

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 458 of 2010**

1. Sayyed Farhin @ Faran, aged about 21 years, S/o Sayyed Afjal Ahmed Musalman, R/o Chhotapara, Raipur, C.G.
2. Amar @ Babu Gouli, aged about 21 years, S/o Lal Gouli, R/o Bayron Bazar, P.S. Kotwali, Raipur, District Raipur, C.G.
3. Prahlad @ Raju Gouli, aged about 19 years, S/o Chhotelal Gouli, R/o Bayron Bazar, P.S. Kotwali, Raipur, District Raipur, C.G.

----Appellants**Versus**

- State of Chhattisgarh, Through District Magistrate, Raipur, C.G.

---- Respondent

For Appellants	Smt. Indira Tripathi, Advocate.
For Respondent/State	Shri Vimlesh Bajpai, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****22/09/2020**

1. The appeal is heard through Video Conferencing.
2. The appellants would call in question the legality, validity and propriety of the judgment of conviction and order of sentence dated 01.07.2010 passed by 7th Additional Sessions Judge, Raipur, C.G. in Sessions Trial No.60/2010, whereby the appellants stand convicted and sentenced as under:-

Conviction	Sentence
Under Section 324 read with 34 of IPC	R.I. for one year and fine of Rs.500/- each, in default of

	payment of fine amount to further undergo additional rigorous imprisonment for one month
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3. Case of the prosecution, in brief, is that on 03.02.2008 at about 10:30 pm FIR (Ex.P-1) was lodged by complainant- Digvijay Rajpurohit informing the police that on the same day i.e. 03.02.2008 at about 9:45 pm, he was going to play at Heritage Club, Bayron Bazar on motorcycle and when he reached there and parked his motorcycle, at that time accused Prahlad @ Raju Gouli stopped his motorcycle by saying that *you parked your motorcycle on road* and started abusing filthily. Hearing this, accused persons namely Juvenile (P), Swapnil Gupta, Sakti Gupta, Kalyani Sardar, Prahlad @ Raju Gouli, Sayyed Farhin @ Farhin, Amar @ Babu Gouli and Juvenile (S) total 8 persons came there and also started using filthy language and threatening the complainant of life, started assaulting upon complainant by means of fighter, belt and club as a result of which complainant suffered injuries on his body. On this, he raised hue and cry and somehow, he came out of their clutches and ran away from there. Thereafter, he informed about the incident to his brother PW-4 Vikram and PW-5 Golu Shankhla. On the same day i.e. 03.02.2008, complainant was sent for medical examination and PW-3 Dr. P.K. Gupta examined him and gave his report vide Ex.P-3:-

- Lacerated wound 3cm x 2 cm external ear (pinna) skin

deep of left ear.

- Multiple contusions and scratches of different size were found on the upper side of back.
- Contusion of size 8cm x 3 cm was found in front and top of lower left shoulder.
- Lacerated wound of size 1cm x ½ cm skin deep found on the back of the right arm.

According to him, injuries present on body were caused hard and blunt object. He opined that the injuries were caused within six hours prior to examination. Injury Nos. 2 to 4 were simple in nature and opinion regarding Injury No.1 will be given by ENT specialist. Injury Nos. 2 to 4 will heal within 7-10 days if no complication arises. He also referred injured to ENT specialist for needful examination, opinion & treatment.

4. During Investigation, spot map Ex.P-5 was prepared by PW-6 Nand Kumar Sinha, Patwari and spot map Ex.P-6 was prepared by PW-7 M.S. Kaushal, Investigating Officer. Accused/appellant namely Sayyed Farhin @ Farhin and Juvenile (P) were arrested on 04.2.2008 vide Exs. P-7 & P-8 respectively. Accused juvenile (S) was arrested on 21.02.2008 vide Ex.P9 and accused namely Amar @ Babu and Prahlad @ Raju Gouli were arrested on 03.02.2008 vide Exs.P-10 and P-11 respectively. After recording statements of the witnesses, charge sheet was filed against the accused/appellants under Section 307 read with 34 of IPC. P & S

being juvenile, charge sheet in respect of them was filed before the Juvenile Justice Board and they were tried separately by the concerned Juvenile Justice Board.

5. The trial Court framed charge under Section 307 read with 34 of IPC against the accused/appellants which was denied by them and they prayed for trial. The prosecution examined 7 witnesses i.e. PW-1 Complainant Digvijay Singh Rajpurohit, PW-2 Brajesh Kumar Tiwari, PW-3 Dr. P.K. Gupta, PW-4 Vikram Singh Rajput, PW-5 Golu Shankhla, PW-5 Nand Kumar Sinha and PW-7 M.S. Kaushal. Statements of the accused/appellants were recorded under Section 313 Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and stated that complainant used to tease the girls at the club and when they try to catch him, he ran away from there on motorcycle. They also stated that they did not beat complainant, they have been falsely implicated in this case by the complainant. However, no defence witness was examined by him.
6. 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.
7. Learned counsel for the appellants submits that the appellants have been falsely implicated in this case. She also submits that in this case no independent witness has supported the prosecution case. She further submits that at the time of incident PW-4

Vikram Singh Rajput and PW-5 Golu Shankhla were not present there and they had not seen the incident. She also submits that as per injury report Ex.P.3 proved by PW-3 Dr. P.K. Gupta, injuries found on the body of the complainant were simple in nature. No sharp or deadly weapon were seized or produced by the prosecution in this case. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellants be acquitted of the charge.

Alternatively, she submits that if this Court ultimately comes to the conclusion that the appellants are guilty of the offence under Section 324 read with 34 of IPC, considering the fact that the incident took place around 12 years ago, the age of the appellants at the relevant time were 21, 21 and 19 years respectively and they have no criminal antecedent, they have already remained in jail for 8, 1 and 1 days respectively, therefore, in these circumstances, the accused/appellants be sentenced to the period already undergone by them.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. I have heard learned counsel for the parties, perused the judgment impugned and the evidence on record.

10. PW-1 Complainant/Injured Digvijay Singh Rajpurohit stated in his deposition that on the date of incident i.e. 03.02.2008 at about 9:30 pm, he went to play at Heritage Club, Bayron Bazar on motorcycle, parked his motorcycle and went inside the club. After some time, he saw that his motorcycle had fallen down in the parking and when he enquired about the same, he found that accused- Prahlad @ Raju Gouli has fallen his motorcycle. When he reached there, accused persons Prahlad @ Raju Gouli, Sayyed Farhin @ Farhin & Amar @ Babu Gouli came there and started using filthy language and threatening the complainant of life, started assaulting upon him by means of fighter, belt and club as a result of which he suffered injuries on his body i.e. neck, abdomen, back, hands, ears and head. On this, he raised hue and cry and somehow, he came out of their clutches and ran away from there. Thereafter, he informed about the incident to his brother PW-4 Vikram and PW-5 Golu Shankhla on telephone. Then, they went to Holy Cross School where complainant was standing and they again went to Heritage club where accused Prahlad @ Raju Gouli was standing and he again started abusing and scuffling with them and also threatened them to kill. Thereafter, they went to the police station and lodged the FIR against the accused persons.

11. PW-2 Brajesh Kumar Tiwari is the Inspector. He stated in his deposition that he has prepared the charge sheet vide Ex.P-2 and produced the same before the Court.

12. PW-3 Dr. P.K. Gupta medically examined the complainant vide Ex.P-3 and gave his report as mentioned in the preceding paragraph. He has duly proved the said report.
13. PW-4 Vikram Singh Rajput, is the brother of the complainant. He stated in his deposition that complainant informed him about the incident on telephone. Then, he along with PW-5 Golu Shankhla went to the Bayron Bazar where complainant was standing. Thereafter, they went to the Heritage club and when they were returning from there, accused persons attacked on them. Thereafter, they went to the police station and lodged the FIR against them.
14. PW-5 Golu Sankhla stated in his deposition that PW-4 Vikram informed him about the incident on telephone that some persons had beaten his brother. Then, both of them went to the spot and asked the complainant about the incident. Thereafter, they went to the police station and lodged the FIR against the accused persons.
15. PW-6 Nand Kumar Sinha is the Patwari. He stated in his deposition that he went to the spot and prepared the spot map Ex.P-5 and duly proved the same.
16. PW-7 M.S. Kaushal is the Sub-Inspector, registered the FIR Ex.P-1, went to the spot and prepared spot map Ex.P-6, recorded the statements of the witnesses, arrested the accused persons vide Exs. P-7 to P-11 and duly proved the same.
17. Now, coming to the question of offence under [Section 324](#) of the

IPC, [Section 324](#) of the IPC states as under: -

""[Section 324](#) : Voluntarily causing grievous hurt by dangerous weapons or means :

Whoever, except in the case provided for by [Section 324](#), voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

18. Thus, in the totality of facts and circumstances of the case, considering the evidence of the complainant as well as the evidence of PW-4 Vikram and PW-5 Golu Sankhla, who have partly supported the evidence of the complainant, it stands proved that it were the accused/appellants who voluntarily assaulted the complainant PW-1 when he was going to play at Heritage Club. As per the MLC Ex.P-3, the complainant sustained lacerated wound on left ear, multiple contusions and scratches on his back side, contusion on over left shoulder and lacerated wound on the back of the right arm. The treating Doctor (PW-3 Dr. P.K. Gupta) opined that the injuries No. 2 to 4 were simple in nature and referred the injured/complainant for opinion and treatment regarding injury No.1 to ENT specialist. However, no evidence whatsoever has been adduced by the prosecution regarding injury No.1 suffered by

the complainant whether it was grievous or simple in nature. Further, as per the prosecution case itself, accused/appellants assaulted the complainant by means of fighter, club and belt and no dangerous weapon was used any of them while assaulting the complainant. No sharp or deadly weapon were seized from the appellants nor produced before the Court. The evidence of the complainant also finds due corroboration from the promptly lodged FIR and medical report. However, considering the over all evidence available on record, the nature of injuries suffered by the complainant and proved by the prosecution, this Court is of the opinion that conviction of the appellants under Section 324 read with 34 of IPC is not sustainable and there act makes them liable for conviction under Section 323 read with 34 of IPC. Accordingly, their conviction under Section 324 read with 34 of IPC is set aside and instead thereof they are held guilty under Section 323 read with 34 of IPC.

19. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellants were first and young offender of 21, 21 and 19 years respectively on the date of incident, they have no criminal antecedent, they have remained in jail for 8, 1 and 1 days respectively, the incident took place around 12 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 appellants back to jail at this stage and the ends of justice would be served if they are sentenced to the period already undergone by them and the fine of Rs.500/- each imposed by the trial Court is enhanced to Rs.1,000/- each. If the fine amount is not deposited by the accused/appellants, they shall have to suffer additional R.I. for 1 month.

20. In the result, the appeal is allowed in part. While acquitting the appellants of the charge under Section 324 read with 34 IPC, they are held guilty under Section 323 read with 34 of IPC and are sentenced to the period already undergone by them. However, the fine amount of Rs.500/- each imposed by the trial Court is enhanced to Rs.1,000/- each. In default of payment of fine, the appellants shall have to undergo additional rigorous imprisonment for 1 month. Out of the total fine of Rs.3,000/-, a sum of Rs.2,000/- shall be payable to the complainant as compensation by the trial Court after due verification. The fine amount already deposited by the appellants, if any, shall be adjusted accordingly.

21. 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 the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge