

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CR.A. No. 431 of 2002**

- Sonu @ Prafful

---- Appellant**Versus**

- State of Chhattisgarh

---- Respondent

For appellant : Shri B.P. Sharma with Shri M.L. Saket, Advocate.
 For Respondent/State : Shri Akhilesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Judgment

18/03/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22-3-2002 passed by the 4th Additional Sessions Judge, Raipur in Sessions Trial No. 330/2001 whereby and whereunder learned trial Court after holding the appellant guilty for voluntarily causing hurt, convicted him under Section 323 of the Indian Penal Code, 1860 (in brevity 'IPC') and sentenced him to undergo RI for six months and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo RI for one month. By the impugned judgment, learned trial Court acquitted the appellant for the charges under Section 307 read with Section 34 of IPC and convicted him for lesser offence as mentioned above. Also the trial Court acquitted other co-accused Ballu alias Lachhan and Sonu alias Lalchand for the charges framed against them under Section 307 read with Section 34 of IPC.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant

as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 3-7-2001 at about 12.30 P.W. 7 Markanday Ram lodged unnumbered FIR from Ward No. 20, Medical College Hospital, Raipur stating that when he was returning to his house, all the three accused persons came near him and on account of previous enmity assaulted him by stick and also by knife and ran away from the spot. He was admitted in the hospital. After recording the unnumbered FIR, Gudhiyari police registered the report bearing No. 129/2001 under Section 307 read with Section 34 of IPC against all the accused persons vide Ex. P-15 and started investigation. During investigation police prayed CMO, Medical College Hospital, Raipur for examination and report regarding the injuries noticed during treatment of complainant P.W. 7. P.W. 6 Dr. Rajiv Pandey after examination gave report vide Ex. P-11 and noticed one lacerated wound at the left side of head 4cm x 2 cm, injury was simple in nature caused by hard and blunt object. During investigation, statement of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in brevity 'Code'). Knife was recovered from accused Sonu alias Lalchand vide Ex. P-3, hockey was recovered from accused Sonu alias Prafulla vide seizure memo Ex. P-4. All the accused were arrested vide arrest memo Ex. P-5, P-6 and P-7. Patwari prepared spot map vide Ex. P-8. The Investigating Officer P.W. 10 S.S. Parihar prepared spot map vide Ex. P-16. He also collected blood stained and plain soil from the spot and seized vide Ex. P-17. Articles seized and collected were sent for chemical examination to FSL, Raipur vide Ex. P-18 which was received by the FSL vide receipt Ex. P-19. After completion of investigation, charges sheet was filed before the Judicial Magistrate First Class, Raipur under Section 307 read with Section 34 of IPC on 14-8-2001 who in turn

committed the case to the Court of session, Raipur. Learned Additional Sessions Judge received the case on transfer and conducted trial. The accused were charged under Section 307, IPC in alternate under Section 307 read with Section 34, IPC. Prosecution examined 10 witnesses in all to prove the guilt of the accused persons before the trial Court. Statement of the accused persons were recorded under Section 313 of the Code wherein they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.

4. After providing opportunity of hearing to the parties, learned trial Court acquitted the present appellant for the offence under Section 307 read with Section 34, IPC, also acquitted other co-accused persons for the charges under Section 307 read with Section 34, IPC and convicted the appellant for a lesser offence under Section 323 of IPC and sentenced him as abovementioned.
5. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.
6. During the course of argument, learned counsel for the appellant submits that the prosecution story is not supported by P.W. 3 Sushila Bai, P.W. 4 Dilip Dhruva and P.W. 8 Ramla Bai. Though all these witnesses are eye-witnesses as per prosecution, but they turned hostile and not supported the prosecution case. Against the present appellant, only P.W. 7 Markanday Pandey has supported the case. Though the doctor medically corroborated the injuries as the injuries were caused by hard and blunt object i.e. hockey stick but as the complainant also turned hostile for others acquitted co-accused, his statement may not inspire confidence. Other co-accused are acquitted by the same set of evidence and the present appellant is convicted for the offence under Section 323, IPC. Statement of the

complainant is not of sterling nature. Hence the appeal may be allowed and the present appellant may also be acquitted of the charges.

7. Per contra, learned counsel for the State/respondent opposed the arguments advanced on behalf of the appellant, supported the judgment impugned and submitted that the impugned judgment is well founded. There is no scope of interference in the same, hence the appeal may be dismissed.
8. In order to appreciate the arguments advanced on behalf of the rival parties, I have perused the evidence adduced by the prosecution during trial.
9. Since P.W. 3 Sushila Bai, P.W. 4 Dilip Dhruva and P.W. 8 Ramla Bai have turned hostile and not supported the prosecution case, only the statement of complainant has to be examined. This witness P.W. 7 Markandey Pandey has stated in para 1 of his cross-examination that he was assaulted by present appellant by hockey stick. The complainant supported lodging of unnumbered FIR Ex. P-12 and supported seizure Ex. P-13 by which blood stained shirt was seized from him. P.W. 6 Dr. Rajiv Pandey has corroborated and deposed that the complainant was inflicted a lacerated wound size 4 x 2 cm simple in nature caused by hard and blunt object. Seizure of the hockey stick and knife are not supported by attesting witness P.W. 1 Jeevanlal though he admitted his signature on memorandum Ex. P-1 and Ex. P-2 and seizure memo Ex. P-3 and Ex. P-4. P.W. 10 the Investigating Officer has deposed that the present appellant gave disclosure statement Ex. P-2 and on the basis of such statement he seized stick at the instance of the appellant. In the present case, the incident occurred at about 10 to 11 pm on 2-7-2001. After the incident without delay the complainant was taken to Medical College Hospital, Raipur by neighbours and relatives and admitted in the hospital. Upon information next day on 12.30 p.m., Gudhiyari

Police reached to the hospital Ward No. 20 and recorded unnumbered FIR. Injury was noticed by the doctor thereby the statement of the complainant is duly corroborated and supported. Though the complainant turned hostile for alleged assault or by any participation of the other co-accused but so far as this witness is concerned, he was cross-examined at length and remained very firm for the act of the present appellant. There was no reason for false implication of this appellant as the report was lodged without delay in the hospital during treatment. As there is medical corroboration, in the considered view of this Court though other alleged eye-witnesses have not supported the prosecution story, the statement of the complainant made against present appellant may not become falsify on the basis of non-corroboration of other witnesses. In the opinion of this Court, complainant's statement regarding the assault by the appellant by hockey stick is well corroborated by the P.W. 6 Dr. Rajiv Pandey. The attesting witness of memorandum of seizure admitted his signature though not supported the memo of seizure but the same was supported by P.W. 10 S.S. Parihar. Even otherwise the memorandum of seizure if for the sake of argument is not proved, even then the ocular evidence supported by medical evidence itself prove the guilt of the appellant. So far as the conviction under Section 323, IPC against the appellant is concerned, the same is proved beyond probable doubt.

10. Now the question arises as to what sentence would be appropriate for the appellant. As submitted, the appellant was first offender with no criminal previous history and he was never involved in any other similar criminal activities. On account of some previous dispute, this present incident happened. The incident is about 14 years old. The appellant deposited fine amount and remained in jail from 4-7-2001 upto 9-7-2001 i.e. for six days,

injuries were simple in nature. No second assault was made to the complainant. Looking to the entire facts and circumstances of the case as there is no minimum sentence prescribed for the offence under Section 323, IPC, it would be just and proper to sentence the appellant for the period already undergone by him including fine sentence.

11. Consequently, the appeal filed by the appellant is hereby partly allowed.

Conviction of the appellant under Section 323 of the IPC is hereby affirmed.

Fine sentence is also maintained and instead of R.I. for six months, the appellant is sentenced for the period already undergone by him.

12. The appellant is reported on be on bail. His bail bond shall remain continue for a further period of six months as per provision of Section 437-A of the Code.

13. Appeal partly allowed.

Sd/

Chandra Bhushan Bajpai

JUDGE