

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 287 of 2005**

- Vinod @ Guddu @ Rikhi, son of Vishram Gadariya, aged about 22 years, resident of Kritbaas, P.S. Gandayee, Distt.- Rajnandgaon (C.G.).

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station- Gandayee, Distt.- Rajnandgaon (C.G.).

---- Respondent

For Appellant : Shri Shashi Bhushan Tiwari, Advocate.
For Respondent/State : Shri Pawan Kesharwani, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****02/01/2020**

This appeal arises out of the judgment of conviction and order of sentence dated 22.03.2005, passed by the Special Judge, Rajnandgaon in Special Case No. 74/2004, convicting the accused/appellant for the offence punishable under Section 323 of IPC and sentencing him to undergo rigorous imprisonment of six months with fine of Rs.100/-, in default of payment of fine, to further undergo rigorous imprisonment of one month.

02. Brief facts of the case are that on the date of incident i.e. 21.04.2004 at village-Gandayee, Ravanpara, District- Rajnandgaon the complainant- Revaram (PW-2) and the accused both were working

under the direction of a contractor- Mahendra Jaiswal, at about 3.00 pm on account of dissatisfaction of the work of complainant- Revaram, accused- Vinod @ Guddu abused the complainant and assaulted him by hand & fist. Thereafter, prompt FIR (Ex. P-2) was lodged by the complainant on the same day i.e. 21.04.2004 within ½ an hour of the incident. The medical examination (Ex.P-1) of the complainant was conducted by Dr. Ashish Sharma (PW-1), he found one abrasion, swelling on the nose and blood oozing out from the cavity of the nose.

03 After investigation charge-sheet under Sections 294, 323 325 of IPC and 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth "Act, 1989") was filed against the accused appellant. After filing of chargsheet, the trial Judge framed charge against the accused under Sections 323, 294 of the Indian Penal Code & Section 3 (1) (x) of the Act, 1989.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses namely- Dr. Ashish Sharma (PW-1), Revaram (PW-2), Bheekhu (PW-3), Ashwani Kumar Bhaghel (PW-4), Pankaj (PW-5), Aamin (PW-6) and Vivek Shukla (PW-7). Statement of the accused 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. One defence witness- Jairam (DW01) has been examined on behalf of accused.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para- 1 of this judgment.

06. Learned counsel for the appellants submits that complainant Revaram sustained injuries on account of his own fault as he himself fell down at the spot. He submits that no voluntarily injuries were caused by the appellant/accused to the complainant and without properly considering the evidence of Jairam (DW-1), learned trial Court has convicted the accused/appellant for the aforesaid offence. He also submits that the accused and complainant both were working together under the direction of a contractor- Mahendra Jaiswal, and incident had occurred over a trivial issue. He also submits that the appellant aged about 22 years is a labour and he has no criminal antecedent and, therefore, looking to the nature of injuries sustained by the complainant, which are simple in nature, he remained jail for about five days, it is prayed that by giving him benefit of probation of offender Act, his (appellant) jail sentence may be reduced to the period already undergone by him.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is based on proper appreciation of the evidence and as such, there is no scope for interference in the judgment impugned.

08. Heard counsel for the respective parties and perused the material on record.

09. Complainant Revaram (PW-2) has stated, in paragraph 1, 2 & 3 of his statement, that on the date of incident at about 3,00 pm the appellant/accused came at the place of occurrence, abused him and assaulted him by hand & fist on his nose as a result of which, blood was oozing out from the nose.

Immediately after the incident, the complainant lodged the prompt FIR (Ex. P/2). He was also examined by the doctor and after his treatment, discharge ticket (Ex. P/3) was issued to him.

10. Bheekhu (PW-3) was the independent witness, who was present at the place of occurrence, who narrated the same story as narrated by the complainant that the accused/appellant assaulted the complainant on nose and thereafter he intervened in the matter. This witness has also proved the spot map (Ex.P/5). Pankaj (PW-5) & Amin (PW-6) have also reiterated the same facts as narrated by the complainant.

11. Dr. Ashish Sharma (PW) has examined the complainant on the same day of incident i.e. on 21.04.2004 and he found only one abrasion swelling over the nose and blood oozing from the cavity. He prepared the MLC report (Ex. P/1), in which he found that injuries sustained by the complainant are serious in nature but the said fact is not proved by examining Bheekhu (PW-3) and Pankaj (PW-5), who are eyewitness to the incident.

12. Defence witness No.-1 Jai Ram has stated in his evidence, that complainant Revaram sustained injuries on account of his own fault as he fell down at the spot and sustained injuries, but none of the witnesses have supported the above-stated fact who were present in the place of occurrence, therefore, there is no substance in the statement of the Jai Ram (DW-1).

13. Statement of complainant (PW-2) was categorically supported by Bheekhu (PW-3) & Pankaj (PW-5) and there is no contradiction and omission found in the statements of the aforesaid persons, this Court is of the opinion that the trial Court was absolutely justified in convicting

the appellant under Section 323 of IPC.

14. As regards, the sentence under Section 323 of IPC, considering the facts that at the time of incident the accused was aged about 22 years (young offender), he has no criminal antecedent, the incident occurred way back in the year 2004, the appellant is facing trial since 2005 and he has already remained jail for a period of five days i.e. from 01.06.2006 to 05.06.2006 and at present he is on bail, 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 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 him 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.

15. Resultantly, the appeal is allowed in part. While maintaining conviction of the appellants under Section 323 of IPC he is sentenced to the period already undergone by him, however, the fine amount imposed on him with default sentence by the Special Court shall remain intact. The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C..

Sd/-

(Gautam Chourdiya)

Judge

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