

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 81 OF 2000

Nasir & Others

Versus

State of Chhattisgarh & Others

&

CRIMINAL Revision No. 261 of 2001

Sabir Ali

Versus

State of Chhattisgarh & Others

C A V JUDGMENT

Sd/-
P.Sam Koshy
Judge

For consideration

Hon'ble Shri Deepak Gupta

Sd/-
Chief Justice

Post for pronouncement of judgment on 21/10/2016.

Sd/-
JUDGE
21/10/2016

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 81 of 2000

1. Nasir aged 21 years, son of Adbul Mazid,
2. Umesh Singh @ Mundu, aged 21 years
3. Kariya Son of Majid Msulaman, aged 31 years.

All residents of Gandhi Chowk, City Dispensary, P.S. city Kotwali, Bilaspur.

---- Appellants

Versus

- State Of Chhattisgarh and Others.

... Respondent

&

CRIMINAL REVISION No. 261 of 2001

- Sabir Ali s/o Jahid Ali aged about 26 years, R/o Karbala Chowk Hanuman Mandir Bilaspur (C.G.)

---- Applicant/
Complainant

Versus

1. The State Of C.G.
2. Habib Khan s/o Majid Khan aged 28 years.
3. Nasir Khan s/o Abdul Majid Khan aged 21 years.
4. Umesh Singh @ Mundu s/o Punai Singh aged 21 years.
5. Kariya @ Hamid s/o Majid Muslman aged 31 years.

All (No. 2 to 4) R/o Gandhi Chowk behind City Dispensory P.S. City Kotwali Bilaspur, Distt. Bilaspur.

---- Non-Applicants

For Appellants	:	Smt. Prabha Sharma and Shri Gourav Saxena, Advocates.
For Respondent/State	:	Shri Vinod Deshmukh, Deputy Govt. Advocate.

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Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

CAV JUDGMENT

Reserved on 08/09/2016

Delivered on 21/10/2016

Per, P. Sam Koshy, J.

1. The Criminal Revision No. 261/2001 has been preferred by the complainant assailing the judgment and order dated 04.12.2000 whereby the Respondents 2-5 have been acquitted from the offence under Section 307/34 IPC therefore has prayed for the remanding of the matter for re-considering afresh. Criminal Appeal No. 81/2000 has been preferred by the accused Appellants assailing the same judgment i.e. judgment dated 04.12.2000 passed in Sessions Trial No. 267/98 whereby the Appellant No. 1 has been convicted for the offence under Section 324 IPC and sentenced to undergo R.I. for 1 year and the Appellants No. 2 & 3 have been convicted for offence under Section 323 IPC and have been sentenced to R.I. for 6 months.
2. A brief fact as per the prosecution is that PW-4 Sajid Ali has lodged an F.I.R. on 03.06.1997 at around 10:45 pm at police station, City Kotwali, Bilaspur stating that he alongwith his friends Hitesh, Willium, Keshav and Sabir were standing at the beetle shop near Laxmi Talkies at around 10:30 pm on 03.06.1997 when suddenly Mundu, Nasir, Habib and Kariya came from behind and attacked with cricket stump and knife on account of which PW-7 Sabir received grievous injuries and PW-4 Sajid Ali also received injuries on his back. After the F.I.R. was lodged the police authorities reached the spot and started

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investigation. Meanwhile, both the injured namely Sabir Ali and Sajid Ali were sent for medical examination on the same day. The doctor after examining the injured Sabir Ali gave report Exhibit P/18 which reads as follows:

1. Incised wound on left chest, bleeding, measuring 12 cm x 1 cm x muscle deep
2. Incised wound No. 1, measuring 1 cm below x 2 cm x $\frac{1}{2}$ cm x muscle deep.
3. Two incised wound on back of neck, measuring 6 cm x 1 cm x Muscle deep and 5cmX muscle deep.
4. Incised wound on left parietal region of sculp, measuring 2 cm x $\frac{1}{2}$ cm x muscle deep
5. Incised wound on right shoulder, measuring 2 cm x $\frac{1}{2}$ cm x muscle deep, bleeding.

3. Similarly Sajid Ali was also medically examined on the same day and his medical report was marked as Exhibit P/19 by PW -13, the Doctor which reads as follows:-

1. Incised wound on left region of hip, measuring 10cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm, margin sharp, bleeding.
4. Later on charge sheet was filed before the Court below and the charges were framed against the accused persons for the offence under Sections 307/34, 324 and 323 IPC. On behalf of the prosecution as many as 13 witnesses were examined and after the trial, the Court below vide its judgment dated 04.12.2000 acquitted all the accused persons from the offence under Section 307 IPC. Likewise, accused Habib Khan was acquitted from all the charges that were leveled against them. So far as accused Nasir he was found

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guilty of offence under Section 324 of causing injuries on Sabir and convicted for offence under Section 324 IPC and sentenced to undergo 1 year R.I. Accused Mundu and Kariya were found guilty of having assaulted Sabir and were convicted for offence under Section 323 IPC and sentenced to R.I. for 6 months. It is this judgment which has been assailed. The complainant Sabir Ali has filed Revision Petition seeking for remittance of the case for re-consideration as according to him the accused should not have been acquitted from the charge for offence under Section 307 IPC. Likewise, the accused persons who have been convicted also preferred an appeal against the judgment of conviction imposed upon them.

5. So far as the Revision Petition is concerned according to the complainant if the statement of PW-13, Dr. Vinay Gupta is taken into consideration it clearly reflects that there were 5 incised wounds on the injured Sabir Ali, PW-7 and in addition there was incised injury sustained by Sajid Ali. The complainant also submitted that the injuries that were sustained by PW-7, Sabir Ali were on the vital part of the body and therefore initially the Court below was justified in framing charge against them for offence under Section 307 IPC, but later on taking the medical evidence which have come on record in a mechanical manner acquitted the accused persons from the offence under Section 307 IPC and have convicted Respondent No. 3 accused Nasir and Umesh as well as Kariya only for the offence under Sections 324 and 323 IPC respectively.

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6. In addition, Counsel for the complainant submits that the impugned order is bad in law to the extent granting clear acquittal to the accused Habib from all the charges inspite of the fact that his name is reflected right from the stage of F.I.R. and therefore the acquittal of Habib deserves to be set aside / quashed.
7. At this juncture learned Counsel for the convicted accused assailing the order submits that the evidence which have come on record clearly suggests that the case of the prosecution has not been established by any of the independent witnesses particularly when the incident occurred on main road in front of Cinema Hall yet there has been no independent witness to prove the case of the prosecution and the witnesses which have been examined are all interested witnesses. Therefore, it gives rise to a great element of doubt in the prosecution story. Another submission made by the Counsel for the accused persons was that the prosecution witness PW-6 the best person who could have proved the prosecution case has not supported the case of the prosecution the benefit of which should have been given in favour of the accused persons. It was further contended that the statement of PW-6 who was the owner of the Beetal Shop reflects that there were about 6-7 persons who came in a group and have assaulted the injured persons and there is no individual overact reflected from the statement. It was also argued that there are major contradiction and omission in the statement of the eye witnesses and the other witnesses who have been examined during the course of investigation, the benefits of which also should have been given to the accused.

persons and they should have acquitted from all the charges granting them the benefit of doubt. It was also argued on behalf of the Appellants that all the injuries appears to have been inflicted by only a person who was having knife in his hand as all the injuries were incised wound which was caused by sharp edged weapon whereas the stand of the case of the prosecution itself is that accused persons were carrying cricket stump and knife. Thus benefit of doubt should be given to the accused persons who were not carrying knife and the judgment of conviction so far as these persons deserve to be set aside.

8. Having considered the rival contention put forth and on perusal of record what clearly reflects is the fact that so far as the incident is said to have occurred stands established from the statement of PW-7 Sabir Ali and PW-4 Sajid Ali who were the injured witnesses. Further PW-4 Sajid had just within 15 minutes of time lodged the F.I.R. and also proved the same before the Court. The occurrence of the incident also stands established from the statement of PW-6 Manhan Gupta in front of whose shop the incident had occurred and he too in his court statement admits occurrence though he may not have clearly supported the case of the prosecution so far as the overt act made by each of the accused persons but as far as the occurrence is concerned it stands proved and established.
9. So far as the injury part is concerned, the statement of the prosecution witnesses recorded right from the stage of recording F.I.R. till the Court statement clearly reflects that there is a firm and consistent version of

each of the witnesses in respect of the attack which was alleged to have been caused by the appellants accused on the injured persons. If we start from the F.I.R. Ex.P/12 there itself the lodger of the F.I.R. had categorically named all the accused persons to have assaulted the injured persons PW-7 Sabir and PW-4 Sajid. Even in their court statement in very categorical terms they have stated the presence of the appellants accused and in the Court statement also PW-7 Sabir has stated that it was Nasir who had inflicted the knife injury on side as well as on the neck portion and Umesh to have assaulted by stump on his head and it was also stated that Kariya @ Hamid also assaulted with fist, foot and knife causing injury near right ear as well as right shoulder. The statement of the PW-7 further reiterated from the evidence of PW-4 another injured person who too had clearly stated that Hamid and Mundu assaulted the injured PW-7 Sabir with stump on his head and Nasir and Karia too have assaulted Sabir.

10. In addition to this important witness if we look into the statement of PW-13 the Doctor who had examined the two injured persons it would clearly reflect that PW7 Sabir in fact had received five incised wound on his body. From the evidence that has come on record it clearly reflects that these five injuries could not have been sustained by a simple fall or by the assault made by hands and fists. So far as the assault made by the accused persons are concerned it stands proved and established. So far as PW-4 Sajid is concerned he too has received incised injuries. Thus, the incident has been established, the injury has been established and it is also established that PW - 7 has

received five injuries and a couple of the injuries were on the vital parts and there being categorical evidence of the injured witness PW-7 that knife injury was caused by Nasir, it can not be said that the Court below has committed any illegality and infirmity in reaching to the conclusion of holding the appellants guilty, of the appellant No. 1 under Section 324 IPC and appellants No. 2 & 3 for offence under Section 323 IPC. The description of the stump recovered also reflects that the incised injury could also be caused by it as it had a tin piece fixed at its bottom.

11. Since, the prosecution has been able to establish its case beyond all reasonable doubt particularly from the evidence of the injured persons. Thus, the name of the appellants present at the place of incident has been reflected in the F.I.R. and also in the other statements which had been recorded subsequently. This Court thus has no hesitation in reaching to the conclusion that the judgment of conviction passed by the Court below was proper, legal and justified and the same does not warrant any interference.
12. So, far as the Revision Petition which has been filed by the complainant seeking remittance of the case back to the Trial Court for re-consideration and the question of conviction under Section 307 IPC is concerned if we look into the deposition of PW-13, the Doctor who had examined the two injured persons it would clearly reflect that the Doctor after minutely examining the injuries sustained by the two witnesses have reached to the conclusion that the injuries which were sustained by the two persons PW-7 Sabir and PW-4 Sajid were all

simple in nature and even a perusal of the medical report establishes this aspect as all the injuries were only muscle deep and were bleeding and none of the injuries have been bone deep nor there was any fracture sustained by any of the injured person.

13. Thus in the given facts and circumstances particularly when the Doctor gives a specific report of the injuries being simple in nature, the offence under Section 307 IPC could not have been established. In the given facts and circumstances of the case this Court is the opinion that no strong case has been made out by the complainant-revisioner calling for interference with the impugned judgment of conviction and for remittance of the same back to the Trial Court for reconsideration on the said offence.

14. For the foregoing reasons we are of the opinion that the Revision Petition preferred by the complainant as well as the Appeal preferred by the accused-appellant both being devoid of substances deserves to be and are accordingly dismissed.

15. The appellants are on bail. Their bail bonds are cancelled. They are directed to surrender forthwith and/or be taken into custody for serving out remaining period of their sentences.

Sd/-
Chief Justice

Sd/-
P.Sam Koshy
Judge