

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 368 of 2020**

Deepak Yadav son of Naveen Yadav, aged about 23 years, resident of
 Khairabhatha, Mahasamund, Police Station, Tahsil & District –
 Mahasamund (C.G.) (In Jail)

---- Applicant**Versus**

State of Chhattisgarh, through the Station House Officer, Police Station -
 Mahasamund, District – Mahasamund (C.G.)

----Non-applicant

For Applicant	:	Mr. Vivek Tripathi, Advocate.
For Non-applicant	:	Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****23.09.2021**

(1) This Criminal Revision has been brought against the impugned judgment dated 17.12.2019 passed by Sessions Judge, Mahasamund (C.G.) in Criminal Appeal No. H 33/2019 whereby judgment of conviction under Section 326 of the IPC and order of sentence of rigorous imprisonment of one year with fine of Rs.1,000/-, with default stipulation passed by Judicial Magistrate, First Class, Mahasamund in Criminal Case No. 1046/2016 vide order dated 27.03.2019 has been upheld.

(2) Brief facts of the case are that on 17.03.2016 at 2.30 pm complainant Hari

Banjare was standing near chicken shop of Alok Pandey at *Khaira mode*, Mahasamund, at that time, applicant came there in a drunken condition and abusing and threatening to complainant and when he restrained him for the said act, then applicant assaulted him by means of sharp edged weapon (Chapad), which is used for cutting of chicken, thereby, applicant caused injuries to the complainant. Within ½ hour of the incident, complainant lodged FIR against the applicant/accused i.e. at 3 pm. Thereafter, the complainant was medically examined by Dr. Lekhram Chandrakar (PW-4). After usual investigation, police filed charge sheet against the applicant under Sections 294, 323, 506 & 326 of IPC & Sections 25 & 27 of the Arms Act, 1959 before Chief Judicial Magistrate, Mahasamund. Charges under Sections 294, 506, 326 IPC & Section 27 of the Arms Act, 1959 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 7 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 support of his defence.

(4) Trial Magistrate, after hearing learned counsel appearing for the respective parties and considering the material available on record, has convicted and sentence 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 upheld by the appellate Court. Hence this Criminal

Revision.

(5) Counsel for the applicant/accused would submit that witnesses of this case are relatives to each other, therefore, merely on the basis of their statements, both the courts below ought not to have been convicted the applicant/accused. More so, seizure of said *Chaped* has not been proved and there is contradictions about the size of *Chaped* as has been mentioned in the seizure memo (Ex.P-3) and query report (Ex.P-8). Looking to these contradictions and involvement of interested witnesses in the case, judgment of conviction passed by both the courts below is erroneous and unsustainable in law, therefore, impugned order deserves to be set aside and the applicant be acquitted of the charge levelled against him.

(6) Per contra, 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 – Hariram Banjare (PW-1) has clearly stated in his deposition that when he refused to give money to the applicant, which he was demanding to purchase liquor, then applicant abused him and assaulted upon him by *Chapad* and injured his leg. He has denied that he got injured in the scuffle took place between them. His statement is well corroborated by his brother Sushil Kumar

Banjare (PW-2) and his wife Bed Bai (PW-5), who are the eye-witnesses of the case.

(9) Dr. Lekhram Chandrakar (PW-4) had examined the complainant at 4 O'clock on the date of incident. As per his deposition, he found cut injuries on right knee of the complainant from where blood was oozing out. He has also opined that aforesaid injuries were caused by sharp edged object within 0 to 6 hours of the medical examination. According to him, he had also examined X-ray of complainant, in which, he found fracture on his right patella bone. The aforesaid statement is well supported by medical report (Exs.P-6) & (Ex.P-7) prepared & proved by him.

(10) Perusal of record of court below would show that FIR (Ex.P-1) naming applicant/accused was lodged within ½ hour of the incident, which has proved by its maker Sub-Inspector Sidhreshwar Pratap Singh (PW-6). Within one hour of the lodging of FIR (Ex.P-1), the complainant was medically examined by Dr. Lekhram Chandrakar (PW-4) and on the next day, on examination of X-ray plate of complainant by said doctor (PW-4), his right patella bone was found fractured. Looking to the chain of aforesaid incident, that too, without any delay, only on the basis of the fact that eye witnesses to the incident are relatives of complainant, their statements cannot be discarded. Therefore, arguments advanced by counsel for the applicant in this regard is not helpful to him.

(11) Head Constable – Virendra Seth (PW-7), in his court statement, has deposed that he has seized *chapad* as per memorandum statement (Ex.P-2) of applicant/accused and had prepared seizure memo (Ex.P-3) in this regard. But

his statement has not been well supported by Sushil Kumar Banjare (PW-2) and Nutan Das Vaishnav (PW-3). Although, they have admitted their signature in both the documents but it has not been mentioned in seizure memo (Ex.P-3) that from which place of Chicken shop of Alok Pandey, applicant discovered the said *chapad*, therefore, memorandum and seizure has not been proved in this case. There is also difference of size of *Chapad* as has been mentioned in the seizure memo (Ex.P-3) and query report (Ex.P-8) of said *Chapad*, despite that since from the evidence of complainant and other eye witnesses, it has been proved that applicant assaulted the complainant by means of chapad, therefore, non-proving of seizure of *Chapad* will not adversely affect the case of the prosecution because it is settled law that if eye-witnesses proved the fact that accused/applicant inflicted injuries by sharp edged weapon and in medical examination also such injuries i.e. cut injuries is found proved, then non-seizure of that weapon will not affect the truthfulness of statement of eye witnesses.

(12) In view of the aforesaid discussion, I am of the opinion that both the courts below have not committed any error in convicting the accused/applicant for commission of offence under Section 326 of IPC. Thus, it is hereby maintained.

(13) So far as sentence part of the impugned order is concerned, after due consideration of the submissions made by counsel for the parties, I find that sentence imposed by the trial Magistrate as upheld by learned Sessions Judge also does not call for any interference by this Court.

(14) In the result, criminal revision, being devoid of substance, is liable to be and is hereby dismissed.

(15) Since, as per report received from Central Jail, Mahasamund, after getting benefit of remission & completion of sentence, applicant – Deepak Yadav has been released from jail on 30.07.2021, therefore, he need not to surrender before the trial Court as he has already completed his jail sentence.

Sd/-
(N.K. Chandravanshi)
Judge

D/-

