

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 502 of 2012

1. Goutam Ram Pradhan S/o Sonau Ram Pradhan, aged about 35 years, R/o Village Kanhai, P.S. Janjgir, Distt. Janjgir Champa C.G.

**---- Appellant
(In Jail)**

Versus

1. State of Chhattisgarh Through - Station House Officer, Police Station; Janjgir , District Janjgir Champa (C.G.)

---- Respondent

For Appellant:
For Respondent:

Shri Pankaj Agrawal, Advocate.
Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

29/01/2016

1. This appeal is directed against the impugned judgment dated 31.3.2011 passed by the Additional Sessions Judge, Janjgir, District Janjgir-Champa in S.T. No.19/2012 convicting the accused/appellant under Sections 307 & 394 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 08 years & fine of Rs.1,000/- and RI for 8 years & fine of Rs.1000/-, plus default stipulations.
2. Case of the prosecution in brief is that on 17.10.2011 dehati nalishi (Ex.P-1) was recorded at the instance of Sitabai (PW-1) wherein she has alleged that in the night of 16.10.2011 some unknown persons have caused injuries to her brother-in-law Narayan Suryavanshi, who was in drunken state, and robbed him of Rs.6,500/-. Based on this dehati nalishi, FIR was registered against unknown persons under Section 307 of IPC. After regaining consciousness, it was informed by injured Narayan Suryavanshi that on 16.10.2011 he was carrying Rs.6,600/- with him.

Seeing money in his pocket, the accused/appellant had snatched the same and on protest being made, the accused/appellant assaulted on his head by stone as a result of which he sustained injuries and blood started coming out of it. On completion of investigation, charge sheet was filed against the accused/appellant for the offence punishable under Sections 307 & 294 of IPC followed by framing of charges by the Court below under the aforesaid sections.

3. The prosecution in order to bring home the charges levelled against the accused/ appellant examined 07 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded false implication.
4. After hearing counsel for the parties the trial Court has convicted & sentenced the accused/appellant for the offences as mentioned above.
5. At the outset, counsel for the accused/appellant submits that he is not pressing this appeal so far as it relates to conviction part of the impugned judgment and would confine his argument to the sentence part thereof only. He submits that the incident has taken place more than four years back and the appellant is in jail for the last more than 4 years & 2 months, therefore, the sentence imposed on him may be reduced to the period already undergone by him. Accused/appellant is ready & willing to pay suitable compensation amount to the complainant. He further submits that though the application filed on behalf of accused/appellant for compounding the offence in the light of compromise arrived at between the parties has been dismissed, but as per judgment of the Apex Court in the matter of Narinder Singh & others vs. State of Punjab & another reported in (2014) 6 SCC 466 the effect of said application can be considered by the Court at the time of deciding the appeal finally.
6. On the other hand supporting the impugned, counsel for the State submits

that the manner in which the offence has been committed, no leniency can be shown to the appellant.

7. Heard counsel for the parties and perused the material available on record including the impugned judgment.
8. Sitabai (PW-1) is the lodger of dehathi nalishi (Ex.P-1). She has stated that on fateful night she was sleeping in her house. Hearing some sound she came out from the house and saw a person running away. Thereafter she saw the complainant lying near the shop in the street. In the light of mobile she saw that blood is coming out from the mouth of complainant. Thereafter he was taken to the government hospital at Janjgir for treatment. She is also a witness to the map (Ex.P-2).
9. Narayan (PW-2) is the victim of incident. While supporting the prosecution case has stated that on the fateful day he was sitting in front of the shop of Nobel, accused/appellant came to him, robbed him of Rs.6,500/- and thereafter assaulted on his temporal region by an object as a result of which he fell down and started bleeding. This witness has further stated that on demand being made by accused/appellant, he gave liquor to him and after consuming the liquor, accused/appellant assaulted him as a result of which he became unconscious. On regaining consciousness in the hospital, he noticed cash of Rs.6,500/- was missing from his pocket.
10. Rathram (PW-3) is the witness of search memo of Ex.P-3 and seizure memos (Ex.P-4 & P-5) by which Rs.500/- was seized from the possession of accused/appellant and bloodstained shirt of injured Narayan were seized.
11. Sohanlal (PW-4) is also the witness of search memo of Ex.P-3 and seizure memos (Ex.P-4 & P-5).
12. Dr. Amit Soni (PW-5) is the person who treated the injured at Sri Ram Care Hospital, Raipur.

13. Dr. Sandeep Kumar Sahu (PW-6) is the person who medically examined the injured at Government Hospital, Janjgir and gave his report Ex.P-12. According to this witness, he noticed lacerated wound of 1 x 5x 0.2 cm at the back side of right ear and opined that injury was grievous in nature and caused by blunt and hard object. Query raised by the police -whether the bodily injury inflicted on the victim was dangerous to his life in the normal course of nature and death was possible if the complainant could not have been treated, has been answered by this witness in the affirmative vide Ex.P-13.

14. Krishna Kumar Dwivedi (PW-7) is the investigating officer and he has duly supported the prosecution case.

15. In the present case counsel for the appellant is not challenging the conviction part but praying for reduction of sentence to the period already undergone by accused/appellant. The Supreme Court in catena of judgements has held that in an appeal against conviction, the appellate Court is under duty and obligation to look into the evidence adduced in the case and arrive at an independent conclusion. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court's conscience must be satisfied before passing the final order that the said concession is based on the evidence on record. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced.

16. In the light of the above principles, this Court proceeds to examine legality of the conviction imposed on the appellant on the basis of evidence available on record.

17. Minute examination of the evidence makes it clear that on 16.10.2011 at

about 10.0-10.30 p.m. in the night the accused/appellant had assaulted the complainant by stone, thereby causing grievous injuries and robbed him of Rs.6,500/-. Complainant- Narayan (PW-2) has stated in his evidence that on the date of incident accused/appellant asked for liquor which he gave to him and after consuming liquor, the accused/appellant had assaulted him with fist, took out Rs.6,500/- from his pocket and thereafter again assaulted him on the back side of his ear as a result of which he drenched with blood and became unconscious. According to the medical evidence, the injury caused on the head of the victim by hard and blunt object was grievous in nature. Query raised by the prosecution- whether the injury sustained by the victim was serious in nature and death was possible if the complainant had not been given timely medical help, was also answered by the doctor (PW-6) in affirmative. Sitabai (PW-1), lodger of FIR, though not witnessed the incident but supported the prosecution case to the extent that she saw the victim lying in injured condition in the street near the shop. Though in the statement recorded under Section 313 of Cr.P.C. the appellant has taken a defence of false implication due to land related dispute, but the defence utterly failed to substantiate this plea by adducing any evidence in this regard. Accordingly, the conviction part of the impugned judgment being just and proper, is not required to be interfered with.

18. Now the only question which arises for consideration of this Court is what would be the appropriate sentence to be imposed upon the appellant?

19. Considering the fact that the appellant is in custody for more than 4 years; he is ready to pay adequate compensation to the victim and further considering that victim and accused/appellant have entered into a compromise/settlement, this Court is of the considered view that ends of justice would be served if the jail sentences imposed on the appellant are

reduced to RI for 5 years from that of 8 years by imposing fine of Rs.5,000/- in addition to the fine of Rs.1,000/- imposed by the court below.

20. In the result, the appeal is partly allowed. While maintaining conviction of accused/appellant under Sections 307 & 394 of IPC, the sentences imposed under both the sentences are reduced to five years. In addition to the fine of Rs.1,000/- imposed by the Court below, the appellant shall also pay fine of Rs.5,000/- on each count. Both the sentences shall run concurrently. The period of detention already undergone by accused/appellant shall be adjusted.

21. The amount of Rs.10,000/- (5000+5000) would be payable to the victim. The appellant shall be entitled to have the benefit of this order only after payment of aforesaid amount to the victim.

Sd/-
(Pritinker Diwaker)
Judge

roshan