

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 804 of 2007**

1. Chheduram S/o Dukalu Suryavanshi, aged about 65 years, Labourer,
 2. Manharan S/o Chheduram, aged about 35 years, Suryavanshi,
- Both are R/o Village Bhurkunda Police Out Post Pachpedi, P.S. Masturi,
Distt. Bilaspur (C.G.)

---- Appellants**Versus**

State of Chhattigarh through Police Out Post Pachpedi Police Station Masturi,
Distt. Bilaspur (C.G.).

---- Respondent

For Appellants	:	Mr. Bharat Rajput, Advocate
For Respondent	:	Mr. G.S. Patel, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**05/03/2021**

1. This appeal has been preferred against the judgment dated 31/08/2007 passed in S.T. No. 49/2006 by the 8th Additional Sessions Judge (FTC), Bilaspur, whereby the Appellants have been convicted under Sections 307 & 323 of the IPC and sentenced to undergo RI for 7 years with fine of Rs. 300/- and RI for 1 year, respectively, with default stipulations.
2. According to the case of the prosecution on 25/11/2005 at about 09:30 am, Benuram (PW6) was taking meal in his house. At that time, he heard some noise coming from the house of Budhram, then he reached to the spot and saw that both the appellants were abusing

and threatening his father Anzori. They also assaulted Anzori by a rod due to which he sustained injuries on his head and various parts of the body. Younger brother of Benuram namely Ravindra (PW7) also reached to the spot. It is alleged that the appellants also assaulted Benuram and Ravindra by the rod. The incident was witnessed by Kholuram and Ganesh. Benuram lodged the report vide Ex.P-9. The injured Benuram and Ravindra were examined by Dr. P.C. Banerjee. (PW1). CT Scan of the head of Anzori was conducted by Dr. Deepika Minj (PW11). Statements of witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been submitted. Trial Court framed the charges. As many as 12 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the appellants have been wrongly convicted by the trial Court without there being sufficient and clinching evidence. He further submits that from the admission made by Anzori, it is established that there was a fight going on between both the parties and in the same incident, Appellant No. 1 also sustained injuries, and a counter case was filed against the Complainant's party, but the trial Court has not appreciated these facts. He further submits that if the entire case of the prosecution is taken as it is, yet the act committed by the appellants would fall within

the ambit of Section 325 of the IPC.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. Anzori (PW2) in his Court statement has deposed that at the time of incident, he was cropping the paddy. At that time, the appellants came and abused him and then they went away. After some time, the appellants came again and carrying an iron rod. They again abused him and when he came outside, then appellant Manharan assaulted him by the rod due to which he sustained injuries on his head. He also assaulted him on his hand, due to which his bone got fractured and he became unconscious. In para 4 of his cross-examination, he admits that in the incident, appellant No. 1 also sustained injuries and a report from the side of Appellants have been made which is pending in the Court. He further admitted that he was also carrying a Danda at the time of incident. Benuram (PW6) and Ravindra (PW7) deposed that they were in field when fight was going on and when they reached to the spot, Anzori was lying in the injured condition. The appellants also assaulted them and they also sustained injuries. Injured, Anzori, Benuram and Ravindra were medically examined by Dr. P.C. Banerjee (PW1). Their examinations reports are Ex.P-1, Ex.P-2 and Ex.P-3, respectively. According to the reports, Benuram and Ravindra sustained only simple injuries over their bodies. Injured Anzori

sustained seven injuries, out of which only one injury was caused on parietal region, and CT Scan of the head of Anzori was conducted by Dr. Deepika Minj (PW11). Her report is Ex.P-15. According to CT Scan report, there was fracture of left frontal bone. Dr. R.G. Kurrey (PW3) conducted X-ray examination of the left hand of Injured Anzori. His report is Ex.P-5. According to his report, 3rd metacarpal bone of the hand of Anzori was fractured.

8. On minute examination of above evidence adduced by the prosecution, it makes clear that at the time of incident, Anzori was assaulted by the appellants, and on this point, Anzori has remained firm during his cross-examination. Benuram and Ravindra, sons of Anzori were also assaulted by the appellants, but when the appellants were assaulting Anzori they were not present on the spot. From the statements of Benuram (PW6) and Ravindra (PW7), it is also established that when they reached to the spot at that time Anzori was already assaulted. There is nothing in their statements which shows that when they reached to the spot, the assault was going on with Anzori. On perusal of medical report of Anzori, it is well established that one injury was caused on his vital part and the same was of grievous nature. There was also one fracture of 3rd metacarpal bone. From the admission made by Anzori, it is also established that he was also carrying a Danda, and in the same incident, appellant No. 1 got injury, and a counter case was also filed against the complainant's party. It appears that a quarrel took place between both the parties and both the parties assaulted each other. In this quarrel, Anzori sustained injury on his head and other parts of the body. Though head injury and

hand injury are of grievous in nature, it is not established that the appellants have assaulted him with an intention to cause death. There is only single injury on his head and the same has been caused in the quarrel occurred between both the parties, therefore, the appellants was not having knowledge that the injury may cause death to the Anzori. Therefore, in my considered view, offence under Section 307 of the IPC is not proved and the act of the appellants would fall within the ambit of Section 325 of the IPC.

9. In the result, the appeal is partly allowed. The conviction of the appellants under Section 307 of the IPC is altered to Section 325 of the IPC. Further, the conviction of the appellants under Section 323 of the IPC is affirmed.
10. It is submitted by the counsel that Appellant No. 1 has already undergone about 8 months of jail sentence and Appellant No. 2 is in jail since two years. Both the appellants are facing the *lis* since 2005 and there is no criminal antecedent against them, therefore, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellants under Sections 325 and 323 of the IPC, the jail sentenced awarded to him is reduced to the period already undergone by him and the fine sentence imposed upon him under Section 307 of the IPC (which has altered to Section 325 of the IPC) is enhanced to Rs. 10,000/- against each appellants. Ordered accordingly. The fine amount enhanced under Section 325 of the IPC shall be payable within two months, failing which the appellants shall further be liable to undergo 6 months RI. The fine amount already deposited shall be adjusted in the fine amount enhanced/imposed

today.

11. It is reported that the Appellant No. 1 is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.
12. It is reported that appellant No. 2 is in jail. He be released forthwith, if not required in any other case.
13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul