

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No.262 of 2009**

- Sandeep Toppo, S/o Samuel Toppo, aged about 25 years, R/o Dhodharoghat, P.S. Narayanpur, District - Jashpur, Chhattisgarh

**---- Applicant****Versus**

- The State of Chhattisgarh, Through District Magistrate, District – Jashpur, Chhattisgarh

**---- Respondent**


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| For Applicant  | : | Smt. Nandkumari Kashyap,<br>Advocate on behalf of Shri<br>Puspendra Kumar Patel, Adv. |
| For Respondent | : | Shri Sameer Sharma, Dy. G.A.                                                          |

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**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on board****08.01.2021**

From the material available on record it appears that prior to the incident there was some land related dispute between the victim herein namely Francis Oraon – PW-4 and one Alfons – father of Alok (the accused) who has been acquitted by the learned Magistrate itself. The incident is said to have taken place on 11.10.2004, where it is alleged that when victim PW-4 was going to Bagicha for attending the Court proceedings on his bicycle, the present applicant along with the acquitted accused met him on the way, stopped him, hurled filthy abuses at him and also threatened him of being eliminated. The present applicant is stated to have caused injuries with the help of a sword like weapon and while

trying to avert the blow, he suffered injuries on the lady finger of his right hand as also on the mouth. Having being assaulted the victim is said to have fled from the scene and reached village Baigakona where he narrated the incident to the people present there including Jeetaram (PW-1), Pitambar (PW-5), Kishun and Buluram (not examined). The report Ex-P/3 came to be lodged on the same day on the basis of which offences under Sections 341, 294, 506 Part II 323/34 IPC were registered against both the accused persons. After medical examination and completion of the investigation the charge-sheet was filed against both of them under Sections 341, 294, 506 Part II, 323/34 and 326 IPC.

2. Learned Magistrate vide its judgment dated 29.01.2009 passed in Criminal Case No.643/2008 acquitted accused Alok of all the charges leveled against him. Learned Magistrate acquitted the present applicant also of the charges under Sections 341, 294 and 506 Part II but at the same time found his act under Section 326 of the IPC duly proved and imposed the sentence to undergo RI for one year and six months plus payment of fine of Rs.500/- with default clause. Learned Lower Appellate Court also approved the findings recorded by learned Magistrate in its entirety. Hence this revision.

3. Learned counsel for the accused-applicant submits that apart from the victim Francis Oraon (PW-4) none of the other independent witnesses have landed any support to the case of the prosecution and therefore, the conviction of the accused-applicant could not be based on solitary evidence of PW-4. After the

strenuously arguing the case on merits, learned counsel as a last resort also made an alternative prayer for reducing the sentence to the period already undergone, in case, this Court is not going to give any concession on the conviction aspect of the matter.

4. State counsel however supports the judgment impugned.

5. Having heard counsel for the parties at a greater length and taken into consideration the evidence of Francis Oraon (PW-4), it is apparent that on the date of incident when he was going to attend the Court proceedings in a land related dispute the accused-applicant stopped him on the way, started abusing filthily and also threatened him of being done away with. In the course of abuses and threats being made, the present accused-applicant also dealt a blow with the help of sword like weapon, as a result of which the lady finger of one of his hands got cut. The blow also injured his mouth and led to breakage of two incisor teeth. He has attributed this incident to the present applicant specifically. He has further specified that the other accused did not play any role in causing injuries to him. Jeetaram (PW-1) and Pitambar (PW-5) whom the victim informed about the incident have not stated anything specific apart from seeing the injuries present on his body, they both have clearly stated that the victim did not inform him as to the offender who caused injuries to him. Dr. T.K. Sahu (PW-12) is the witness who medically examined the victim and gave his report Ex-P/6 stating that he saw cut injuries on the lady finger of his right hand, cut injuries on mouth and breakage of two incisor teeth. The injury number 1 and 3 i.e. cutting of lady finger and breakage of teeth

have been opined to be grievous in nature. The query report Ex-P/7 given by this witness clarifies that the injuries noticed by him on the body of the victim could have been caused by the weapon produced before him for examination, one side of which was hard and blunt and the other was sharp edged. Investigating Officer (PW-10) has duly supported the case of the prosecution.

6. The aforesaid discussion thus does not persuade this Court to take a different view to that of the one taken by both the Courts below as regards the conviction of the present applicant. The evidence of victim Francis Oraon (PW-4) displays the active involvement of the accused-applicant, where he caused injuries to the victim with the help of a sword like weapon. Accordingly, the conviction of the accused-applicant under Section 326 IPC is hereby maintained.

7. However looking to the fact that the incident had taken place in the year 2004 and that the accused-applicant has already remained in detention for one and half month, interest of justice would be served if the sentence imposed on this applicant is reduced to the period already undergone. Ordered accordingly.

8. The revision is thus allowed in part.

Sd/-  
**(Vimla Singh Kapoor)**  
Judge