



28

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.10 of 2000

1. Rajkumar S/o Dhaniram, aged 19 years, R/o Akhradand, P.S.-Chirmiri, District-Surguja(Chhattisgarh).
2. Dhaniram S/o Niga Yadav, aged 40 years, R/o Akhradand, P.S.-Chirmiri, District-Surguja(Chhattisgarh)

---- Appellants

Versus

1. State Of M.P. (now Chhattisgarh) Through-Police Station- Chirmiri

---- Respondent

For the Appellants: Smt. Ranjana Jaiswal, Advocate.

:Smt. Usha Chandrakar, Advocate through legal aid.

For the State : Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

28/11/2016

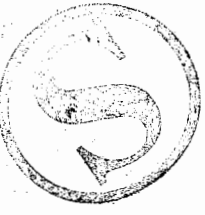
1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the Additional Sessions Judge, Manendragarh in Sessions Trial No.88/1998 on 12.10.2000, whereby appellant No.1 Rajkumar has been convicted under Section 326 of IPC and sentenced to undergo R.I. for 1 year with a fine of Rs.500/- and appellant No.2 Dhaniram has been convicted under Section 323 of IPC with a fine of Rs.500/-.



26

2. The facts of the case in brief are these, that in the year 1997 complainant Sumeshwar(PW-3) had cultivated pulse in his fields in village-Akharadand. On the date of incident 14.11.1997, at about 7 a.m. buffaloes belonging to appellant No.2 Dhaniram entered the cultivated fields of complainant and started grazing, seeing it, complainant and his son Chhotelal (PW-5) caught hold of the buffaloes and they were taking them to the cattle pound then appellants Dhaniram, Rajkumar and Deni Yadav assaulted the complainant with clubs thereby causing injuries to him. Hearing commotion, his brother Sunder came on the spot, appellant Rajkumar assaulted him with a crow bar and caused grievous injury on his head. FIR Ex.P-4 was lodged on the same day by Sumeshwar (PW-3), offence under Section 307, 323/34 of IPC were registered against the appellants and one Deni Yadav. In the investigation, injured Sumeshwar(PW-3) and Sunder (PW-2) were medically examined, blood stained and plain soil were seized from the spot vide Ex.P-5, blood stained clothes were seized from the possession of Sunder Ram (PW-2), one club was seized from accused Deniram vide Ex.P-7, one crow bar was seized from the appellant/accused Rajkumar vide Ex.P-8. Spot map was prepared vide Ex.P-12 by the Investigating Officer, seized article crow bar was sent for examination. On medical examination, it was found that Sunder Ram(PW-2) suffered with a grievous injury of fracture on his right parietal bone. Statement of witnesses were recorded. On completion of investigation appellants were charge-sheeted.

3. Appellants and accused Deniram were charged under Section 323/34 and 307/34 of IPC, they denied the charges. The trial was completed and appellants and accused Deniram examined under Section 313 of Cr.P.C. in which they pleaded innocence and false implication. It was stated that there was a land dispute between complainant Sunder Ram (PW-2) and accused persons. For this reason, complainant party assaulted the accused party. Impugned judgment has been passed by the trial Court in which accused Deni Ram has been acquitted. On the other hand, appellant/accused persons have been convicted and sentenced as mentioned above.
4. The grounds in this appeal are these that the trial Court has erred in giving the finding on the conviction against the appellants. The weapon used by appellant-Rajkumar cannot be regarded as a weapon likely to cause death. The case against this appellant is not covered under Section 326 of IPC. The medical evidence is also against the finding of the trial Court. It has been prayed that appellant-Rajkumar be given benefit of doubt.
5. It is submitted on behalf of the appellants that the statement of injured witnesses and other witnesses are not trustworthy. In the evidence of medical experts, though the injury of Sunderlal was found to be grievous, but it was not fatal neither dangerous in any manner. For these reasons, the appellants had been entitled of benefit of doubt. In the alternative, it is submitted on behalf of the appellant No.2, that he has already undergone custody of a period of about 2 months. It is



prayed that the sentence of appellant No.1(Rajkumar) be modified to imprisonment for a period of custody already undergone by him.

6. Learned counsel for the State has argued that prosecution has proved its case beyond reasonable doubt. The statement of eyewitnesses Sunder Ram(PW-2), Sumeshwar(PW-3) and Chhotelal(PW-5) have been reliable, which has been relied upon by the trial Court to arrive at the finding. Opposing the arguments of the appellants side, it is submitted that there is no scope for interference in the impugned judgment.
7. After hearing the arguments and perusing the material on record the question before this Court is whether the conviction under Section 326 is supported with evidence of prosecution or not ?
8. Appellant No.1 has been charged for causing grievous injury on the head of Sunderlal with a crow bar which resulted in fracture on his head, hence, the consideration shall be limited to this aspect alone. Sunder Lal (PW-2) is the injured person who has stated that on the date of incident, when the buffaloes of appellant Dhaniram were grazing his fields, his brother Sumeshwar was driving them to cattle pound, at that time appellant Rajkumar and others came on the way and Dhaniram and others initiated the assault. Appellant Rajkumar hit on his head with a rod, due to which he was injured and fell down in the ground. In cross-examination, this statement has remained rebutted.



9. Sumeshwar (PW-3) is also a witness to this incident, has stated that appellant No.1(Rajkumar) used a crow bar to assault his brother Sunder Ram(PW-2) this statement is also unrebutted, in his cross-examination. Chhotelal(PW-5) is another witness present on the spot who has stated similarly and his statement has also remained unrebutted, in his cross-examination. The eyewitness account is very clear and unrebutted, on that point, that the assailant was appellant No.1 (Rajkumar), who used a crow bar to assault the Sunder Ram(PW-2) in thereby causing injury to him.
10. Sunder Ram(PW-2) was examined by Dr. R.R. Gajbhiaiye (PW-11), who has stated that on examination, he found one lacerated wound of 2X1" size in right side of the head of Sunder Ram and also found other simple injuries in his report vide Ex.P-10, he has opined that the injuries were caused by some hard and blunt object and appeared to be grievous in nature. He referred the injured for further treatment. In cross-examination, Dr. R.R. Gajbhiaiye(PW-11) has admitted on suggestion of the defence, that since injured was admitted for treatment on 14.11.1997 and he came to consciousness on the next day and recovered very soon, hence, the injury cannot be regarded as serious, on which the appellant has given emphasis, but this statement cannot be taken as a ground to decide the nature of injury, specially when there is other evidence available in this respect, on the record. Dr. A.K. Pandey(PW-9) has vide his report Ex.P-16 given his statement that on X-ray examination of Sunder, it was found that he had a fracture on his right parietal region of his skull, X-ray film Ex.P-



30

17 and Ex.P-18 have been examined by this witness to opine as per his report Ex.P-16. In cross-examination, he has admitted that injured was discharged from the hospital on 19.11.1997.

11. It is true that Sunder Ram (PW-2) had a injury of fracture on his head, which is a grievous injury as defined under Section 320 of IPC, but the gravity of injury on the other count that it was of such grave nature which could have caused danger of his life, such opinion has not been given by any of the doctors. On the other hand, looking to the injury and the opinion of the doctors, this also cannot be held that the injury caused to the injured Sunder Ram(PW-2) was sufficient to cause death, in due course of nature.

12. Section 326 of IPC defines the offence according to which when a grievous hurt is caused to a person by any instrument for stabbing etc which when used as a weapon of offence is likely to cause death. In this context, the use of article crow bar can be termed as a weapon of offence which can be used for causing death of any person. Hence, conviction of appellant No.1 (Rajkumar) under Section 326 of IPC is proper which cannot be interfered with.

13. Considering the prayer on behalf of the appellant No.1 that the sentence part be modified to the period of custody already undergone by him, during trial in appeal. It is submitted on behalf of the appellant that actual by the case was of free-fight, as the members of appellant party also suffered injury which has been stated by Dr. A.K. Pandey (PW-1) that he examined appellant No.2 (Dhaniram) his wife Lalli Bai,



who had suffered simple injuries, the reports Ex.P-2 and Ex.P-3 have been exhibited, which has not been put to any challenge by the prosecution. Hence, this is a ground which can be considered for relaxing the sentence of imprisonment of appellant No.1. It is also submitted that since the date of incident 19 years have elapsed, appellant had regular and particular in giving appearance and defending during the trial Court and thereafter prosecuting this appeal, which has caused enough hardship on him.

14. On the other hand, learned counsel for the State has opposed the contention of the appellant side. Looking to the facts above and considering in totality of the things at present, it appears that the incident took place because buffaloes of appellant Dhaniram grazed the cultivated fields of complainant party. Both the parties have participated in this incident, it was by chance that the appellant party over powered in the incident by causing grievous injury to Sunder Ram(PW-2) that explains the injury suffered by the appellant. In this situation and after the lapse of 19 years, it is not going to serve any purpose if the appellant No.1(Rajkumar) is sent for undergoing the remaining part of sentence, awarded in the case. Hence, the sentence of imprisonment can be modified.

15. In view of above discussions, the appeal is partly allowed. The conviction of appellant No.1 and 2 is upheld in this appeal and sentence passed for appellant No.2 is also upheld, the sentence passed in the impugned judgment for appellant No.1 is set aside. Instead of that appellant No.1 is sentenced with a period of detention



32

already undergone with a fine of Rs.500/-, in default of payment of fine further undergo R.I. for 3 months. Appellant No.1 need not to surrender.

16. The appellant No.1 is on bail. His bail bonds shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the Cr.P.C. He shall appear before the higher Court, as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha