuries sustained by the injured persons namely Durgin Bai and Akhilesh Pandey stands proved beyond all reasonable doubt.

17) Now this Court was considered the eye witness account in this case PW-08 Durgin Bai has stated from para 1 to 3 of her examination-in-chief that on the date of incident she alongwith her husband was at her home, at that time the accused appellants alongwith one juvenile “T” came to her home with sword, rod etc and started abusing her husband filthily saying as to why he has deposed against them. All four accused persons assaulted her husband till he fell unconscious. In the said incident she also sustained injuries on her back. She admits that she lodged report at Police Station Newai. She has proved the seizure from Ex. P-10 to Ex. P-13.

18) PW-06 Akhilesh Pandey has also proved the above fact as sated by PW-08 Durgin Bai. He states that on the date of incident the accused appellants alongwith one juvenile 'T' reached his home with sword, rod and club, started abusing him and thereafter assaulted him with sword, rod and club. He states that his wife

PW-08 Durgin Bai was slapped by accused Dewa. Due to assault, he fell unconscious and his wife went Police Station for lodging report. He admits that his medical examination was done that he sustained fracture of jaw bone.

19) From the perusal of the statements of injured witness PW-06 Akhilesh Pandey and PW-08 Durgin Bai, this Court does not see any major contradiction or omission in their statements. Their evidence further find support from promptly lodged FIR Ex. P-3 by PW-08 Durgin Bai as well as medical evidence in the form of their MLCs (Ex. P-5 and Ex. P-6) and the evidence of PW-04 Dr. P.C. Deshmukh, PW-01 Dr. Surya Prakash Saxena and PW-03 Dr. Lal Mohammad and PW-13 Dr. A.K. Sahu. The defence has utterly fails to prove that appellants has been falsely implicated in this case. No such evidence have been adduced by the defence regarding false implication of the appellants in the crime in question. Therefore, considering the overall evidence, oral and document available on record this Court is of the opinion that the learned Trial Court has rightly convicted the appellants for offence under Sections 452 and 325/34 of IPC.

20) So far as sentence part is concerned, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 17 years ago, the age of the appellants Nohar and Dewa at the relevant time i.e. 20 & 22 year respectively, they have no criminal antecedent, during pendency of this appeal the appellants were on bail since 2004 and did not misuse the liberty granted to them, keeping in view the judgment of 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 and the judgment of the Apex Court in ***Nasir Vs. State of Uttar Pradesh (Supra),*** this Court is of the opinion that no fruitful purpose would be served in sending the appellants back to jail at this stage and the ends of justice would

be served if the appellants are sentenced to the period already undergone by them which comes to **12 days** and **24 days** regarding accused Nohar and Dewa respectively and fine amount under Section 325/34 of IPC is enhanced suitably.

21) In the result, the appeal is allowed in part. While maintaining the conviction of the appellants Nohar and Dewa under Section 452 & 325 of IPC, their jail sentence is reduced to the period already undergone by them. Fine amount under Section 325/34 of IPC of Rs. 1,500/- imposed by the Trial Court is enhanced to Rs. 3,000/- each. However, the fine amount with default sentence as imposed by the Trial Court under Section 452 of IPC shall remain intact. In the event of failure of the appellants to pay fine amount under Section 325/34 of IPC, they shall have to suffer S.I. for 6 months each in default of fine.

22) Out of the total fine amount of Rs. 7,000/- being deposited by the appellants, a sum of Rs. 5,000/- shall be payable to the injured witness PW-06 Akhilesh Pandey as compensation under Section 357 of Cr.P.C. by the Trial court after due verification.

23) The fine amount, if any, already deposited by the appellants shall be adjusted accordingly. Since 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 provision of Section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant