

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****Criminal Revision No. 147 of 2020**

Kumbhkaran Ram, son of Jageshwar, aged about 37 years, resident of
Sajbahar, Police Station – Tumla, District – Jashpur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through the Station House Officer, Police Station -
Tumla, District – Jashpur (C.G.)

----Non-applicant

For Applicant	:	Ms. Meenu Banerjee, Advocate.
For Non-applicant	:	Mr. Dinesh Tiwari, Dy. Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****03.09.2021**

(1) Present revision is directed against the impugned judgment dated 19.12.2019 passed by Upper Sessions Judge, Kunkuri, District Jashpur (C.G.) in Criminal Appeal No. 03/2016 affirming the judgment of conviction and order of sentence dated 10.03.2016 passed by Judicial Magistrate, First Class, Kunkuri, District Jashpur in Criminal Case No. 154/2014 convicting the applicant/accused for the offence punishable under Section 326 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for two years with fine of Rs. 200/-, with default stipulation.

(2) Brief facts of the case are that on 3.12.2014 at about 2-3 pm complainant Khatridhar Rai went to jungle for search of his goat where he met with one Divya Sethi (PW-9), they were sitting and talking to each other, at that time, applicant – Kumbhkaran, who is father of Divya Sethi, went there holding with axe and on seeing him, while running away, complainant fell down, thereafter applicant attacked upon him with backside of axe, Divya Sethi intervened the matter but the applicant did not stop, as a result thereof, complainant sustained injuries on his leg and other parts of the body. Applicant went from there alongwith his daughter – Divya Sethi. On being called by complainant, his friends namely Bhanu Pratap, Shyam Kumar (PW-8), Vijay, Devnandan & others came there and picked-up the complainant and taken him to the Farasbahar Hospital as he was unable to stand & walk. On 8.30 at night, complainant made complaint at Police Station Farasbahar, on the basis of which un-numbered FIR was registered and after receiving the same, numbered FIR was lodged at Police Station Tumla, District Jashpur – Nagar. After usual investigation, charge sheet under Sections 324 & 326 of IPC was filed before Judicial Magistrate, First Class, Kunkuri, District Jashpur. Charge under Section 326 IPC was framed and the same was read and explained to the applicant/accused, which he denied and his plea was recorded.

(3) In order to prove the guilt of applicant/accused, the prosecution has examined as many as 14 witnesses. Statement of the applicant/accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false

implication. Applicant has not examined any witness in his defence.

(4) Trial Magistrate, after hearing learned counsel appearing for the respective parties and considering the material available on record, has convicted and sentenced the applicant/accused as mentioned in opening paragraph of the judgment. In an appeal preferred by the applicant/accused, judgment passed by the trial Magistrate has been affirmed by the appellate Court. Hence this Criminal Revision.

(5) Counsel for the applicant/accused would submit that both the courts below have convicted the applicant merely on the basis of statement of complainant Khetridhar Rai (PW-1). As per case of the prosecution, only the eye witness appeared on the spot was Divya Sethi (PW-9) but she has not supported the statement of complainant in respect of the injuries caused to him by the applicant whereas in FIR (Ex.P-1), complainant himself narrated the entire incident stating that while running, he fell down and Divya Sethi (PW-9) has also stated in her court statement that while running, he collided with wood and fell down, in which, he sustained several injuries on his leg. Even, Dr. C.R. Bhagat (PW-14), who examined the complainant, has admitted in his cross-examination that such injuries, which were caused to the complainant, can be sustained on fall while running and collided with wood. Other witnesses have only hearsay witness. Despite that, learned both the courts below without properly appreciating the evidence have convicted the applicant/accused for the offence under Section 326 IPC, which is erroneous and unsustainable in law.

(6) On the other hand, learned counsel for the State while supporting the impugned judgment would submit that the impugned judgment is based on well founded evidence, which does not call for any interference by this Court.

(7) I have heard learned counsel for the parties and perused the material available on record of both the courts below including impugned judgment with utmost circumspection.

(8) Complainant – Khetridhar Rai (PW-1) has deposed in his court statement that when he went for searching of his goat to jungle, there he was talking with one Divya Sethi (PW-9) about his goat, at that time, applicant came there holding with axe and while asking him “what you are taking with my daughter” assaulted him upon his left leg with backside of axe. He had also tried to attack from sharp side of axe, but Divya Seth stopped him. He has further stated on being assaulted by the applicant, he got fractured on his leg and also sustained injuries on his hip & shoulder. Due to the injuries sustained by the complainant, he walk with support of crutch. His statement has well supported by FIR (Ex.P-1).

(9) Rajendra Rai (PW-4), who is uncle of complainant, has deposed in his court statement that he is eye witness to the incident but complainant – Khetridhar Rai (PW-1) himself has discarded his statement in his cross-examination stating that at the time of incident, no-one was there on the spot except Divya Sethi (PW-9). He has further stated in his court statement that his uncle came on the place of occurrence after the incident. Complainant - Khetridhar Rai (PW-1) had denied adverse suggestion in his cross-examination

that the applicant was not assaulted him and due to fall while running and colliding with wood, he had sustained injuries.

(10) Chandradhar Rai (PW-2) has deposed in his court statement that complainant had called him and told that applicant has assaulted him with axe, therefore, he is unable to walk. According to him, complainant was brought on a cot (खाट) by villagers from the place of occurrence.

(11) Seelkaro Ram (PW-03), Kotwar of the Village, Vijay Ram (PW-5), Harish Rai (PW-6), Devnandan Rai (PW-7) have also deposed in their court statements that complainant was brought on a cot from the place of occurrence by the local villagers.

(12) Devnandan Rai (PW-7) & Shyam Kumar Rai (PW-8) have deposed in their court statement that while going at the place of occurrence, after hearing about the incident that applicant has injured the complainant by axe, they had seen the applicant and her daughter, who were coming with axe. Although Chandradhar Rai (PW-2), Seelkaro Ram (PW-3), Vijay Ram (PW-5), Harish Rai (PW-6), Devnandan Rai (PW-7) and Shyam Kumar Rai (PW-8) are relatives of the complainant but from their statement, natural conduct of the complaint is proved that after assault made by applicant, he narrated the entire incident to his relatives.

(13) Dr. C.R. Bhagat (PW-14), in his court statement, has proved that on 3.2.2014, he had examined the complainant and found lacerated wound with swelling and tenderness on his right leg and complainant was complaining pain

on his right shoulder. He has also stated that on examination of X-ray, he found fracture on tibia bone of complainant. His statement get support from medical report Exs. P-6 & P-7, respectively which he had proved.

(14) Seizure of alleged axe has not been proved because its witnesses namely Ramcharan (PW-10) & Narottam Nishad (PW-11) have not supported the seizure memo (Ex.P-2).

(15) Although, there is no eye-witness to incident except complainant & Divya Sethi (PW-9) and Divya Sethi (PW-9) has not supported the statement of complainant that applicant caused him injuries by assaulting with axe but since complainant is injured witness and there is no animosity has been proved between him and the applicant and also after the incident, applicant has called and informed his relatives regarding the fact that applicant has assaulted him by axe, which shows his natural conduct. In FIR (Ex.P-1) also complainant has stated about the assailant, therefore, looking to all these evidence of the witnesses, it cannot be said that judgment passed by both the courts below are perverse and baseless.

(16) Although seizure of axe from applicant has not been proved but complainant has clearly stated that injuries, caused to him, were caused by the applicant with backside of axe and he had narrated the entire incident immediately after the incident to other witnesses. From medical evidence also, it is proved that injuries caused to the complainant on his leg was lacerated injuries, therefore, non-proving of axe would not have adversely affected the case of the prosecution. Thus, I am of the view that judgment of conviction and

order of sentence is based on proper appreciation of evidence and not having any infirmity and illegality in the same. Therefore, I upheld the judgment of conviction and order of sentence passed by the trial Court as affirmed by the appellate Court.

(17) In the result, criminal revision, being meritless, is liable to be and is hereby dismissed.

(18) Since as per report of Jail Superintendent, District Jail, Jashpur, District Jashpur after getting benefit of remission & completion of sentence, applicant – Kumbhkaran Ram has been released from jail on 15.05.2021, therefore, he need not to surrender.

Sd/-
(N.K. Chandravanshi)
Judge

D/-

