

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 831 of 2008**

- 1) Balkrishna S/o Bishram Verma, aged about 38 years R/o Village Baherabhata
- 2) Sudarshan Thakur W/o Dhanwa Thakur, aged about 38 years R/o Village Baherbhata, Bhandapara, Police Station Ghumka, District Rajnandgaon (C.G.)

---- Appellants**Versus**

State of Chhattisgarh, Through District Magistrate, Rajnandgaon, (C.G.).

---- Respondent

For Appellants	:	Mr. Anuroop Panda, Advocate
For Respondent	:	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****23/11/2020**

1. This appeal has been preferred against the judgment dated 19/08/2008 passed in Sessions Trial No. 11/2008 by the Additional Sessions Judge, (Fast Track), whereby the Appellants have been convicted under Section 324/34 of the Indian Penal Code and sentenced to undergo RI for 1 year and to pay fine of Rs. 500/- with default stipulation.
2. According to the case of the prosecution, on 18/11/2007 at about 4:00 pm, Beduram (henceforth 'the Complainant') was sitting near Gram Panchayat of Village Baherebhata. At that time, the appellants were going towards his house by holding sticks (Lathi) in their hands. Near purana Talab, brother of the Complainant namely Bhikam Verma was sitting. The appellants assaulted Bhikam (henceforth 'the Victim') by

the sticks. When the Complainant rushed towards the place of occurrence, then the appellants fled away from the spot. The Victim sustained injuries on his head and other parts of the body. The incident was witnessed by Manoj, Veeru and Gangaram. The Complainant along with other witnesses had taken the victim to the hospital. The matter was reported vide Ex.P-1 by the Complainant. Statement of the Victim and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed under Section 307/34 of the IPC against the appellants. Trial Court framed the charges. As many as 13 prosecution witnesses have been examined. Statements of the Appellants under Section 313 of the Cr.P.C have been recorded, wherein they have pleaded their innocence and false implication in the matter.

3. After trial, the trial Court has acquitted the appellants from the charge framed under Section 307/34 of the IPC, however, the appellants have been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellants submits that without there being any clinching evidence, the appellants have been wrongly convicted. The learned trial Court has failed to appreciate that the Victim was in drunken condition and the same is evident from the statement of Dr. Mohan Parakh (PW6) and Tahal Ram Verma (PW7). The trial Court has also failed to appreciate the fact that even all the eye-witnesses have not supported the case of the prosecution. There are material contradictions and omissions occurred in the statements

of witnesses. He further submits that from the statement of Dr. Mohan Parakh (PW6), it is well established that the Victim had sustained only one simple injury which was caused by a stick (Lathi), therefore, the appellants would be liable to be convicted under Section 323 of the IPC not under Section 324 of the IPC. He further submits that the appellants have already undergone about 11 days during trial and during the pendency of this appeal, therefore, he alternatively argues that the conviction of the appellant may be altered to Section 323 of the IPC and they may be sentenced to the period already undergone by them.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the judgment of the trial Court as well as the statements of the witnesses before the trial Court.
7. In his Court statement Bhikam (PW4) has categorically stated that both the appellants came to him and assaulted him by a wooden stick. Though there are some contradictions and omissions occurred in his statement, they are not material. This witness has remained firmed during his cross-examination on this point.
8. From the statement of Dr. Mohan Parakh (PW6) and MLC report of the Victim (Ex.P-12), it is also well established that the Victim had sustained only one injury on his head. According to the opinion given by the Dr. Mohan Parakh (PW6), the said injury was of simple nature

and caused by hard and blunt object.

9. Considering the above aspects, I am of the view that the act committed by the appellants falls within the ambit of Section 323 of the IPC and the conviction of the appellants under Section 324/34 of the IPC is not sustainable. Accordingly, the conviction of the appellants under Section 324/34 of the IPC is set-aside and the said conviction is altered to Section 323/34 of the IPC.
10. Since the appellants have already undergone about 11 days, there is no previous antecedent registered against them and they are facing the *lis* since 2008, I am of the view that the ends of justice would be met if, while convicting the Appellants under Section 323/34 of the IPC, the jail sentenced awarded to them under Section 324/34 of the IPC is reduced to the period already undergone by them.
11. Consequently, the appeal is partly allowed. The conviction of the appellants is altered to Section 323/34 of the IPC and they are sentenced to the period already undergone by them.
12. It is reported that the Appellants are on bail. Their bail bonds are not discharged at this stage and the same shall remain operative for a further period of six months in view of the provisions contained in Section 437-A of the IPC.
13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge