

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 682 of 2012**

- Yogesh Kumar Yadaw @ Raja, S/o Bajrang Das Yadaw, aged about 19 Years, R/o Village - Sukuldehan, Ps Lalbag Rajnandgaon, Distt. - Rajnandgaon C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through Station Officer, PS Lalbag District Rajnandgaon, C.G.

---- Respondent

For Appellant	Shri Vivek Singhal, Advocate.
For Respondent/State	Shri Sameer Sharma, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

23/09/2020

1. The appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 23.07.2012 passed by the Sessions Judge, Rajnandgaon, C.G. in Sessions Trial No.32/2011, whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 324 of Indian Penal Code	Rigorous Imprisonment for one year and fine of Rs.3,000/-, in default of payment of fine amount to undergo further rigorous imprisonment for six

	months
Under Section 323 of Indian Penal Code	Simple Imprisonment for three months

(Both sentences were directed to run concurrently)

3. Case of the prosecution, in brief, is that on 20.02.2011 complainant Heera Ram along with his servants went to the field for grazing she-goats, at that time accused/appellant came there and started abusing filthily by saying that *if you want to graze your goats then you have to give your goat for being eaten otherwise he would not permit him to graze his goats*. When PW-6 complainant-Heera Ram refused him to give goat, then accused/appellant started assaulting him by stick. Thereafter, he came back and narrated the said incident to his brother PW-7 Gokar. On 21.02.2011, complainant- Heera Ram along with his brother PW-7 Gokar went to the clinic of Dr. Hirwani for treatment, at that time accused/appellant also came there and again started abusing filthily and assaulted upon his brother PW-7 Gokar by cricket bat as a result of which PW-7 Gokar sustained injury on his head and blood was oozing from his head and he became unconscious. When complainant tried to save his brother PW-7 Gokar, again appellant started assaulting him. Thereafter, on the same day i.e. 21.02.2011, injured/Gokar was sent for medical examination to District Hospital, Rajnandgaon where he was examined by PW-12

Dr. Sahodra Thakur and he gave his MLC report vide Ex.P-11A and found following injuries on the body of the injured- PW-7 Gokar:-

1.Pain at right parietal region of head. Clotted blood present at right ear. No active bleeding present.

2. Pain at right calf muscle of right leg.

For injury No.1, X-ray and CT scan of head advised. Injury No.2 simple in nature and was caused by hard and blunt object and caused within 12 hours prior to the examination. Patient was urgently shifted to MSW for proper treatment and management by surgical specialist.

4. Complainant Heera Ram was also medically examined by PW-12 Dr. Sohadra Thakur and he gave his MLC report vide Ex.P-18 and found injury on the body of the injured- PW-6 Heera Ram/Complainant:- i.e. Complaining of pain over both forearms which was caused by hard and blunt object. He opined that the injuries were caused within 3 days and simple in nature. When injured/Gokar was admitted in hospital then written information was sent from the hospital to the police station, Lalbhag. Thereafter, PW-9 B.S. Rajput, ASI went to the District Hospital and enquired about the incident from complainant- Heera Ram and registered

Dehati Nalishi vide Ex.P-8. On the basis of Dehati Nalishi Ex.P-8, FIR Ex.P-10 was registered on the same day i.e. 21.02.2011 against the accused/appellant.

5. During investigation, spot map Ex.P-2 was prepared by PW-2 Murlidar Sharma. One shirt and pink colour shawl were seized from Arjun (brother of injured Gokar) vide Ex.P-1. Memorandum statement of accused/appellant was recorded vide Ex.P-4 consequent to which one cricket bat was seized from him vide Ex.P-5. Accused/appellant was arrested on 21.02.2011 vide Ex.P-6. Spot Map Ex.P-13 was prepared by PW-11 Sushma Chelak, Sub-Inspector. Seized articles were sent to FSL for examination vide Ex.P-14 and as per FSL report Ex.P-17, blood was found on seized articles i.e. bat, shawl and shirt. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Sections 294, 323, 506 and 307 of IPC.
6. The trial Court framed charge under Sections 323, 294, 506 (B) and 307 of IPC against the accused/appellant which were denied by him and he prayed for trial. The prosecution examined 12 witnesses in support of its case i.e. PW-1 Mehmood Qureshi, PW-2 Murlidhar Sharm, PW-3 Manoj, PW-4 Amar Das, PW-5 Budhram, PW-6 Complainant Heera Ram, PW-7 Gokar, PW-8 Dr. K.R. Bisen, PW-9 B.S. Rajput, PW-10 Premlal, PW-11 Sushma Chelak and PW-12

Sohadra Thakur. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.

7. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
8. Learned counsel for the appellant submits that appellant has been falsely implicated in this case. He further submits that no independent witness has supported the prosecution case. There are material contradictions and omissions in the statements of the complainant and other witnesses. No cogent evidence is available on record against the appellant. He also submits that no sharp or cutting 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 appellant be acquitted of the charge.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellant is guilty of the offence under Sections 324 and 323 of IPC, considering the fact that the incident took place around 9 years ago, the age of the appellant at the relevant time was 19 years and he

has no criminal antecedent, he has already remained in jail for 56 days, by granting the benefit of Probation of Offenders Act, the accused/appellant may be sentenced to the period already undergone by him.

9. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
10. Heard learned counsel for the parties and perused the material available on record.
11. PW-6 Heera Ram/complainant stated in his deposition that on 20.02.2011 he along with his servants went to the field for grazing goats, at that time accused/appellant came there and started abusing filthily by saying that *why you came here for grazing goats, now you have to give me your goat*. When he refused him to give goat, then accused/appellant started assaulting him by stick as a result of which he sustained injury on his hand. Thereafter, he came back and narrated the said incident to his brother PW-7 Gokar. On the next day, he along with his brother PW-7 Gokar went to the clinic of Dr. Hirwani for treatment, at that time accused/appellant also came there and again started abusing filthily. When his brother PW-7 Gokar tried to pacify

the dispute, appellant assaulted upon him/Gokar by cricket bat as a result of which PW-7 Gokar sustained injury near his ear and blood started oozing from the ear and he became unconscious. When he tried to save his brother/Gokar, again appellant started assaulting him. Then, he took PW-7 Gokar to Government Hospital, Rajnandgaon for treatment. Thereafter, the written information was sent from the hospital to the police station, Lalbhag. Thereafter, police came and enquired from the incident and registered Dehati Nalishi vide Ex.P-8.

12. PW-7 Injured/Gokar is the brother of PW-6 complainant- Heera Ram. He has also supported the statement of PW-6 Heera Ram and stated the same facts as stated by PW-6 Heera Ram.

13. PW-1 Mehmood Qureshi stated in his deposition that he had heard about the incident from the relative of PW-6 Heera Ram on telephone. He also stated that PW-6 Heeram Ram told him that accused/appellant had demanded goat and when he refused to give him goat, appellant assaulted upon him by stick. He also stated that PW-6 Heeram also told him that in the morning when he and PW-7 Gokar were going to the clinic of Doctor for treatment, at that time accused/appellant came there and assaulted upon his brother PW-7 Gokar by means of cricket bat.

14. PW-3 Manoj has also supported the statement of PW-6 Heera Ram. He stated that on the next day i.e. 21.02.2011, he was not present on the spot and PW-7 Gokar told him about the incident that accused/appellant assaulted upon him by cricket bat.
15. PW-2 Murlidhar Sharma is the Patwari. He has prepared the spot map Ex.P-2 and duly proved the same.
16. PW-4 Amar Das, PW-5 Budhram and PW-10 Premlal have turned hostile and not supported the prosecution case.
17. PW-8 Dr. K.R. Bisen has treated the injured PW-7 Gokar on 25.02.2011 vide Ex.P-9 and duly proved the same.
18. PW-9 B.S. Rajput, ASI, has written the Dehati Nalishi Ex.P-8 and on the basis of Dehati Nalishi Ex.P-8, registered the FIR Ex.P-10 and duly proved the same.
19. PW-11 Sushma Chelak, Sub-Inspector, who investigated the case, has supported the prosecution case.
20. PW-12 Dr. Sohadra Thakur medically examined the complainant PW-6 Heera Ram and PW-7 Gokar vide Exs.P-11 and P-18 and gave his reports as mentioned in the preceding paragraphs. He has duly proved the said reports.
21. Thus, in the totality of facts and circumstances of the case, considering the evidence of complainant-PW-6 Heera Ram,

PW-7 Gokar /injured, PW-1 Mehmood Qureshi and PW-3 Manoj, duly corroborated by the medical evidence in the form of MLC of Exs.P-11A and P-18 as also corroborated by the prompt & named FIR Ex.10, it stands proved beyond all reasonable doubt that it is the accused/appellant who voluntarily caused hurt by cricket bat (used as a weapon and was likely to cause death) to PW-7 Gokar and also committed *marpeet* with PW-6-Heera Ram/Complainant. As a result thereof, PW-7 Gokar suffered pain at right parietal region of head with clotted blood at right ear as also pain at calf muscle of right leg as per MLC Ex.P-11A. However, PW-6 Heeram Ram suffered pain over both forearms only as per MLC Ex.P-18. No sharp or cutting weapons were seized from the appellant nor produced before the Court. However, considering the over all evidence available on record, the nature of injuries suffered by the complainant-PW-6 Heeram and PW-7 Gokar and proved by the prosecution, this Court is of the opinion that conviction of the appellant under Sections 324 and 323 of IPC awarded by the trial Court appears to be just and proper warranting no interference by this Court.

22. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellant was first and young offender of 19 years on the date of incident, he has no criminal antecedent, he has remained in jail for 56

days, the incident took place around 9 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 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 maintaining the fine amount as awarded by the trial Court with default stipulation.

23. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Sections 324 and 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 trial Court shall remain intact.

24. The appellant is reported to be on bail, therefore, his 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