

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 752 of 2013**

1. State Of Chhattisgarh Through District Magistrate, Janjgir-Champa (C.G.)

---- Appellant**Versus**

1. Giri Lal S/o Lodhu Ram Patel, aged about 45 Years, R/o. Suar Mal, P.S. Akatlata, District Janjgir-Champa (CG.)
2. Parmeshwar S/o Late Reshamlal, aged about 25 Years, R/o. Suar Mal, at present Lofandi, P.S. Koni, District Bilaspur (C.G.)

---- Respondents

For Appellant/State	: Shri Mateen Siddiqui, Dy. Advocate General
For Respondent	: Shri Parag Kotecha, Advocate.

Hon'ble Justice Shri Gautam Chourdiya
Judgment

29/06/2020

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under section 377 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 15/05/2013 passed by Additional Sessions Judge, Janjgir, District Janjgir-Champa (C.G.) in Session Trial No. 149/2012; whereby the respondents stand convicted and sentenced as under:-

Conviction	Sentence
U/s. 325/34 of Indian Penal Code, 1860 (in short "IPC")	Till rising of the Court and fine of Rs. 800/- each, in default of payment of fine additional S.I. for 10-10 days each.

- 3) Case of the prosecution in brief is that on 17/03/2012 around 22:00 PM in village Saremal, near Bridge before School in public

place both accused voluntary caused grievous hurt to complainant Rambharos and abused filthily and assaulted with club. Complainant lodged FIR Ex. P-4 on the date of incident itself against both the accused. Complainant Rambharos was examined by PW-01 Dr. S.K. Gupta and as per MLC vide Ex. P-1 Doctor noticed the following injuries :-

- i) lacerated wound over right parietal region of size 7x2 cm.
- ii) lacerated wound over right parietal region of size 5x2 cm.
- iii) multiple bruise over back side of size 10x2 cm, 10x2 cm, 8x1 cm and 5x1 cm.
- iv) Abrasion, pain & swelling over nose.

Doctor opined that all these injuries were caused by hard and blunt object and also advised for X-Ray. As per X-Ray report Ex. P-5 injury found over chest right 5th rib, L.S. spine, back shoulder and right hand writ. The Doctor found fracture of right hand 2nd metacarpal bone.

- 4) As per Ex. P-5A and Ex. P-6 spot map is prepared. Bed head ticket is Vide Ex. P-7. The case diary statements of witnesses Rambharos (complainant), Ramsharan, Santram, Ajay Kumar, Dhankuwar, Sonmat Bai were recorded and during investigation one club was seized from Girilal. After due investigation charge sheet was filed against the both accused/respondents for the offence under Sections 294, 506(II), 323, 325, 307 read with 34 of IPC.
- 5) The Trial Court framed charges against the accused/respondents under Sections 294, 506, 323, 325, 307 read with section 34 of I.P.C. The accused/respondents denied the charges and prayed for trial.
- 6) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Dr. S.K. Gupta (Medical Officer), PW-02 Rambharos (complainant), PW-03 Sant Ram, PW-04 Shyam

Lal, PW-05 Ajay Kumar, PW-06 Ashray Singh (Head Constable), PW-07 Ramsharan Satnam, PW-08 Vishwanath Prasad Noniya (Patwari), PW-09 R.C. Paikra (A.S.I.) and PW-10 Jhaman Lal. The statement of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication. No witness was examined by the accused in their defence.

- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/respondents as mentioned above in Para-2 of this judgment.
- 8) In this case no any appeal against the conviction and sentence has been filed by the respondents.
- 9) Appeal is filed by the State for enhancement of sentence. Learned counsel for the appellant submits that looking to the nature of injury found on the body of the complainant, his second metacarpal and 5th rib were fractured, both accused without any reason assaulted upon the complainant and prosecution case is proved beyond all reasonable doubt, learned Trial Court awarded sentence only till rising of Court and fine of Rs. 800/- which is very unjust and not commensurate with the gravity of the offence and therefore, needs to be appropriately enhanced.
- 10) On the other hand learned counsel for the respondent/accused supporting the impugned judgment and submits that the learned Trial Court considering the facts and circumstances of the case, the manner in which the incident occurred, the age of the respondents/accused i.e 45 years and 25 years respectively at the time of incident and the fact that the respondents/accused have not criminal record and they are the first offender while convicting for under section 325 of IPC awarded sentence till rising of the Court and imposed fine of Rs. 800/- on each of them

which appears to be just and proper and therefore, needs no interference by this Court.

- 11) Heard counsel for the parties and perused the material available on record.
- 12) Admittedly no appeal has been filed by the respondents/accused challenging their conviction under Section 325/34 of IPC and this appeal has been filed by the State seeking enhancement of the sentence awarded to the accused. Considering the facts and circumstances of the case, the manner in which the respondents/accused assaulted upon the complainant by means of club and fist resulting in lacerated wound over right parietal region, multiple bruises over back side and fracture of right hand second metacarpal bone, it has been duly proved by the evidence of the treating Doctor and other prosecution witnesses including the complainant, this Court is of the opinion that the sentence awarded by the Trial Court is not commensurate to the gravity of the offence and deserves to be enhanced suitably. Looking to the fact that the incident took place in the year 2012 i.e around 8 years ago, the age of the respondents/accused at the time of incident is 45 years and 25 years respectively, the fact that they are first offender, *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 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*, the ends of justice would be served if instead of awarding them jail sentence they are directed to pay enhanced fine of Rs. 5,000/- each with default sentence, out of which Rs. 8,000/- is given to the complainant under Section 357 of Cr.P.C.
- 13) In the result, the appeal is allowed in part. While maintaining the conviction of the respondents/accused under Section 325/34 of IPC and the sentence awarded by the Trial Court till rising of the

Court, the fine amount of Rs. 800/- imposed by the Trial Court is enhanced to Rs. 5,000/- each. Out of the total amount of Rs. 10,000/-, Rs. 8,000/- shall be payable to the complainant as compensation under Section 357 of Cr.P.C. by the Trial Court after due verification. In the event if appellants failure to deposit the fine amount they shall have to suffer additional R.I. for 3 months each. Needless to say that the fine amount already deposited by the appellants shall be adjusted accordingly.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant