

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 157 of 2009**

State of Chhattisgarh, Through: District Magistrate, District Janjgir-Champa (C.G.)

---- Appellant**Versus**

Laxmikant, S/o – Mangtaram, Aged about -32 years, R/o – Sadar Bazar, Champa, P.S. - Champa, District Janjgir-Champa (C.G.)

----Respondent

For Appellant	:	Mr. Dinesh Tiwari, Deputy Govt. Advocate.
For Respondent	:	None present.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****06.07.2021**

(1) Proceedings of the matter have been taken-up through Video Conferencing.

(2) Present appeal is directed against the judgment dated 16.03.2006 passed by Judicial Magistrate, First Class, Janjgir, District Janjgir-Champa in Criminal Case No.113/2005 acquitting the respondent/accused of the alleged commission of offence punishable under Section 325 of the Indian Penal Code.

(3) Case of the prosecution, in brief, is that respondent/accused assaulted the complainant by means of *Basula* [Adze] and also bite with teeth on his middle finger of left hand, as a result of which, he sustained multiple injuries on his hand

and feet resulting into the fracture in the middle finger of left hand and thereby committed the aforesaid offence. Based on this, FIR (Ex.P-9) was registered under Section 325 IPC against the respondent/accused. After filing of the charge sheet, the trial Court framed the charge under Section 325 IPC against the respondent/accused.

(4) So as to hold the respondent/accused guilty, the prosecution has examined as many as 6 witnesses. Statement of the respondent/accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the case.

(5) The trial Magistrate after hearing counsel for the respective parties and considering the material available on record has acquitted the respondent/accused as mentioned in opening paragraph of this judgment. Hence, this acquittal appeal.

(6) Learned counsel appearing for the appellant/State would submit that eye-witnesses to the incidents have corroborated the statement of complainant – Mangtaram Sharma stating that respondent/accused brutally assaulted the complainant by means of *Basula* and also bite with teeth on his middle finger of left hand, as a result thereof, complainant Mangtaram Sharma sustained several injuries on his fingers of left hand, which has also been proved by medical evidence, despite that learned trial Court has acquitted the respondent/accused of the charges levelled against him, therefore, judgment passed by the learned

trial Magistrate is liable to be set aside as the trial Magistrate has erred in law in acquitting the respondent/accused even when there is ample evidence against him.

(7) I have heard learned counsel for the State and perused the evidence and documents available on record including impugned judgment with utmost circumspection.

(8) Complainant – Mangtu Ram Sharma (PW-1) has stated in his evidence that on the date of incident when he was at his home, at that time the respondent/accused came there and by abusing him in filthy language assaulted him with *Basula*, which he stopped, then respondent/accused bite his middle finger of his left hand with teeth. He has further stated that on assault of *Basula*, his fingers of left hand got injured. Statement of complainant – Mangtu Ram Sharma would not get support from FIR (Ex.P-9), wherein it has been stated that respondent/accused committed “*marpeet*” with him and thrown him on the floor, due to which, he suffered injuries on his knee of both the legs, thereafter, on being assault by respondent/accused with *Basula*, he sustained injuries on his fingers of left hand.

(9) Kuldeep (PW-2), who is said to be the eye witness to the incident, has stated in his evidence that when respondent/accused tried to assault the complainant by means of *Basula*, then, mob which were present there, snatched that *Basula* from respondent/accused. Thereafter, respondent/accused had bitten middle finger of left hand of complainant. But he has clearly stated that

respondent was not caused injuries by means of *Basula* on fingers of left hand of the complainant.

(10) Shivkant (PW-3), who was another eye witness to the incident, has stated in his evidence that when respondent/accused assaulted the complainant by means of *Basula*, he and his elder brother snatched that *Basula*, then non-applicant bite middle finger of complainant with teeth. But he has not stated in his police statement (Ex.D-3) that respondent/accused has assaulted the complainant by means of *Basula*, which was snatched by them.

(11) Meera Sharma, (PW-4) has stated in her evidence that respondent/accused assaulted the complainant by means of *Basula*, then, that *Basula* was snatched by her brothers namely Kuldeep & Shivkant but as per her evidence, she did not see that respondent/accused assaulting the complainant by means of *Basula*. Although, she has stated that the respondent/accused had bitten the middle finger of complainant.

(12) It is noteworthy to mention here that respondent-accused is the son of complainant and Kuldeep (PW-2), Shivkant (PW-3) & Meera Sharma (PW-4) are also sons and daughter, respectively of the complainant.

(13) Perusal of cross-examination of aforesaid witnesses would show that there had been family and property dispute between complainant and respondent/accused and the said incident has arisen on account of previous dispute between them. Evidence of prosecution witnesses would show that there

is material contradiction in the statements of complainant Mangtaram Sharma (PW-1), Kuldeep (PW-2), Shivkant (PW-3) and FIR (Ex.P-9) about the incident.

(14) Complainant – Mangtaram Sharma (PW-1) has stated in his evidence that on being assaulted by respondent/accused by means of *Basula*, he sustained injuries on his fingers of left hand whereas Kuldeep (PW-2) and Shivkant (PW-3) have stated in their evidence that when respondent/accused assaulted the complainant by means of *Basula*, then they were snatched that *Basula*, thereafter, respondent/accused had bitten middle finger of left hand of the complainant but neither in the FIR (Ex.P-9) nor in the statement of the complainant recorded under Section 161 of the Cr.P.C., it has been stated that respondent/accused had bitten the middle finger of left hand of the complainant. Kuldeep (PW-2), Shivkant (PW-3) and Meerabai (PW-4) had also not stated in their police statement that respondent/accused had bitten the middle finger of the complainant.

(15) Complainant – Magtaram Sharma (PW-1) has stated in his evidence that due to the assault made by respondent/accused by means of *Basula*, his middle finger of left hand got injured but Kuldeep (PW-2), who is said to be the eye witness to the incident, has stated in his evidence that respondent-accused was not assaulted the compliant by means of *Basula* as he has stated earlier that when respondent/accused tried to assault the complainant by means of *Basula*, then, the mob, which were present there, were snatched that *Basula* from him. Meera Sharma (PW-4) has clearly stated in her evidence that she did not see

assaulting the respondent/accused by means of Basula to the complainant.

(16) Above mentioned material contradictions and omissions appearing from the evidence of prosecution witnesses, FIR (Ex.P-9) and their police statement creates serious doubts about the truthfulness of the incident. Although, Dr. K.R. Singh (PW-5), who was medically examined the complainant on 24.8.2003, has stated in his evidence that he found one cut injury on middle finger of left hand, one abrasion of middle finger of left hand, one abrasion on below the knee of right leg, one abrasion on middle of right leg and the complainant was complaining pain on his middle finger of right hand and he found there swollen. He has stated that document (Ex.P-1) is the medical report prepared by him on 24.8.2003 but in the said medical report, it has not been opined on 24.8.2003 that complainant was complaining pain on middle finger of his left hand and middle finger was swollen. In medical report (Ex.P-1), Dr. K.R. Singh (PW-5) suggested X-ray of middle finger of complainant but he had not given such suggestion for the first time of medical examination i.e. on 24.8.2003. In X-ray report (Ex.P-2) prepared by Dr. K.R. Singh (PW-5), he has opined fracture of middle finger of complainant but as stated above that he was not given any suggestion regarding X-ray of middle finger of the complainant on 24.8.2003, therefore, it cannot be held that the said fracture suffered by the complainant is due to the alleged incident.

(17) Although, the medical report prepared by the Dr. K.R. Singh (PW-5) would show that on 24.8.2003 complainant had sustained injuries on his middle finger

of left hand and on knee of his right leg but looking to the material contradictions and omissions of prosecution witnesses and their statements recorded under Section 161 of the Cr.P.C. and also FIR (Ex.P-9), it has not been proved beyond reasonable doubt that the aforesaid injuries suffered by the complainant, were received by him due to the alleged assault made by the respondent/accused.

(18) In view of the foregoing discussion and on going through the material contradictions and omissions in the evidence of the prosecution witnesses as different version have been given by the different witnesses and the fact that prosecution has utterly failed in proving its case beyond reasonable doubt and the trial Court is fully justified in recording the finding of acquittal, which is based on proper appreciation of evidence available on record, this Court is of the view that the judgment impugned acquitting the respondent/accused of the offence punishable under Section 325 of the Indian Penal Code, is just and proper and does not call for any interference by this Court.

(19) Accordingly, the acquittal appeal preferred by the appellant/State is devoid of any substance and, therefore, the same is liable to be and is hereby dismissed.

Sd/-
(N.K. Chandravanshi)
Judge

D/-

