

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 312 of 2008**

1. Jibrail Khan, S/o Julab Khan, aged about 24 years,
2. Julekha Bee, W/o Julab Khan, aged 45 years,

Both R/o Village Serma, P.S. & Tahsil Nawagarh, District Janjgir-Champa, C.G.

**----Appellants****Versus**

- State of Chhattisgarh, Through Police Station Nawagarh, District Janjgir-Champa, C.G.

**---- Respondent**


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| For Appellants       | Shri Gurudev I Sharan, Advocate.           |
| For Respondent/State | Shri Ragvendra Verma, Government Advocate. |

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**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board****19/03/2020**

1. The appellants would call in question the legality, validity and propriety of the judgment of conviction and order of sentence dated 29.02.2008 passed by 2<sup>nd</sup> Additional Sessions Judge (FTC) Janjgir, C.G.. in Sessions Trial No.8/2008, whereby the appellants stand convicted and sentenced as under:-

| Conviction                                          | Sentence                                                                                                              |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Under Section 325 read with 34 of Indian Penal Code | One year rigorous imprisonment and fine of Rs.100/-, in default of payment of fine to undergo additional R.I. for one |

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|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
|                                                     | month.                                                                                                                       |
| Under Section 323 read with 34 of Indian Penal Code | 6 months rigorous imprisonment and fine of Rs.100/-, in default of payment of fine to undergo additional R.I. for one month. |

2. Case of the prosecution in brief is that FIR Ex.P-9 was lodged by complainant/Salma at 14:40 pm alleging that on the date of incident i.e. 29.09.2007 at 11:00 am her father made her a call and after talking to her father when she came down from roof then the appellants started abusing her by saying that “you were complaining about our family to your father”. After some time, at 11:30 am when she was going to pond to take bath then appellants Jibrail Khan & Julekha Bee stopped her and again started abusing by using filthy language and accused Jibrail Khan assaulted her by sickle on various parts of her body. After that she lodged prompt FIR Ex.P-9 on the same day and this incident was witnessed by Khikhram Sahu, Gokul and Gopal Yadav. Complainant was also examined on the same day by PW-14 Dr. R.S. Raj, who found the following injuries on the body of the complainant vide Ex.P-14:-

1. Lacerated wound size 7cmx1cmx1cm on scalp over occipital region of skull. Horizontal in shape. Blood clot on scalp & bleeding from the lacerated wound.
2. Lacerated wound size 6cmx2cmx.. bone is seen on right side of face over right mandible region. Horizontal in shape. Bleeding from lacerated wound. Blood clot present on face & chest and abdomen and back of chest and abdomen and both forearms and hands and palms.

3. Lacerated wound 3cmx1cmxbone deep on front of right index finger.

4. Lacerated wound 2cmx1cm on back of right index finger. Bleeding from lacerated wound.

5. Lacerated wound size 5cmx2cmx1cm on left palm below base of left thumb. Bleeding from lacerated wound. Opinion will be given after x-ray report.

According to the doctor the injuries were caused by hard and sharp object and duration was about five hours. The doctor advised for x-ray of scalp, hand and palm.

3. As per X-ray report Ex.P-19 and Ex.P-20, right mandible bone of the skull was found fractured. After the incident, statement of complainant was recorded under Section 161 on 17.10.2007 where she also alleged against Chand Bee and Maan Bee that they also assaulted upon her. After usual investigation, charge sheet was filed against the four accused persons namely Jibrail Khan, Julekha Bee, Chand Bee and Maan Bee under Sections 294, 341, 506, 324, 452, 307 read with 34 of IPC. The trial Court framed the charges under Sections 452, 504, 323 and 307 read with 34 of IPC against the four accused appellants which were denied by them and they prayed for trial.

4. So as to hold the accused persons guilty, the prosecution examined as many as 17 witnesses i.e. PW-1 Dukhram, PW-2 Vijay Yadav, PW-3 Janki Bai, PW-4 Ram Narayan, PW-5 Vinod Singh, PW-6 Neelkanth Patel, PW-7 Lachiram, PW-8 Salma, PW-9 Dr. Smt. Anita Shrivastava, PW-10 Seekhram Urf Anandram, PW-11 Gopal, PW-12 Gokul, PW-13 Ghasiya Ram Yadav, PW-14 Dr. R.S. Raj, PW-15 S.L. Kausik, PW-16 Dr. N.S. Chandel and PW-17 Keshav Jaiswal. However, no defence witness was

examined by them in their defence.

5. 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 Jibrail Khan and Julekha Bee as mentioned in para-1 of this judgment while acquitting accused Chand Bee and Maan Bee of the charges as mentioned above.
6. Learned counsel for the appellants submits that the testimony of the complainant/prosecutrix was not supported by any independent witness. He submits that the appellant No.2 Julekha Bee has been falsely implicated in this case by the prosecutrix and the main allegation was made only against the appellant No.1 Jibrail Khan. He further submits that if the statement of the prosecutrix is compared with her diary statement, it is clear that the allegation was only against the appellant No.1 Jibrail Khan that he assaulted the prosecutrix by means of sickle as a result of which prosecutrix suffered various injuries on her body. No allegation was made against the appellant No.2 Julekha Bee and, therefore, appellant No.2 deserves to be acquitted of the charges levelled against her. He also submits that if this Court ultimately comes to the conclusion that the appellant No.1 Jibrail Khan is guilty of the offence under Sections 323 read with 34 and 325 read with 34 of IPC, considering the fact that the incident took place around 17 years ago, the age of the appellant No.1 Jibrail Khan at the relevant time i.e. 24 years and the fact that he has no

criminal antecedent, he has already remained in jail for 59 days, by granting the benefit of Probation of Offenders Act, the accused appellant No.1 Jibral Khan may be sentenced to the period already undergone by him after enhancing the fine amount suitably.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Heard learned counsel for the parties and perused the material available on record.
9. It is not disputed by both the counsel that FIR Ex.P-9 was lodged against the accused appellants. In FIR that this fact is mentioned by the prosecutrix that when she was going to pond to take bath on the way Jibrail Khan and Julekha Bee stopped her and started abusing her by using filthy language but it is not mentioned in the FIR as to who was abusing her. In FIR Ex.P-9, she specifically stated that appellant Jibrail threatened to kill and assaulted her by sickle, as a result of which she suffered injuries. As per MLC report, all injuries mentioned in para 2 of this judgment were proved by PW-14 Dr. R.S. Raj. There is no any assault made by appellant No.2 Julekha Bee and no any specific injury caused by appellant No.2 Julekha Bee. Looking to the manner in which the incident occurred and the statement of the prosecutrix, it cannot

be said that both these appellants were having common intention of causing voluntary injury or grievous injury to the prosecutrix.

10. Looking to the entire evidence and statement of the prosecutrix, it stands proved that only appellant no.1 Jibrail Khan assaulted the prosecutrix and caused her grievous and simple injuries and this fact was also supported by FIR Ex.P-9, MLC report Ex.P-14, X-ray report Exs.P-19 & P-20 and the evidence of the treating doctor PW-14 Dr. R.S. Raj. There is no challenge by the defence to the said medical report nor any suggestion to PW-14 Dr. R.S. Raj which could make his evidence doubtful and further, there is no contradiction or omission in the FIR as compared to the statement of the complainant in respect of appellant No.1 Jibrail Khan.

11. In this case, PW-1 Dukhram has not supported the prosecution case regarding he being the eyewitness. He only stated in para 1 that all four accused persons brought the prosecutrix in injured condition and went towards prosecutrix's home.

12. PW-2 Vijay Yadav, PW-4 Ram Narayan, PW-10 Khikhram @ Anandram, PW-11 Gopal, PW-12 Gokul Prasad, PW-13 Ghasiya Ram Yadav and PW-16 Dr. N.S. Chandel all have been declared hostile and not supported the prosecution case.

13. PW-3 Janki Bai only stated that when prosecutrix reached her home in injured condition with accused appellants at that time appellant No.1 Jibrail Khan was having sickle in his hand. PW-6

Neelkanth Patel, Patwari proved the spot map Ex.P-8.

14. PW-8 prosecutrix has deposed that on the date of incident she was alone at her home, at that time her father made her a call. After talking to her father when she came down from the roof then appellants started abusing her. When she was going to pond to bathe then appellants Jibrail Khan & Julekha Bee stopped her and again started abusing by using filthy language and accused Jibrail Khan threatened to kill and assaulted her by sickle as a result of which she suffered various injuries on her body. After that she lodged prompt FIR Ex.P-9 on the same day against the accused appellants.

15. PW-9 Dr. Smt. Anita Shrivastava proved the Bed Head Ticket Ex.P-10.

16. Looking to the entire evidence of the prosecution only offence under Section 325 is proved by the prosecution beyond all reasonable doubt against appellant No.1 Jibrail Khan but the prosecution has failed to prove its case against appellant No.2 Julekha Bee as there is no element of common intention being shared by appellant No.2 Julekha Bee with appellant No.1 Jibrail Khan while he was making assault on the complainant and, therefore, she is acquitted of the charges levelled against her.

17. It is not disputed that appellant No.1 Jibrail Khan caused injuries on the body of the prosecutrix and fracture was also caused to her. It is true that appellant No.1 Jibrail Khan was the young

offender at the time of incident, aged about 24 years but looking to the nature of injuries caused by him, it would not be appropriate to give him the benefit of Probation of Offenders Act. Since offence under Section 323 of IPC is covered under Section 325 of IPC which is the graver offence, therefore, no jail sentence or fine sentence is required to be imposed under Section 323 of IPC separately against this appellant.

18. In the totality of facts and circumstances of the case, the age of appellant No.1 at the time of incident i.e. 24 years, the fact that he has no criminal antecedents, he has remained in jail for 59 days, the incident took place around 17 years back, 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 the 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 fruitful purpose would be served in sending the accused appellant No.1 Jibrail Khan back to jail at this stage and the ends of justice would be served, if he is sentenced under Section 325 of IPC to the period already undergone by him and the fine of Rs.100/- imposed by the trial Court is enhanced to Rs.7,000/- which shall be payable as compensation to the complainant-Salma under Section 357 of CrPC. If the fine amount is not deposited by the accused Appellant No.1 Jibrail Khan, he shall have to suffer additional R.I. for six months.

19. In the result, the appeal is allowed in part. While acquitting the appellant No.2 Julekha Bee of charges under Sections 323 read with 34 and 325 read with 34 of IPC and accused appellant No.1 Jibrail Khan under Section 323/34 of IPC, he is held guilty under Section 325 of IPC and is sentenced to the period already undergone by him. He is further directed to pay a fine of Rs.7,000/- which shall be disbursed to the complainant- Salma as compensation under Section 357 of CrPC by the trial Court after due verification. If the fine amount is not deposited by the accused appellant No.1 Jibrail Khan within a period of 4 months, he shall have to suffer additional R.I. for a period of six months. Needless to say, fine amount already deposited by appellant No.1 Jibrail Khan with the trial Court under Sections 323/34 & 325/34 of IPC shall be adjusted accordingly.

Sd/-  
Gautam Chourdiya  
Judge

Akhilesh