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**(2018) 06 CHH CK 0200**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 553 Of 2002

Jitendra And Ors

APPELLANT

Vs

State Of Chhattisgarh vvv

RESPONDENT

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**Date of Decision:** June 28, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 323, 341, 506, 506B
- Code Of Criminal Procedure, 1973 - Section 313, 357

**Hon'ble Judges:** Pritinker Diwaker, J

**Bench:** Single Bench

**Advocate:** N.K. Malviya, Ravindra Agrawal

**Final Decision:** Partly Allowed

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### **Judgement**

Pritinker Diwaker, J

01. This appeal arises out of the judgment of conviction and order of sentence dated 23.04.2002 passed by II Additional Sessions Judge, Bilaspur in

Sessions Trial No.57/2001 convicting the accused/appellants under Sections 341, 323 IPC & sentencing them to undergo R.I. for one month with fine

of Rs.500/- and R.I. for one year with fine of Rs.1000/- plus default stipulation respectively.

02. As per the prosecution case, on 31.10.2000 FIR (Ex.P/1) was lodged by victim Umashankar Vastrakar (PW/1) alleging in it that on the date of

incident at about 12.00 in the noon, when he was returning on his bicycle after attending computer class, the accused/appellants apprehended him near

village Sakri and on account of old dispute they caused club injuries to him. Based on this FIR (Ex.P/1), offence under Sections 341, 323 and 506-B of

IPC was registered against the accused/appellants. On the same day, victim was medically examined by Dr. B.D. Sonwani (PW/3), who gave his report (Ex.P/3) noticing following injuries :-

(i) Lacerated wound of 1 1/2 x 1 cm x bone deep over right parietal area of head.

(ii) Contusion of 4 x 4 cm with swelling over left knee.

(iii) Contusion of 2 1/2 x 1 1/2 cm over right side of waist region.

The Doctor has opined that all the injuries were red in colour caused by hard and blunt object.

03. After filing of the charge sheet, the trial Court framed the charges against accused/appellants under Sections 341, 307 and 506 Part-I of IPC.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses. Statements of the accused/appellants were also

recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the

accused/appellants as mentioned in para-1 of this judgment. Hence, this appeal.

06. Counsel for the accused/appellants submits that he is not pressing this appeal on merit and would confine his argument to the sentence part thereof

only. He further submits that the incident took place in the year 2000 i.e. about 18 years back, now the relation between the accused/appellants and

victim are cordial, the accused/appellants have already remained in jail for five days, the jail sentence is not mandatory either under Section 341 or 323

IPC and, therefore, their sentences may be reduced to the period already undergone by them. He also submits that the accused/appellants are willing

to pay suitable compensation to the victim.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellants is in

accordance with law and there is no infirmity in the same.

08. Heard learned counsel for the parties and perused the material available on record.

09. Complainant Umashankar Vastrakar (PW/1) while supporting the prosecution case has stated that on 31.10.2000 when he was returning on his bicycle, near Sakri he was intercepted by the accused/appellants and then both of them caused club injuries to him as a result of which he sustained injuries on his head, left knee, waist and became unconscious. He has further stated that he was taken to Community Health Center, Chakarbhata where he was medically examined and from there he was referred to Govt. Hospital, Bilaspur for further treatment. In cross- examination, he remained firm and nothing could be elicited by the defence to discredit his testimony.

10. Bhagwat Prasad (PW/2) turned hostile.

11. Dr. B.D. Sonwani (PW/3) medically examined the victim and gave MLC (Ex.P/3) noticing one lacerated wound and two contusions on right parietal region of head, left knee and right waist respectively and opined that the injured were caused by hard and blunt object.

12. Ravi Shankar (PW/4) - cousin brother of victim, reached the hospital after coming to know about the incident.

13. Arun Kumar (PW/5), Vinod Kannoje (PW/6), Jageshwar Yadav (PW/10) and Chandra Shekhar (PW/11) have turned hostile.

14. B.S. Nishad (PW/7), Maniraj Tiwari (PW/8) and R.S. Kushwaha (PW/9), police personnel did part of investigation.

15. R.K. Mishra (PW/12) - Investigating Officer, has duly supported the prosecution case.

16. Close scrutiny of the evidence, in particular the statement of victim PW/1, makes it clear that on 31.10.2000 when he was returning after attending computer class, the accused/appellants intercepted him and caused injuries by club on his head, knee and waist. The version of victim is well corroborated by the evidence of Doctor (PW/3) who medically examined him and gave report (Ex.P/3) noticing three injuries on his head, left knee and right waist. Though the independent witnesses have not supported the prosecution case but considering the statement of the victim (PW/1), his medical report (Ex.P/3) and promptly lodged FIR (Ex.P/1) naming the accused/appellants to be the assailant, the trial Courts has arrived at a

conclusion that the prosecution has successfully proved its case beyond the shadow of all reasonable doubt and held them guilty under Sections 341

and 323 of IPC. This Court finds no reason to interfere with the said findings and therefore, the same is hereby affirmed.

17. The only question which arises for consideration by this Court is as to what would be the appropriate sentence to be imposed upon the accused/appellants.

18. Considering the overall facts and circumstances of the case, in particular the fact that the incident occurred 18 years ago, by now the

accused/appellants must be settled, they have already remained in jail for about five days, sending them to jail again may figure enmity between the

two groups and jail sentence is not mandatory under Sections 341 and 323, this Court is of the opinion that no useful purpose would be served in

sending them back to jail at this stage and the ends of justice would be served if they are sentenced to the period already undergone by them,

however, they are directed to pay compensation of Rs.5,000/- each under Section 357 of Cr.P.C.

19. In the result, the appeal is partly allowed. While maintaining conviction of the accused/appellants under Sections 341 and 323 of IPC, their jail

sentence is reduced to the period already undergone by them. However, they are directed to pay compensation of Rs.5000/- each (total Rs.10,000/-)

within six months from today. The amount of compensation so deposited by the accused/appellants before the trial Court be paid to the victim (PW/1)

after due verification by it.