

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 71 of 2005

- Shiv Singh, S/o Chandro Ram Gond, Aged about 34 years, R/o Vijay Nagar, Thana – Chhura, District Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh : Through P.S. - Chhura, District - Raipur (C.G.)

---- Respondent/State

For Appellant	:	Shri K.K. Dewangan, Advocate appears on behalf of Shri Alok Kumar Dewangan, Advocate
For Respondent/State	:	Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment

17.07.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 19.01.2005 passed by the Sessions Judge, Raipur (C.G.) in Sessions Trial No. 225 of 2004, whereby the appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 324 of Indian Penal Code (for short 'IPC')	R.I. for one year and pay a fine of Rs.2,000/-, in default of payment to further undergo R.I. for two months

3. Facts of the case in brief are that on 24.06.2004 at about 00:40 am F.I.R. (Ex.-P/1) was lodged by Bir Singh (PW-2) to the effect that on 23.06.2004 at about 08:00 pm, Gadaram came to his house and told him that today at 07:00 pm, appellant Shiv Singh has assaulted his son Padman (PW-1) by

means of axe and he sustained injury on his head and back as a result of which blood was oozing. Then PW-2 reached the house of Gadaram and saw that Padman (PW-1) was lying on the verandah of his house. PW-2 asked from Padman as to who assaulted him, then Padman told him (PW-2) that when he was sitting in front of his house, due to previous enmity appellant Shiv Singh came with axe and assaulted him. Padman told PW-2 that he was rescued from appellant by his mother Budho Bai (PW-3) and his wife Tijo Bai and the incident was seen by Chhatar Bai @ Parvati etc. Therefore, PW-2 Bir Singh alongwith Baishakhu and Ramkumar Kotwar went to police station to lodge the report against appellant Shiv Singh.

4. In the morning of 24.06.2004, injured Padman was sent for medical examination to Government Hospital, Chhura vide Ex.-P/8, where Padman was medically examined by PW-6 Dr. G.L. Tandon and he gave his MLC report (Ex.-P/13) and found following injuries on the body of Padaman:-

- 1) Lacerated wound in size of 4 inch x 1 inch x 1 inch on the upper arm of left hand (humerus mediolateral);
- 2) Lacerated wound in size of 3 inch x 1 inch x 1 inch back side on 4th rib, one inch away from spinal cord;
- 3) Lacerated wound in size of 1 inch x 1 inch x 1 inch on back side on left 6th rib, one inch away from spinal cord &
- 4) Lacerated wound in size of 2 inch x 1½ inch x ¾ inch mid of the occipital region.

As per Doctor, all injuries were serious in nature and final opinion can be given after X-ray, therefore, he referred the injured to Medical College Hospital, Raipur for X-ray and he advised X-ray for skull, left shoulder and back side rib. Doctor (PW-6) also examined the axe vide Ex.-P/14, gave query report vide Ex.-P/15 and opined that all the wounds were possible due to contact of the said axe, the injuries were possibly serious in nature and could cause death.

5. On 24.06.2004, inquest (*nazrinaksha*- Ex.-P/5) was prepared by PW-5 R.L.

Sahu, Assistant Sub Inspector in presence of Tijo Bai and Bir Singh (PW-2) and blood stained soil & plain soil were seized from place of occurrence vide Ex.-P/4. Accused/appellant was arrested on 24.06.2004 at about 19:30 hours and his memorandum statement (Ex.-P/2) was recorded on the same day consequent to which axe was recovered at the instance of the appellant vide Ex.-P/3. Seized articles were sent for FSL examination.

6. During investigation, case diary statements of Padman (PW-1), Bir Singh (PW-2), Budho Bai (PW-3), Tijo Bai and other witnesses were recorded by PW-5 R.L. Sahu. On 30.06.2004, spot map (*nazrimaanchitra* – Ex.-P/6) was prepared by Patwari Baldau Ram Patkar (PW-4) in presence of Bir Singh (PW-2). After completion of investigation, charge-sheet was filed against the accused/appellant under Section 307 of IPC. While framing of the charge, the Sessions Judge, Raipur (C.G.) framed the charge against the accused/appellant under Section 307 of IPC which was denied by him, he pleaded innocence and prayed for trial.
7. So as to hold the accused/appellant guilty, the prosecution examined 06 witnesses namely injured- Padman Singh (PW-1), Bir Singh (PW-2), Budho Bai (PW-3), Baldau Ram Patkar (PW-4), R.L. Sahu (PW-5) and Dr. G.L. Tandon (PW-6) in support of its case. Statement of the accused/Appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. The accused/appellant examined Kanwal Singh as DW-1 and Madan Singh as DW-2 in support of his defence.
8. After appreciation of the evidence available on record, the learned Sessions Judge, Raipur (C.G.) by the impugned judgment, while acquitting the appellant of the charge under Section 307 of IPC, convicted and sentenced the accused/appellant as mentioned in para- 2 of this judgment, hence this appeal.

9. Learned counsel for the appellant submits that in this case, the trial Court did not consider the evidence of Kanwal Singh (DW-1) and Madan Singh (DW-2). He submits that as per evidence of DW-1, on the date of incident, when Padman assaulted Shiv Singh, then in defence Shiv Singh also gave *lathi* blow which hit the axe of the Padman and the handle of the axe held by Padman was broken, at that time Padman was under the influence of liquor and he fell down on the ground and sustained injury. Therefore, the trial Court has wrongly convicted the appellant for the offence under Section 324 of IPC.
10. Lastly, learned counsel for the appellant submits that if this Court finally comes to the conclusion that the appellant has rightly been convicted by the trial Court for offence under Section 324 of IPC, considering the fact that the appellant is the first offender aged about 34 years at the time of incident, the incident took place around 16 years ago, he may be given the benefit of Probation of Offender Act and sentenced to the period already undergone by him. In support of his contention reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478.***
11. On the other hand, learned counsel for the State supporting the impugned judgment and submits that the trial Court has rightly convicted and sentenced the appellant for the above offence which needs no interference by this Court.
12. Heard learned counsel for the parties and perused the evidence available on record.
13. PW-1 Padman (injured) has stated in his deposition that on the date of incident at about 07:00 pm, when he was sitting in front of his house, appellant Shiv Singh came there and said that he (appellant) will kill him (PW-1) and appellant went to his house and again came back with axe and

assaulted Padman by axe. PW-1 sustained injuries on his head and other parts of the body. When PW-1 cried for help, Budho Bai (PW-3) and Tijo Bai reached the place of occurrence and the appellant fled away from there.

14. PW-2 Bir Singh lodged the F.I.R. (Ex.-P/1) and he is the witness of memorandum statement (Ex.-2) of the appellant; seizure of axe (Ex.-P/3); seizure of blood stained soil and plain soil (Ex.-P/4), inquest (*nazrinaksha*-Ex.-P/5) prepared by PW-5 R.L. Sahu; spot map (*nazrimaanchitra* – Ex.-P/6) prepared by Patwari Baldau Patkar (PW-4) and has proved the same. PW-2 has also stated the same facts which were informed by injured Padman (PW-1) just after the incident.

15. PW-3 Budho Bai is the mother of Padman (PW-1) and eyewitness of the incident. PW-3 has supported the prosecution case and has stated that appellant Shiv Singh has assaulted upon Padman by means of axe as a result of which he sustained injury on his body. After considering the evidence of PW-1 Padman (injured), PW-2 Bir Singh and PW-3 Budho Bai, there appears to be no reason to disbelieve the evidence of these witnesses.

16. It is not disputed by the parties that as per X-ray report (Ex.-P/16), no sign of any bony fracture was found on X-ray and the injuries sustained by PW-1 Padman were simple in nature and that fact is proved by PW-6 Dr. G.L. Tandon who found four injuries on the body of PW-1 which have been mentioned in the para-4 of this judgment. PW-6 Doctor proved his MLC report (Ex.-P/13). PW-6 also examined the axe vide Ex.-P/14 and opined that the injuries sustained by Padman (PW-1) can be caused by the axe recovered at the instance of appellant vide Ex.-P/3.

17. Learned counsel for the appellant mainly argued the case on the basis of evidence of the defence witnesses (DW-1 and DW-2). Madan (DW-2) has stated in para-1 of his deposition that on the date of incident, Padman was under the influence of liquor, at that time appellant Shiv Singh went to

convince Padman, then Padman got up to assault Shiv Singh with club (*lathi*). But, DW-2 has admitted in para-4 that he has no knowledge about the quarrel between the appellant and injured- Padman and at the time quarrel, he was not present. DW-2 only stated that he wanted to defend the appellant by giving such evidence. DW-1 Kanwal Singh has stated that Padman (PW-1) has sustained injury due to falling down under the influence of liquor. But no any evidence available on record, nor suggested to any prosecution witnesses that on the date of incident, Padman was in drunken condition and sustained injury due to falling down. Therefore, the evidence of defence witnesses (DW-1 & DW-2) cannot be accepted.

18. Thus, in the totality of facts and circumstances of the case, considering the evidence of Padman (PW-1), Bir Singh (PW-2) & Budho Bai (PW-3), duly corroborated by the medical evidence in the form of MLC Ex.-P/13 as also corroborated by named F.I.R. Ex.-P/1, it stands proved beyond all reasonable doubt that it is the accused/appellant who voluntarily caused hurt by axe to PW-1 Padman. Being so, conviction of the appellant under Section 324 of IPC awarded by the trial Court appears to be just and proper warranting no interference by this Court.

19. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellant was first offender of 34 years on the date of incident, he has no criminal antecedent, he remained in jail above two months and is on bail since 08.02.2005 granted by this Court, the incident took place around 16 years back, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of *George Pon Paul* (supra) 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

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 while keeping the fine sentence with default stipulation intact.

20. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant awarded by the Sessions Court under Section 324 of IPC, he is sentenced to the period already undergone by him, however, the fine amount imposed on him with default sentence by the Sessions Court shall remain intact. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge