

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 77 of 2002

Appellant : Sunil Sharma

Versus

Respondent : State of Chhattisgarh

For Pronouncement of Judgment

04.02.2015

Sd/-
Inder Singh Uboweja
Judge

43

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 77 of 2002

APPELLANT : Sunil Sharma

VERSUS

RESPONDENT : The State of Chhattisgarh

[Criminal Appeal u/s 374 (2) of the Code of Criminal Procedure, 1973]

Present:

Mr. Ranbir Singh Marhas, Advocate for the appellant.
Mr. S.R.J. Jaisawal, Panel Lawyer for the State.

SB: Hon'ble Mr. Inder Singh Uboweja, J.

J U D G M E N T

(Delivered on ...04... February, 2015)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.01.2002 passed by the 1st Additional Sessions Judge, Mahasamund in Sessions Trial No.29/1998 whereby the learned trial Court has convicted the appellant under Section 323 and 394 of the IPC and sentenced him to undergo R.I. for one year and to pay fine of Rs.500/-, in default of payment of fine additional R.I. for two months and R.I. for ten years and to pay fine of Rs.2,000/-, in default of payment of fine, additional R.I. for six months respectively.
2. Conviction is impugned on the ground that without there being an iota of evidence against the appellant, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed an illegality.
3. Prosecution story, in brief, is that on 04.09.1997 at about 9.00 p.m., at

44

village Jhalap, the accused / appellant and other co-accused persons having conspiracy came together on two Jeeps bearing Nos. CPS-7273 and MP-23D-6262 at the *Dhaba* and intimating the customers, workers and Ajit Singh (complainant), abused in filthy language and started beating them with lathis and started breaking the articles kept in the *Dhaba*. They also took away the amount of Rs.3,500/- kept in the cash counter. After the incident, Ajit Singh (PW-7) lodged the FIR (Ex.P-8) regarding the alleged incident on the same day at about 11.00 p.m. On that very day injured persons - Ajit Singh, Bharat Kumar, Shivcharan and Mangal Singh were examined and on next day other injured Jogender Singh was examined by Doctor Mahavir Agrawal (PW-15), who gave his report vide Exs. P-13, P-14, P-15, P-16 and P-9. Breaking articles were seized from the *Dhaba* and seizure memos Exs. P-5 & P-6 were prepared. Spot maps were also prepared vide Exs. P-4 & P-7.

4. Statements of the witnesses were recorded under Section 161 of the Code of the Criminal Procedure, 1973 (for short 'the Code'). Accused were arrested and identification parade was organized by the police vide Exs.P-1, P-2 & P-3.
5. After completion of investigation charge sheet was filed before the Court of Judicial Magistrate First Class, Mahasamund, who in turn committed the case to the Court of Sessions, Raipur from where learned 1st Additional Sessions Judge, Mahasamund received the case on transfer for trial.

45

6. The learned trial Court framed charges against the appellant and other co-accused persons for the offence punishable under Sections 148, 294, 323 or 323/149, 323 of 323/149, 323 or 323/149, 323 or 323/149, 324 of 324/149, 506 Part-II, 427, 395 along with Section 397 of the IPC. Appellant abjured his guilt.
7. In order to bring home the guilt of the appellant, the prosecution has examined in all twenty witnesses. The appellant was examined under Section 313 of the Code in which he denied having committed any offence and pleaded innocence. The defence of the appellant has been that because complainant has been arrested for selling illegal liquor and appellant being Manager of liquor shop, so on account of rivalry, he has been falsely implicated in crime in question.
8. After providing opportunity of hearing to the parties, learned 1st Additional Sessions Judge has convicted & sentenced the appellant as aforementioned.
9. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.
10. Mr. Ranbir Singh Marhas, learned counsel for the appellant, has assailed the conviction of the appellant not being based on cogent, reliable and unimpeachable evidence. Prosecution witnesses have deposed different story in their statements. There are huge contradictions amongst the statements of the eyewitnesses, therefore, the appellant is entitled for acquittal from the charges.

46

11. On the other hand, learned State counsel opposed the appeal and supported the judgment of conviction and order of sentence passed by the trial Court.
12. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence available on record.
13. Ajit Singh (PW-7) is the complainant who stated that at about 9.30 p.m. accused Sunil Sharma came to his *Dhaba* and demanded for liquor whereupon the complainant replied in negative. Thereafter Sunil pushed him and assaulted by lathi, other co-accused persons also started creating commotion there. Thereafter, Sunil Sharma took away the amount of Rs.3,500/- from his cash counter box and then he became unconscious.
14. Prosecution has examined eyewitnesses namely Shivcharan (PW-1), Mangal Singh (PW-2), Bharat Dewangan (PW-8), Netram (PW-9) and Hemlal Chandrakar (PW-10). All the above eyewitnesses have corroborated that Sunil Sharma (appellant) and some persons came to *Dhaba* and they started quarrelling there, but no one has said that he has seen Sunil Sharma taking away amount of Rs.3,500/- kept in the cash counter. Other two eyewitness have stated different stories, one eyewitness Balbir Singh (PW-14) has stated that some persons came along with Sunil Sharma at *Dhaba*, one person whose face covered with a cloth, assaulted Ajit Singh and another eyewitness Jogender Singh (PW-20) has stated that some persons came with Sunil Sharma and they started assaulting Ajit Singh.

- (47)
15. Other eyewitnesses though supported the statement of complainant – Ajit Singh that he was assaulted by Sunil Sharma, in their lengthy cross-examination by the defence, nothing material could be elicited, on which, it may be said that they were falsely implicated the appellant. Their evidence on the assaulting point remained fully intact, but the eyewitnesses have not supported the statement of Ajit Singh regarding the incident of taking away the amount of Rs.3,500/- kept in the cash counter.
 16. Eyewitnesses Netram (PW-9) and Bharat (PW-8) have clearly stated in their Court evidence that after receiving the injury Ajit Singh was unconscious. If Ajit Singh was suddenly unconscious after receiving the injury then it was not possible that he saw Sunil Sharma taking amount from his cash counter box. Statement of Ajit Singh is not cogent, reliable and trustworthy.
 17. First Information Report (Ex.P-8) clearly shows that F.I.R. is manipulated and some alterations have taken place in FIR. It is clear by the statements of police officers Prashant Thakur (PW-16) and N.K. Swarnkar (PW-17), they have clearly admitted that they have not mentioned the commission of robbery of Rs.3,500/- by the appellant. So, it is clear by the statements of police officers that the words commission of robbery of Rs.3,500/- by Sunil Sharma have been mentioned after completion of the First Information Report. Statement of complainant Ajit Singh (PW-7) was also not reliable on the point of taking away the amount of Rs.3,500/-.

(48)

18. Dr. Mahavir Agrawal (PW-15) has examined Ajit Singh and he found one abrasion and two bruise over the body of Ajit Singh. He proved his examination report vide Ex.P-13. Medical evidence is also supported by the statement of Ajit Singh and other eyewitnesses. It is clearly proved that simple injuries were caused by the appellant to Ajit Singh.
19. For the foregoing reasons, I am unable to sustain the conviction of the appellant on the charge of Section 394 of the IPC, it is hereby set aside and the appellant is acquitted of that charge.
20. Considering the entire evidence, I am of the view that the trial Court has rightly convicted the appellant under Section 323 of the IPC and I hereby affirm the judgment of conviction against the appellant.
21. So far as the quantum of sentence is concerned, considering the period of prosecution launched against the appellant, period of detention, age of appellant and looking to the totality of the circumstances appeared before this Court, I am of the view that no purpose would be served in sending the appellant back to jail as the object of criminal justice would be served by awarding the sentence already undergone by him.
22. Consequently, the appeal is partly allowed. Appellant is acquitted from the charge of Section 394 of the IPC and conviction of the appellant awarded by the trial Court under Section 324 of the IPC is hereby affirmed, but, his sentence awarded by the trial Court is modified and instead of rigorous imprisonment of one year with fine of



49

Rs.500/-, he may be adequately sentenced to rigorous imprisonment for the period already undergone by him. However, the sentence of fine amount is enhanced to Rs.1,000/-. The appellant shall pay remaining amount of Rs.1,000/- in addition to the fine already imposed on him by the trial Court within a period of 60 days from today before the trial Court.

Sd/-
Inder Singh Uboweja
Judge

chandra