

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 525 of 2005**

1. Kanhaiya Lal, aged 60 years, S/o Moti Ram Sahu (Dead)
2. Dilip Kumar, aged about 33 years, S/o Kanhaiya Lal
3. Mohan, aged about 28 years, S/o Kanhaiya Lal Sahu

All are resident of village Kona, Police Station Mahasamund, District Mahasamund, C.G.

----Appellants

Versus

- The State of Chhattisgarh, Through District Magistrate, Mahasamund, C.G.

---- Respondent

For Appellants	Smt. Indira Tripathi, Advocate.
For Respondent/State	Shri Ayaz Naved, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment

25.06.2020

1. The matter is heard through Video Conferencing.
2. In this appeal filed under Section 374(2) Cr.P.C., the appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 20.06.2005, passed by the 1st Additional Sessions Judge, Mahasamund, C.G. in S.T. No.122/2004, whereby and whereunder the appellants stand convicted and sentenced as under:-

Accused	Conviction	Sentence	Default Sentence
<u>Dilip</u>	Under Section 323 of IPC	R.I. for three months and fine of Rs.500/-	Additional R.I. for four months
	Under Section 323 of IPC	R.I. for three months and fine	Additional R.I. for four

		of Rs.500/-	months
	Under Section 323 of IPC	R.I. for three months and fine of Rs.500/-	Additional R.I. for four months
	Under Section 294 of IPC	Fine of Rs.500/-	Additional R.I. for four months
<u>Kanhaiyalal</u>	Under Section 323 read with 34 of IPC	R.I. for three months and fine of Rs.500/-	Additional R.I. for four months
	Under Section 323 read with 34 of IPC	R.I. for three months and fine of Rs.500/-	Additional R.I. for four months
	Under Section 323 read with 34 of IPC	R.I. for three months and fine of Rs.500/-	Additional R.I. for four months
	Under Section 294 of IPC	Fine of Rs.500/-	Additional R.I. for four months
<u>Mohan</u>	Under Section 323 read with 34 of IPC	R.I. for three months and fine of Rs.500/-	Additional R.I. for three months
	Under Section 323 read with 34 of IPC	R.I. for three months and fine of Rs.500/-	Additional R.I. for three months
	Under Section 323 read with 34 of IPC	R.I. for three months and fine of Rs.500/-	Additional R.I. for three months

(All sentences were directed to run concurrently)

3. Case of the prosecution, in brief, is that on the date of incident i.e. 10.01.2004 at about 10-11 am, Complainant Vishnu Chandrakar, who had purchased 20 decimal of land from Shanti Bai for a consideration of Rs.20,000/-, was sitting in his field, at that time accused/appellants came there with club & stick, started quarrelling with him saying as to why he is dumping soil on the aforesaid field. During this quarrel, the accused persons after abusing filthily and threatening the complainant of life started assaulting him with club and stick as a result of which he sustained injuries over his head and hand. When

Gayaram and Sewenlal intervened in the matter they were also assaulted by the accused persons. The incident was witnessed by Beniram Sahu. Soon after the incident, FIR Ex.P-1 was lodged by complainant Vishnu Chandrakar at 11:30 am against the accused persons on which offence under Sections 294, 506 B, 323, 34 of IPC was registered against them. The injured complainant/Vishnu Chandrakar was sent for medical examination which was conducted by PW-8 Dr. O.P. Dubey vide Ex.P-3 and noticed following injuries:-

1. Lacerated wound over left parietal region of skull 2.5 inch x 0.5 inch x 0.25 inch.
2. Tenderness on right thumb middle joint with swelling.
3. The patient was referred for X-ray to Medical Collage Hospital, Raipur, C.G.

As per X-ray report of the complainant Ex.P-4, no fracture was found in his skull.

4. PW-8 Dr. O.P. Dubey also medically examined injured Sewanlal Chandrakar vide Ex.P-5 and noticed swelling on middle of nose with pain, roll mark over lumber region transversely placed on back side with abrasion and abrasion on right elbow.

The Doctor advised for X-ray of the Victim. As per X-ray report Ex.P-6, no fracture was found in the body of the Sewanlal.

5. PW-8 Dr. O.P. Dubey also examined Gayalal Chandrakar vide Ex.P-7 and found swelling with pain in the middle of forehead abrasion on right forearm.

6. During investigation, as per Ex.P-2 one club was seized from Dilip Kumar. Spot Map was prepared as per Ex.P-3. After recording statements of the witnesses, charge was filed against the accused persons under Sections 294, 506B, 323, 325, 307 read with 34 of IPC and one separate charge sheet was filed against the Juvenile (D).
7. The trial Court framed charges under Sections 294, 506 Part-II, 323, 307 read with 34 of IPC against the accused persons which were denied by them and they prayed for trial. The prosecution examined 10 witnesses in support of its case i.e. PW-1 Vishnu Chandrakar/complainant, PW-2 Sewanlal Chandrakar, PW-3 Gayalal Chandrakar, PW-4 Beni Ram Kurmi, PW-5 Hemant Kumar Sahu, PW-6 Dhanuram, PW-7 Smt. Rena Neelam Minj, PW-8 Dr. O.P. Dubey, PW-9 J.P. Sharma and PW-10 C.S. Thakur. Statements of the accused persons 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. In defence, they examined two witnesses i.e. DW-1 Khorbahra and accused Kanhaiya Lal examined himself as DW-2.
8. 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. Since, the appellant No.1 Kanhaiya Lal has died during the pendency of this appeal, the appeal in respect of him is abated vide order dated 05.07.2018.

9. Learned counsel for the appellants submits that in this case counter case was also filed against the Complainant Vishnu Chandrakar, Sewanlal, Pramod, Lokesh and Gayaram by accused Kanhaiya Lal and that documents were placed before the trial Court as per Ex.D-4 copy of complainant. She also submits that the disputed land was in the name of Kanhaiya Lal as per revenue record Ex.D-1 and Ex.D-2. No injuries were caused by the appellants to victims. She further submits that civil suit Ex.D-6 was filed by Kanhaiya Lal, therefore, due to previous dispute with the complainant party and accused party, appellants have been falsely implicated in this case. She also submits that defence witnesses have also denied the incident narrated by the victims. Looking to the contradictory statements of eyewitnesses, the prosecution has failed to prove its case beyond all reasonable doubt. The trial Court without considering the defence of the appellants and previous enmity with the complainant party only on the basis of victims' statements has held the appellants guilty and therefore, the impugned judgment is liable to be set aside and the appellants be acquitted of all the charges.
10. 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. However, no appeal has been filed by the State against acquittal of the appellants under Sections 506 Part-II, 294 and 307/34 of IPC.

11. I have heard learned counsel for the parties and perused the material available on record.
12. PW-8 Dr. O.P. Dubey medically examined the injured persons namely Vishnu Chandrakar, Sewanlal and Gayalal vide Exs. P-3, P-5 and P-7 and noticed certain injuries as mentioned in the preceding paragraph. He has duly proved the said injury reports.
13. PW-1 Vishnu Chandrakar stated that on the date of incident i.e. 10.01.2004 at about 10-11 am, he was sitting in his field, at that time accused/appellants came there with club & stick, started quarrelling with him saying as to why he is dumping soil on the aforesaid field. During this quarrel, the accused persons after abusing filthily and threatening the complainant of life started assaulting him with club and stick as a result of which he sustained injuries over his head and hand. When Gayaram and Sewenlal intervened in the matter they were also assaulted by the accused persons. Thereafter, FIR. Ex.P-1 was lodged against the accused persons and injured victims were sent for medical examination.
14. PW-2 Sewan Lal Chandrakar, PW-3 Gayalal Chandrakar, PW-4 Beniram Kurmi, PW-5 Hemant Kumar Sahu and PW-6 Dhanuram have also categorically stated in their deposition that all the accused persons assaulted upon the victims. There is no reason to disbelieve the evidence of injured witnesses. They have specifically stated that the accused persons were filthily abusing them and after threatening them of life, assaulted upon them.

15. DW-1 Khorbahar has not stated anything about the incident. He admits in para 2 that he has no knowledge about the ownership of the disputed land and he was not the witness of the incident. DW-2 Kanhaiya Lal/appellant stated that he had filed the documents Exs. D-6 and D-7 (copy of suit). However, only on the ground that complainant was having land dispute with the accused persons, it cannot be said that the accused persons were falsely implicated in this case.

16. No any evidence was adduced by the defence for false implication of the appellants. However, from the unrebutted evidence of the injured witnesses, which is fully supported by the prompt FIR and medical evidence, prosecution has successfully proved its case against the appellants beyond all reasonable doubt. Therefore, the offence under Sections 323 (thrice) and 294 against Dilip and under Sections 323 read with 34 (thrice) of IPC against Mohan is proved against the appellants and, therefore, they have been rightly convicted thereunder by the trial Court.

17. As regards the sentence, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 16 years ago, that at the time of incident accused-Dilip was 33 years of age and accused- Mohan was 28 years of age at present they must be 49 and 44 years respectively, the fact that they have already remained in jail for 3 days, keeping in view the judgment of Hon'ble Supreme Court in the matter of **George Pon Paul vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that

the 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 no useful purpose would be served in sending the accused/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 while maintaining the fine amount as awarded by the trial Court with default stipulation.

18. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant- Dilip under Sections 323 (thrice) and 294 of IPC and appellant- Mohan under Section 323/34 (thrice) of IPC, they are sentenced to the period already undergone by them. However, the fine amount imposed on them with default sentence by the trial Court shall remain intact.

19. The appellants are reported to be on bail, therefore, their 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

Akhilesh