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(2019) 08 CHH CK 0132

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 33 Of 2009

Keshri Yadav

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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Date of Decision: Aug. 21, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 294, 307, 323, 325, 506
- Code Of Criminal Procedure, 1973 - Section 357

Hon'ble Judges: Vimla Singh Kapoor, J

Bench: Single Bench

Advocate: Rahil Arun Kochar, Himanshu Sharma

Final Decision: Allowed

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### Judgement

Vimla Singh Kapoor, J

1. As per the FIR (Ex.P-15) lodged by victim Shyam Singh alias Tinga Yadav (PW-7), on 12.07.2005 when he along with his nephew Ganesh Yadav

(PW-8) had been to the house of the accused/appellant herein for demanding back money, he bluntly told him not to give the same, started hurling

filthy abuses at him and dealt blows on his head with the bamboo stick carried by him. It is alleged that when PW-8 tried to intervene in the matter, he

too was dealt with in the same manner and with the same object i.e. the wooden piece. On noticing the noisy scene, absconding accused Vinod Singh

and Moti Singh also came to the spot and indulged in the activities initiated by the accused/appellant herein. On the basis of this report, offences under

Sections 294, 506, 323, 34 IPC were registered against the accused/appellant and two absconding accused persons. After medical examination of the

victims and completion of other procedural requirements challan was filed under Sections 294, 506, 323, 307, 34 IPC followed by framing of charge accordingly.

2. Learned Court below by its judgment dated 27.11.2011 passed in Sessions Trial No. 406/2005 convicted the accused/appellant under Sections 294, 323 and 307 IPC and sentenced him to pay fine of Rs. 200/- for the first two offences and to undergo rigorous imprisonment for three years with fine of Rs. 300/- under Section 307 IPC, plus default stipulations.

3. Counsel for the appellant submits that apart from the injured persons, there is no other independent witness to the incident and even the so called eyewitness Mansaram (PW-1) has turned hostile. Likewise, according to the counsel for the appellant, the seizure witness (PW-4) has also not supported the case of the prosecution. Medical evidence is also argued to be not sufficient for convicting the accused/appellant under Section 307 IPC as it does not point out that he had any intention or knowledge of eliminating the victims - particularly the PW-7.

4. State counsel on the other hand supports the judgment impugned and submits that looking to the evidence collected by the prosecution, the conviction and sentence imposed on the accused/appellant by the judgment impugned does not, in any manner, appear to be at fault, and therefore, the same does not need to be interfered with.

5. Victim (PW-7) has stated that when he demanded back the money, accused/appellant told him not to yield to his say, started abusing and also inflicted injuries on his head with the stick held by him. On intervention by PW-8, he too was treated alike. Absconding accused persons named above are also said to be instrumental in abusing and assaulting PW-7 and PW-8. Though Mansaram (PW-1) along with one Maan Singh are stated to have seen the incident and lifted PW-7 home, Maan Singh has not been examined by the prosecution and the other being Mansaram - PW-1 turned hostile and has not supported the case of the prosecution. Another injured (PW-8) has also stated almost the same thing like PW-7 adding that when he asked the accused/appellant not to abuse and assault PW- 7, he too was not spared and was caused injuries on his left foot, waist, back, wrist etc with

the stick carried by him. Though stick is said to have been seized from the accused/appellant, seizure witness (PW-4) does not support the case of the prosecution on this point. Doctor (PW-5) who medically examined victim (PW-7) and gave his report Ex. P-11 has stated that he noticed one

lacerated wound on occipital region in the size of 2 x 1 cm and another lacerated wound of the same size on the temporal region. PW-7 is said to have

complained pain on his limbs, but no injury thereon was noticed by the doctor (PW-5). Of course, fracture of skull bone has been opined to be grievous

in nature but the statement of the doctor (PW-5) is very specific to the effect that on clinical examination, no internal injury was found on the head of

the victim as at the time of examination he was fully conscious and was talking. In respect of victim (PW-8) he has given report Ex. P-10 stating

abrasion on left foot and contusion on left thigh and that the injuries suffered by him were simple in nature. Radiologist (PW-

6) who gave his report Ex. P-14 has also stated that there was fracture on the parietal bone of skull and fibula bone of PW-7. That apart, evidence of

Investigating Officer (PW-10) goes to show that though he was not aware of any case being pending against the complainant party yet he has

categorically stated that he saw fracture on the index finger of absconding accused Vinod and the injuries on the body of the present appellant also.

Pendency of case against the complainant party is however apparent from the statements of PW-7 and PW-8, and thus the possibility of the injury

being the outcome of free fight cannot be ruled out.

6. In aforesaid view of the matter it can be conclusively said that though the injuries caused to PW-7 with the bamboo stick have been opined to be

grievous in nature but there is no evidence to show that the appellant had any intention or knowledge to cause his death while inflicting the same. In

these circumstances, the conviction of the appellant under Section 307 is not sustainable in the eye of law and at the most his act would make him

liable for being held guilty under Section 325 IPC for causing grievous hurt to PW-7. Accordingly, conviction of the appellant under Section 307 IPC is

hereby set aside and instead he stands convicted under Section 325 IPC. His conviction under other sections is also kept as it is.

7. As more than 14 years have gone by since the occurrence and the appellant has already remained in jail for about two and a half months and that in the incident accused/appellant had also suffered injuries which is evident from the evidence of the investigating officer, this Court thinks it proper and in the interest of justice to reduce the sentence to the period already undergone by enhancing the fine to Rs. 5000/- to be paid as compensation to victim Shyam Singh (PW-7) in terms of provisions of Section 357 of the Code of Criminal Procedure. Order accordingly. Appellant to deposit this amount in the Court below within a period of four months from the date of receipt of copy of this judgment or else he may not get the benefit in respect of sentence.

8. Appeal is allowed in part.