

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceeding Through Video Conferencing****CRA No. 1090 of 2007**

- Bhupsai, aged about 38 (40) years, Son of Sahebu Vishwakarma, R/o Village Nareshpur (Namand), P.S. and Tahsil Surajpur, District Sarguja, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through the Station House Officer, Police Station Surajpur, District Sarguja, C.G.

---- Respondent

For Appellant	Shri Vivek Bhakta, Advocate on behalf of Shri A.N. Bhakta, Advocate.
For Respondent/State	Shri Rahul Jha, Government Advocate.

CRA No. 1101 of 2007

- Manglu @ Nanbhu, S/o Papta Lohar, aged about 45 years, R/o Village Nareshpur P.S. Surajpur, District Sarguja, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through P.S. Surajpur, District Sarguja, C.G.

---- Respondent

For Appellant	Shri Shrawan Agrawal, Advocate.
For Respondent/State	Shri Rahul Jha, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

16/10/2020

1. Since both these appeals filed under Section 374(2) of Cr.P.C. arise out of the common judgment of conviction and order of sentence

dated 26.07.2007 passed by the Special Sessions Judge (constituted under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 / Additional Sessions Judge, Sessions Division- Surguja, place Ambikapur, C.G. in Special Sessions Trial No.39/06 convicting each of the appellants under Section 324 of Indian Penal Code (for short 'IPC') and sentencing them to undergo R.I. for 3 years, they are being disposed of by this common judgment.

2. Case of the prosecution, in brief, is that on 02.12.2005 at village Nareshpur, accused/appellants entered the house of complainant-Dharamsai and went to the place where complainant's daughter-in-law was cooking food. At the same time, complainant/injured came there and stopped them by saying that *why they are going towards the kitchen wearing shoes*. Thereafter, when complainant-Dharamsai was ploughing the field of one Manikchand, at that time accused/appellants came there and after threatening him of life, assaulted upon him by Axe, as a result of which, he suffered injuries on various parts of his body. On the same day i.e. 02.12.2005, FIR Ex.P-1 was lodged by complainant against the accused/appellants under Crime No.308/05 in police station Surajpur, C.G.. Injured person was sent for medical examination who was examined by PW-8 Dr. R.S. Singh vide Ex.P-5. The injuries sustained by the injured /complainant are as under:-

1. One incised wound present over the right shoulder size 3" x 1" and deep from the muscle to the bone, there were blood clots which were red in colour.

2. One incised wound present over the lower scapular region transversally placed 3" x ½" and deep from the muscle to the bone, there were blood clots which were red in colour.

3. One abrasion present over the right cheek size ½" x ½", there were blood clots which were red in colour.

4. Swelling present over the right upper forearm with tenderness present on touch.

5. Complaining of pain over the right lower chest with tenderness on touch.

6. Complaining of pain over both the knee joint with abrasion, there red colour blood was present.

As per Doctor, injury Nos. 3 & 6 were simple in nature and for injury Nos. 1, 2, 4 & 5 opinion can be given after X-ray. Injury Nos. 1 & 2 were caused by hard and sharp object whereas other injuries were caused by hard and blunt object and caused within 2-3 hours prior to the examination. He also advised X-ray for right shoulder, right side under the chest and right arm. He referred the injured to Community Health Center, Surajpur.

3. During investigation, spot map Ex.P-2 was prepared by PW-10 Ayodhya Prasad Paikara, Patwari. One caste certificate of the injured-Dharam was seized vide Ex.P-3. Memorandum statement of accused/appellant- Bhupsai was recorded vide Ex.P-8 consequent to which one axe was seized from him vide Ex.P-9. Spot Map Ex.P-10 was prepared by PW-14 S.K. Pandey, Investigating Officer. Memorandum statement of

accused/appellant- Manglu @ Nanbhu was recorded vide Ex.P-11 consequent to which one axe was seized from him vide Ex.P-12. Accused/appellants were arrested on 02.12.2005 vide Exs.P-13 & 14 respectively. After recording statements of the witnesses, charge sheet was filed against the accused/appellants under Section 307 read with 34 of IPC and Section 3 (2) (V) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities), Act.

4. The trial Court framed charge under Section 307 of IPC read with Section 3 (2) (V) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities), Act against the accused/appellants which was denied by them and they prayed for trial. The prosecution examined 17 witnesses in support of its case i.e. PW-1 Dharam Sai, Complainant, PW-2 Mahant Das, PW-3 Jhamal Singh, PW-4 Samudri Bai, PW-5 Girdhari, PW-6 Devanand, PW-7 Dr. J.K. Bhutani, PW-8 Dr. A.R. Singh, PW-9 M.S. Rathiya, PW-10 Ayodhya Prasad Paikra, PW-11 Shiv Prakash Upadhyay, PW-12 Surendra Kumar Sahu, PW-13 Ram Bilas Sahu, PW-14 S.K. Pandey, PW-15 I.S. Netam, PW-16 Narmada Tiwari and PW-17 Tapeswar. Statements of the accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. Appellants stated that on the date of incident when they were returning from their field, on the way complainant met them in drunken condition and started abusing

filthily and committed *marpeet* with them. In their defence, they examined two witnesses i.e. DW-1 Manbodh and DW-2 Sangram.

5. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellants as mentioned above.
6. Learned counsel for the appellants submit that appellants have been falsely implicated in this case. They further submit that no independent witness has supported the prosecution case. There are material contradictions and omissions in the statements of the complainant and other witnesses. No cogent evidence is available on record against the appellants. They also submit that no injury was caused by the appellants to complainant. They further submit that in fact it is the complainant who had assaulted upon the accused persons and used filthy language against them. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellants be acquitted of the charge.

Alternatively, learned counsel for the appellant in CRA No.1090 of 2007 submits that if this Court ultimately comes to the conclusion that the appellant- Bhupsai is guilty of the said offence, considering the fact that the incident took place around 15 years ago, the age of the appellant at the relevant time was 40 years and he has no criminal antecedent, he has already remained in jail for 10 months and 29 days, the accused- Bhupsai be sentenced to the period already undergone by him.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellants are 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. PW-1 Dharamsai- complainant stated in his deposition that on the date of incident when he was ploughing the field of Manikchand Rajwade, at that time accused/appellants came there and after threatening him of life, assaulted upon him by Axe, as a result of which, he suffered injuries on various parts of his body and fell unconscious. Then, accused/appellants fled from there. At that time, Dhammal and Chokkidar were present there. Thereafter, Holsai, Jagsai and his family members came there and took him to hospital for treatment. Then, he went to the police station and lodged the FIR Ex.P-1 against the accused/appellants. In his presence, Patwari prepared the spot map Ex.P-2 and police seized his caste certificate Ex.P-3. He was also admitted in Ambikapur Hospital for 5-6 days.
10. PW-2 Mahant Das and PW-3 Jhamal Singh both have fully supported the statement of PW-1 complainant- Dharamsai and stated the same facts as stated by PW-1 Dharamsai.
11. PW-4 Samudri Bai is the daughter-in-law of complainant. She

stated in her deposition that on the date of incident when she was cooking food, at that time accused/appellants entered her house. Then, her father-in-law came there and stopped the accused/appellants by saying that *why they are going towards the kitchen wearing shoes*. Hearing this, accused- Manglu got annoyed and started abusing filthily. Thereafter, her father-in-law went to the field of Manikchand for ploughing and after some time she heard that accused/appellants assaulted upon complainant by axe. Then, she went to the spot and saw the complainant in injured condition.

12. PW-5 Girdhari, PW-16 Narmada Tiwari and PW-17 Tapeswar have turned hostile and not supported the prosecution case.

13. PW-6 Devanand has stated in his deposition that after the incident he heard the hue and cry and after that he went to the spot and saw the complainant in injured condition. Thereafter, villagers came there and took the complainant to hospital for treatment.

14. PW-7 Dr. J.K. Bhutani has proved the injuries found on the body of the complainant and gave his report vide Ex.P-4 and duly proved the same.

15. PW-8 Dr. R.S. Singh medically examined the injured complainant vide Ex.P-5 and noticed certain injuries as mentioned in the preceding paragraph. He has duly proved the said injury report. He also examined the seized axe and opined that the injuries suffered by the victim could be caused by seized axe vide Ex.P-6.

16. PW-9 M.S. Rathiya is the Sub-Inspector. He registered the FIR

Ex.P-1 and sent the complainant to hospital for treatment (Ex.P-5A) and duly proved the same.

17. PW-10 Ayodhya Prasad Paikra, Patwari, prepared the spot map Ex.P-2. PW-11 Shiv Prakash Upadhyay, Tehsildar, has proved the seized caste certificate of complainant vide Ex.P-7.

18. PW-12 Surendra Kumar Sahu & PW-13 Rambilas Sahu are the witnesses of memorandum and seizure vide Exs. P-8 and P-9 but they have turned hostile and not supported the prosecution case. They have admitted their signatures on these documents (Exs.P-8 and P-9).

19. PW-14 S.K. Pandey, Assistant Sub-Inspector, who investigated the case, has supported the prosecution case.

20. PW-16 I.S. Netam, 12th Battalion Commandant, has stated that he recorded the statements of Dharamsai, Mahant Das, Jhamal Singh, Samudari Bai and Devanand on 05.03.2006.

21. The defence witnesses DW-1 Manbodh and DW-2 Sangram have stated that they have no knowledge about the quarrel between the appellants and injured and they were not present at the time of incident. Therefore, their statements have no legal value.

22. Thus, in the totality of facts and circumstances of the case, considering the evidence of complainant-PW-1 Dharamsai, who remained firm during his cross-examination and his statement is duly supported by PW-2 Mehant Das, PW-3 Jhamal Singh and PW-4

Samudri Bai, as also by the medical evidence in the form of MLC Ex.P-5A and P-6, bed head ticket Ex.P-4, evidence of PW-7 Dr. J.K. Bhutani and PW-8 Dr. R.S. Singh and further by the prompt & named FIR Ex.1, it stands proved beyond all reasonable doubt that it is the accused/appellants who voluntarily caused hurt by a dangerous weapon axe to PW-1 Dharamsai/Complainant. The evidence of the defence witnesses, as discussed above, is of no help to the appellants as they have not stated anything specific in favour of the appellants and have not seen the incident. No any evidence was adduced by the defence to substantiate the plea of previous enmity or false implication of the appellants. However, considering the over all evidence available on record, the nature of injuries suffered by the complainant-PW-1 Dharamsai and proved by the prosecution, this Court is of the opinion that conviction of the appellants under Sections 324 of IPC awarded by the trial Court is just and proper warranting no interference by this Court.

23. So far as sentence part is concerned, as per jail report of Central Jail, Ambikapur, Surguja, C.G. dated 29.09.2020, the appellant-Manglu @ Nanbhu has been released from jail on 16.12.2008 after remission and completion of the sentence. Therefore, there is no need to pass any further order regarding his arrest/surrender etc. in respect of appellant- Manglu @ Nanbhu in CRA No.1101 of 2007.

24. However, considering the facts and circumstances of the case, the fact that the appellant- Bhupsai was the first offender of 40 years on the date of incident, he has no criminal antecedent, he has remained in jail for 10 months and 29 days, the incident took place around 15

years back, keeping in view of 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 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 in the present case also no useful purpose would be served in again sending the appellant-Bhupsai back to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him.

25. In the result:-

- The appeal **CRA No.1101 of 2007** being without any substance is liable to be dismissed and is, accordingly, dismissed.
- The appeal **CRA No.1090 of 2007** is allowed in part. While maintaining the conviction of the appellant- Bhupsai under Section 324 of IPC, he is sentenced to the period already undergone by him.

26. The appellant- Bhupsai in **CRA No.1090 of 2007** is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge