

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 122 of 2008**

1. Bhukhal Ram Rajwade S/o Bhanuram Rajwade, aged about 30 years, R/o Village Soyda, Police Station Lakhanpur, District Surguja (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through : The Police Station Lakhanpur, District Surguja (CG.)

---- Respondent

For Appellant	:	Shri Santosh Bharat, Advocate.
For Respondent/State	:	Shri Ashish Gupta, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya
Judgment On Board

30/01/2020

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 27/12/2007 passed by Special Sessions Judge, (Scheduled Castes & Scheduled Tribes) (Prevention of Atrocities) Act, 1989, Sessions Division- Surguja, Place Ambikapur (C.G.) in Special Session Trial No. 30/2007; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 324 of Indian Penal Code, 1860 (in short "IPC")	R.I. for 1 year and fine of Rs. 2,000/-, in default of payment of fine additional R.I. for 4 months.

- 2) None appeared on behalf of the appellant for arguing this appeal despite repeated calls. In the given facts and circumstances of the case, in particular the long pendency of the appeal, this Court feels it appropriate to appoint a counsel in this case from the High Court Legal Services Committee for arguing the appeal

on behalf of the appellant.

- 3) Shri Santosh Bharat, Advocate, present in the Court, empanelled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court appoints Shri Santosh Bharat, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
- 4) Case of the prosecution in brief is that as per Ex. P-7 FIR was lodged by Khulaso Bai on 23/01/2007 at around 06:00 PM informing the police that on the same date at about 02:00 PM accused Bhukhal Ram Rajwade assaulted upon complainant/ Khulaso Bai, when she visited his home and asked the accused as to why he purchased the land at higher price which was agreed to be purchased by her. On this the accused got provoked and by using filthy language Tor Dai Chodo tor Ma ka Chodo he picked up Axe and assaulted on her head. On the same day she lodged FIR Ex. P-7 and she was examined by PW-05 Dr. Prem Singh Marko who found one cut wound over forehead left side of size 1"x0.5"x0.5" and she was complaining of pain on both thighs. The incident was witnessed by Ram Sai and his wife Phool Mohani. During investigation and as per memorandum Ex. P-10 Spot map is prepared by I.O. and according to the Memorandum statement of accused vide Ex. P-11 one Axe was seized from accused as per Ex. P-12.
- 5) After due investigation charge sheet was filed against the appellant/accused for the offence under Sections 294, 506 and 324 of IPC and offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.
- 6) The Trial Court framed charges against the accused/ appellant under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 and under Sections

294, 324 and 506 Part-I of I.P.C. The accused/appellant denied the charges and prayed for trial.

- 7) The prosecution in support of its case examined as many as 09 witnesses namely PW-01 Khulasoo Bai (complainant/ victim), PW-02 Kendi Bai, PW-03 Phool Mohani, PW-04 Ram Sai, PW-05 Dr. Prem Singh Marko (Medical Officer), PW-06 Sapan Choudhari, PW-07 Manoj Kumar Singh (Patwari), PW-08 J.R. Thakur (C.S.P.) and PW-09 Bateshwar. The statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. No witness was examined by the accused in his defence.
- 8) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in Para-1 of this judgment.
- 9) Learned counsel for the appellant submits that the Trial Court has not properly appreciated the evidence available on record. He further submits that since the land purchased by the appellant was earlier agreed to be purchased by the complainant, she was having ill-will against the appellant and has falsely implicated him in this case. No any independent witness supported the prosecution case. PW-03 Phool Mohani and PW-04 Ram Sai both were declared hostile and did not support the prosecution case at any stage of examination. Looking to the previous enmity between the appellant and complainant, the possibility of false implication of the appellant cannot be ruled out. The trial Court considering the exaggeration, inconsistencies in the statement of the complainant and the other prosecution witnesses has though rightly acquitted the appellant of the charges under 3(1)(x) of the Act and 506 Part-I of IPC but has committed an illegality in holding him guilty under Section 324 of I.P.C.

- 10) Alternatively, he submits that the accused was 30 years of age at the time of incident which took place in the year 2007 i.e. near about 13 years back, he has no criminal antecedent, he has been on bail since long and never misused the liberty, therefore, he may be extended the benefit of Probation of Offender Act.
- 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 Khulasao Bai is the victim in this case and as per PW-01 she stated in her deposition in para 2 that when she asked the accused as to why he purchased the land which was agreed to be purchased by her without consulting her, the appellant assaulted her by means of Axe over her forehead. At the time of incident Ram Sai and his wife were present. She proved the promptly lodged FIR Ex. P-7. PW-02 Kendi Bai also stated that at about 04:00 PM the complainant was going towards Lakhanpur and she had suffered injury over her head. PW-05 Dr. Prem Singh Marko has proved that injury was found on the body of the complainant Khulasao Bai as per Ex. P-5 MLC. The doctor noticed one cut wound over forehead left side of size 1"x0.5"x0.5" and that time she was complaining of pain on both thighs. He opined that the said injury was caused by sharp object. He has also proved Ex. P-6 i.e. examination report of weapon of offence Axe. PW-03 Phool Mohani, PW-04 Ram Sai, both independent eyewitnesses, have turned hostile and not supported the prosecution case.
- 14) PW-06 Sapan Choudhari, proved Ex. P-7 (FIR) lodged by PW-01 Khulasao Bai just after the incident. PW-07 Manoj Kumar Singh proved the Spot Map Ex. P-10 and PW-08 J.R. Thakur also

supported the prosecution case. There is no reason to disbelieve the evidence of PW-01 Khulasu Bai that she sustained injury on her forehead as mentioned in FIR and duly supported by MLC Ex. P-5. No any major contradiction or omission is mentioned on her statement. The injury on the body of the complainant was also seen by PW-2 Kendi Bai soon after the incident when the complainant was going towards Lakhanpur. In these circumstances, I am of the opinion that the Trial Court did not commit any illegality in convicting the appellant under section 324 of IPC.

- 15) 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 13 years ago, the age of the appellant at the relevant time i.e. 30 years, he has no criminal antecedent, during pendency of this appeal the appellant was on bail since 2008 and did not misuse the liberty granted to him, 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, this Court is of the opinion that no fruitful purpose would be served by sending the appellant back to jail at this stage and the ends of justice would be served if the appellant is sentenced to the period already undergone by him **i.e. 03 days** and the fine amount of Rs. 2,000/- imposed by the trial Court is enhanced to Rs. 4,000/- with default sentence and out of the said amount Rs. 2,000/- is directed to be paid to the complainant as compensation under Section 357 of Cr.P.C.
- 16) In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 324 of IPC, his jail sentence is reduced to the period already undergone by him. However, fine sentence of Rs. 2,000/- imposed by the trial Court

is enhanced to Rs. 4,000/-. If the appellant fails to deposit the said fine amount, he shall suffer additional R.I. for four months. The fine amount already deposited by the appellant shall be adjusted accordingly. Out of the said amount, Rs. 2,000/- shall be payable to the complainant (PW-1 Khulasoo Bai)) as compensation under Section 357 of Cr.P.C. after due verification by the Trial Court. Since the appellant is reported to be on bail, his bail bond 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