

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 472 of 2012

1. Chitren S/o Ram Sahay Verma, aged about 46 years, R/o Village – Bhendervani, Police Station – Saja, District – Bemetara (C.G.)
2. Uttam Verma S/o Janmejai Verma, aged about 22 years, R/o Village - Bhendervani Police Station – Saja, District – Bemetara (C.G.)

---- Appellants

Versus

1. State of Chhattisgarh, through Police Station Saja, District – Bemetara (C.G.)

---- Respondent

For Appellant No.1 – Shri P.P. Sahu, Advocate.
For Appellant No.2 – Shri C.R.Sahu, Advocate.
For Respondent – Shri Roshan Dubey, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement on Board

19/08/2015

1. Challenge is in this appeal is to the judgment of conviction and order of sentence dated 24-05-2012 passed in Sessions Trial No.56/10 whereby and whereunder the learned Additional Sessions Judge, Bemetara, C.G., after holding the appellants guilty for attempting to take life of victim Bhagiram Verma (PW-13) by sharing common intention and assaulting by stick, convicted them under Section 307 read with Section 34 of the Indian Penal Code (in short 'the IPC') and sentenced the appellants to undergo rigorous imprisonment for 7 years and to pay fine of Rs.500/-, in default of payment of fine, to further undergo additional rigorous imprisonment for 1 month to each of the appellants.

2. Conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. As per case of the prosecution, in brief, on 27-08-2010, at about 06.00 p.m., both the appellants sharing common intention assaulted Bhagiram Verma (PW-13) by stick and thereby he received injury near the left ear, also on the right foot and other injuries including fracture on head and 5th metacarpal, The victim was immediately taken to Gayatri hospital. Doctor Girish K.V.Sahu (PW-10) examined the victim and noticed the injuries and gave his report vide Ex.-P/15. After initial treatment, the victim was referred to sector 9 hospital where he was admitted till 09-09-2010. Doctor Aadarsh Trivedi (PW-19) treated him. CT scan was conducted. Though, hematoma and clotted blood were noticed at backside of the head and in brain, but the patient was cured by medicine only. No any operation was conducted for the same. The matter was reported before police by Giridhar Lodhi (PW-14), father of the victim. Saja police registered the FIR as crime No.194/2010 against both the appellants and conducted the investigation by obtaining query report, MLC report, other medical papers, bed head ticket of the patient admitted in sector 9 hospital as indoor patient. Both the appellants were arrested. Spot map was prepared vide Ex.-P/26 and after completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Saja, who, in turn, committed the case to the Court of Sessions, the learned Additional Sessions Judge received the case on transfer and conducted the trial. Charges for the offence under Sections 294 and 307/34 of the IPC were framed. The appellant denied the charges and prayed for trial.

4. In order to prove guilt of the appellants, the prosecution examined 19 witnesses in all. The statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.

5. After providing opportunity of hearing to the parties, the learned trial

Court convicted and sentenced the appellants as aforementioned. The trial Court acquitted the appellants from the charge framed under Section 294 of the IPC.

6. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

7. Learned counsel appearing on behalf of the appellants prayed that they are not challenging the judgment of conviction passed against both the appellants, and as instructed, they are confining their argument only to the quantum of sentence. As submitted, both the appellants were in jail as under trial prisoner for 12 days; thereafter they are in jail from the date of the judgment i.e., from 24-05-2012 to till date thereby they have served sentence for 3 years, 3 months and 7 days. Maternal niece of appellant Chitren (A-1) namely Seema was married to the victim, Bhagiram Verma (PW-13). As per the statements of the witnesses, Bhagiram Verma (PW-13) used to beat her wife always. On the date of incident, he had consumed liquor and this fact is also admitted by the other witnesses and Doctor Girish K.V.Sahu (PW-10) at para 10. After consuming the liquor, he assaulted mother of appellant Chitren (A-1) namely Sahodrabai, matter regarding this incident was also reported to police; the victim was tried by the concerned criminal Court and has been convicted. In a sudden provocation, without premeditation, the incident happened in front of the house of appellant Chitren (A-1). There was no any intention for attempt to take life or to kill, otherwise, the appellants would have assaulted with any sharp edged weapon. Only 1 injury over head was noticed by the Doctor who conducted the MLC and the other injuries were on the hand and foot, it goes to show that they have not acted in a cruel manner. As after assault to the mother of appellant Chitren (A-1) present incident happened, both the appellants were the first offender with no criminal past, they have sufficiently tested post effect of the act committed by them, they be given an opportunity. It is further

submitted there is no any minimum sentence provided and looking to the entire facts, their matter may be appreciated in a proper way for the act committed by them.

8. On the other hand, learned counsel for the State/respondent opposed the prayer and submitted that after the incident committed by the victim with the mother of appellant Chitren (A-1), both the appellants in a reaction and to take revenge assaulted the victim by stick in front of their house, looking to their act, the trial Court has rightly sentenced the appellants which requires no interference, hence, the prayer may be dismissed, and the appeal may also be dismissed as not maintainable.

9. To appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduce by the prosecution.

10. After perusal of the entire evidence, looking to the injuries, corresponding fracture and the facts that the injured was admitted in the hospital as indoor patient till 09-09-2010, also as described by the victim himself before the Court regarding the incident, in the considered view of this Court there is no any illegality or impropriety in the judgment of conviction passed against the appellants. As such, the conviction part does not require any interference and the same is affirmed. Also the fine sentence imposed upon the appellants cannot be appreciated as on the higher side, hence, the sentence of fine awarded by the trial Court requires no interference.

11. So far as quantum of substantive jail sentence is concerned, from the entire perusal of the facts surfaced during the trial, it goes to show that the appellants were the first offender with no criminal past, and in the background of regularly beating to the maternal niece of appellant Chitren (A-1) by the victim who happened to be her husband and also in the background of the incident committed earlier by the victim by assaulting mother of appellant

Chitren (A-1) namely Sahodrabai, the victim had consumed liquor at the time of incident, only single blow was inflicted on the head though resulted in corresponding fracture, other injuries were received over the hand and the foot and other part of the body, it goes to show that the incident took place in a sudden provocation, without premeditation and both the appellants sharing common intention assaulted the victim, but it may not be held as an intention to attempt to take life in its true sense; victim has also consumed liquor which also shows his state of physical condition and mind at the time of incident and after perusal of other facts as submitted by learned counsel for the appellants, I am of the view that substantive jail sentence awarded to the appellants requires interference.

12. Consequently, the appeal filed on behalf of the appellants is allowed in part. Conviction passed against the appellants under Section 307 read with Section 34 of the IPC is hereby affirmed. The fine sentence awarded to both the appellants is also hereby maintained. So far as quantum of sentence is concerned, instead of rigorous imprisonment for 7 years, each of the appellants is sentenced rigorous imprisonment for 3 ½ years along with benefit of set off and remission available under the law.

13. The appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

