

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 893 of 2009

1. Shrawan Kumar S/o Gofe Satnami, aged about 27 years,
2. Panna Lal @ Ghana Ram S/o Gopi Satnami, aged about 38 years,
3. Manak S/o Gopi Satnami, aged about 35 years,
4. Pawan S/o Gofe Satnami, aged about 22 years,

All are R/o Village Bandhimouha, Police Station Kawardha, District Kabirdham (C.G.)

---- Appellants

Versus

1. State of Chhattisgarh, through Station House Officer, Kawardha, District Kabirdham (C.G.)

---- Respondent

For Appellants	:	Shri Ajit Singh, Advocate.
For Respondent/State	:	Shri Vimlesh Bajpai, Dy. Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya

Judgment On Board

17/09/2020

- 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 30/11/2009 passed by Sessions Judge, Kabirdham (Kawardha) (C.G.) in Session Trial No. 14/2008; whereby the appellants stand convicted and sentenced as under:-

Conviction	Sentence
U/s 323 of Indian Penal Code (in short "IPC")	S.I. for 6 months (each)

- 3) Case of the prosecution in brief is that PW-01 Bhola Satnami lodged FIR Ex. P-1 on 15/09/2007 at around 09:40 PM against all the four accused Manak, Pawan, Shrawan and Panna @ Ghana Ram stating therein that on the same day at about 6 to 7 PM there was some quarrel between the women of their family. Hearing the sound of quarrel Jethu, Manak reached the place of occurrence and Bhola also came there with club. Accused Manak snatched the club from Bhola and assaulted him with Jethu, Chaitram, Mohan and Kumari Bai intervened in the matter, all the accused persons assaulted them also with club and caused them injuries. While assaulting the complainant party, the accused persons were also filthily abusing them and threatened them to kill. The incident was witnessed by Panchu Satnami and other villagers. Based on the aforesaid report, offence under Sections 294/506 and 323/34 of IPC was registered against the accused persons. The injured persons were sent for medical examination which was conducted by PW-04 Dr. Gajendra Singh. As per MLC Ex. P-2A of injured PW-01 Bhola, he suffered lacerated wound of 3cmx0.5cm into dermis deep over parietal region in mid vertical direction and there was swelling with tenderness over left wrist. Accordingly, to the Doctor PW-04 Gajendra Singh, the injuries were simple in nature and caused by hard and blunt object.
- 4) MLC Ex. P- 3A of injured PW-05 Jethu reveals that he suffered bruise of 26cmx3.5cm over anterior chest travelling almost over clavicle and lacerated wound of 3x0.5cm over left side of head with bleeding. According to the PW-04 Dr. Gajendra Singh, the injuries were caused by hard and blunt object and he advised for X-Ray of the chest. PW-04 Dr. Gajendra Singh also medically examined injured PW-05 Chaitram vide Ex. P-4A and noticed lacerated wound of 6.5x0.5cm. Bone deep over made of forehead with bleeding and lacerated wound of 2.5cmx1cm. Bone deep over dorsal aspect of right forearm upper/3rd with bleeding. PW-04 Dr. Gajendra Singh also found swelling with tenderness over left hand, right elbow and forearm. The said

injuries were caused by hard and blunt object. The Doctor PW-04 Gajendra Singh advised for X-Ray of head and both the hands.

- 5) As per MLC Ex. P-5A of injured PW-07 Kumari Bai conduct by PW-04 Dr. Gajendra Singh she suffered penetrating wound of 0.5x0.5cm of dorsal aspect of mid left forearm with bleeding, swelling and pain. There was one bruise of 3x1.5cm over back on right side. The injuries were caused by hard and blunt object. The Doctor PW-04 Gajendra Singh also medically examined injured PW-06 Mohan vide Ex. 6A and found bruise of 6cmx2cm over dorsal aspect of left forearm and bruise of 3cmx1.5cm over dorsal aspect of left wrist. The Doctor PW-04 Gajendra Singh also noticed swelling and tenderness on the said injuries. These injuries were caused by hard and blunt object. The Doctor PW-04 Gajendra Singh advised for X-Ray of left forearm injury and wrist.
- 6) During investigation one club was seized from injured Bhola vide Ex. P-7. Likewise, from accused Pawan one club was seized vide Ex. P-8 and one club was seized from accused Panna Lal vide Ex. P-9. Spot map vide Ex. P-10 was prepared by PW-08 Chaintaram Deshmukh (Head Constable) after recording the statement of witnesses charge sheet was filed against all the accused persons under Sections 294, 506, 323 and 34 of IPC.
- 7) The Trial Court framed charges against all the four accused/appellants under Sections 294/34, 506/34 and 323/34 (5 times) of I.P.C. The accused/appellants denied the charges and prayed for trial.
- 8) The prosecution in support of its case examined as many as 08 witnesses namely PW-01 Bhola. PW-02 Chaitram, PW-03 O.P. Joshi (Assistant Sub Inspector), PW-04 Dr. Gajendra Singh (Medical Officer), PW-05 Jethu, PW-06 Mohan, PW-07 Kumari Bai and PW-08 Chintaram Deshmukh (Head Constable) The statement 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 and pleaded innocence and

false implication.

In their defence the accused appellants has stated that complainant Bhola and others had assaulted the accused persons and thereafter a report lodged by the accused persons, they have been falsely implicated by the complainant party whereas they are innocent. One defence witness DW-01 Jogi was examined by the accused appellants in their defence.

- 9) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in Para 2 of this judgment.
- 10) Learned counsel for the appellants submits that all the accused persons are the relatives. In fact it is the complainant party who first assaulted the appellants in which the appellants sustained injuries and lodged report against the complainant party. However, in order to save themselves from criminal prosecution, complainant Bhola lodged a false report against the accused appellants. He submits that no injury was caused by the appellants to the complainant party voluntarily and it is the complainant party who was aggressor and assaulted the appellants.
- 11) He further submits that it is admitted by PW-01 Bhola in para 9, PW-05 Jethu in para 6 and PW-07 Kumari Bai in para 6 that soon after the incident, the accused appellants lodged a report against the complainant party that in the said incident both the parties had sustained injuries. As per evidence on record, the dispute between the parties arose on the trivial issue of demand of kerosene oil between the women of both the party which led to the incident. Both the parties are resident of the same village and are relatives. He submits that if this Court ultimately confirm the conviction of the appellants under Section 323 of IPC, considering the facts and circumstances of the case, the age of the appellants at the relevant time, the fact that they are young

offender having no criminal antecedents, the incident took place in the year 2007 i.e. about 13 years back and the appellants have been on bail since during Trial and pendency of this appeal and never misused the liberty granted to them, they be extended the benefit of Probation of Offenders Act.

- 12) 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 appellants by the impugned judgment which calls for no interference by this Court.
- 13) Heard counsel for the parties and perused the material available on record.
- 14) First this Court considers the injury sustained by the victims namely PW-01 Bhola, PW-05 Jethu, PW-02 Chaitram, PW-07 Kumari Bai and PW-06 Mohan. As per their MLCs, the injuries were caused by hard and blunt object. Accordingly to the Doctor the injuries suffered by the victims were simple in nature except the injury sustained by PW-05 Jethu on chest, the injury suffered by PW-02 Chaitram on head and hands and the injury suffered by PW-06 Mohan on left forearm and wrist, for which the Doctor advised for X-Ray. However, there is no evidence on record to show that any of the victims suffered any grievous or bony injury. Rather from the X-Ray reports available on record of PW-07 Kumari Bai, PW-02 Chaitram and PW-05 Jethu (all exhibited) it is seen that no bony injuries was suffered by any of these victims. Thus from the overall evidence on record it is clear that the injuries suffered by the victims in the incident were simple in nature.
- 15) The evidence on record comes to show that initially there was dispute between the women of both the parties over demand of kerosene oil which was subsequently joined by the male members of the respective families. It has been admitted by PW-01 Bhola, PW-05 Jethu and PW-07 Kumari Bai in their

depositions that in the said incident both the parties sustained injuries and first the report was lodged by the accused party against them and the case is pending against them. PW-07 Kumari Bai has also admitted the fact that the complainant party and the accused persons are neighbour and that the appellants are cousin.

- 16) PW-01 Bhola has stated that on the date of incident son of Jogi came to the house of PW-05 Jethu for taking kerosene oil, however, wife of Jethu asked him wait for sometime as she was Breast feeding at that time but the son of Jogi went to the house of the Sukhjotin for demanding kerosene oil. At that time the accused persons reached there and supported quarreling that the complainant party. He states that when he came out of his house, the accused persons started beating him by club. Manak assaulted him by club on his head. When PW-05 Jethu, PW-02 Chaitram, PW-07 Kumari Bai and PW-06 Mohan came to his rescue, the accused persons also assaulted him by hurling filthy language at them. Soon after the incident he lodged Fir Ex. P-1 against the appellants and has proved the same. The same facts have been proved by injured witnesses PW-02 Chaitram, PW-05 Jethu, PW-06 Mohan and PW-07 Kumari Bai in their depositions.
- 17) As per unrebutted evidence of the injured witnesses, it is proved that accused Shrawan caused injuries to PW-07 Kumari Bai and PW-06 Mohan Das, accused Ghana Ram caused injury to PW-05 Jethu, accused Manak caused injuries to PW-01 Bhola & PW-07 Kumari Bai and accused Pawan caused injuries to PW-02 Chaitram. All these injuries suffered by the victims were simple in nature as has already been held in Paras 3, 4 & 5 of this judgment.
- 18) In this case no documents of counter case being registered at the instance of accused appellants against the complainant parties herein was filed and proved by the prosecution or the defence. Therefore, it is not possible to ascertain as to who was aggressor in the incident. Rather from the evidence on record it

appears that it is a case of free fight between the parties where the members of both the parties including the present appellants sustained injuries.

- 19) Thus considering the manner in which the incident occurred, the evidence of the injured eye witnesses which is duly supported by the promptly lodged FIR as well as their medical report proved by treating Doctor PW-04 Gajendra Singh, this court is of the opinion that the Trial Court has rightly convicted the appellants under Section 323 of IPC as it is a case of free fight between the parties where each of the participants is liable for his/her individual act.
- 20) So far as the sentence part is concerned, in the totality of the facts and circumstances of the case, the trivial issue of demand of kerosene oil which led to the incident, the fact that the complainant party and the accused parties are neighbours, the injuries sustained by the complainant parties are simple in nature, the incident occurred in the year 2007 i.e. 13 years ago, the appellants have no criminal antecedents, they are the young offender of 27 years, 38 years, 35 years and 22 years respectively at the time of incident, they were on bail during pending of this appeal since December 2009 and never misused the liberty granted to them, the fact that jail sentence under Section 323 of IPC is not mandatory, this Court is of the opinion that no useful purpose would be served in awarding jail sentence to the appellants at this stage and the ends of justice would be served if they are sentenced to fine only with default stipulations.
- 21) In the result the appeal is allowed in part. While maintaining the conviction of the appellants under Section 323 of IPC, the jail sentence awarded thereunder by the Trial Court is hereby set aside and instead thereof, they are sentenced to fine amount as under:-

SN.	Accused/ appellants	For voluntarily causing hurt to	Fine	Amount payable as compensation under Section 357 of Cr.P.C.
1	2	3	4	5
1	Shrawan	Kumari Bai PW-07	Rs. 1,000/-	Rs. 500/-
		Mohan PW-06	Rs. 1,000/-	Rs. 500/-
2	Ghana Ram	Jethu PW-05	Rs. 1,000/-	Rs. 500/-
3	Manak	Bhola PW-01	Rs. 1,000/-	Rs. 500/-
		Kumari Bai PW-07	Rs. 1,000/-	Rs. 500/-
4	Pawan	Chaitram PW-02	Rs. 1,000/-	Rs. 500/-
Total			Rs. 6,000/-	Rs. 3,000/-

In the event of failure of the appellants to pay fine amount, they shall have to suffer S.I. for 3 months on each count. 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