

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1288 of 2014

1. Devnath @ Bhukha @ Ramdeo S/o Late Jagmohan @ Laxman,
2. Jainath Ram S/o Late Laxman, aged about 32 years,

Both R/o Village Changori, P.S. Dhourpur, Distt. Surguja (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, Through P. S. Dhourpur, District Surguja (C.G.)

---- Respondent

For Applicant : Shri Shashi Kumar Kushwaha, Advocate
For Respondent/State : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

22/11/2016

1. This appeal has been preferred against the judgment of conviction and sentence passed by Additional Sessions Judge (F.T.C.) Ambikapur in S.T. No. 129/2011 passed on 16/10/2014, whereby the appellants were convicted under Section 307/34 of Indian Penal Code and sentence with rigorous imprisonment of ten years along with fine of Rs. 1000/- each.

2. The case of prosecution is, that on 24/11/2010 at about 5 p.m. near Changori crusher, under Police Station, Dhourpur, District Ambikapur complainant Abhishek Singh (PW-3) was on his

way to home when appellants and juvenile Jagdev Lal stopped him on the way, thereafter appellant Devnath by using an axe assaulted Abhishek Singh with intention to commit murder on his neck causing injury and also causing injury on the left side of the face. Complainant felt unconscious and was taken to the District Hospital, Ambikapur. His brother Sanket Singh (PW-2) lodged information un-numbered vide (Ex.P/5) with the officer of Police Station, Ambikapur in the Hospital and on its basis later on numbered FIR (Ex.P/9) was recorded for the offence under Section 341 and 307 of IPC against Devnath @ Bhukha. Investigation was carried out in which seizure of blood stained and plain soil from the spot was made vide (Ex.P/3). Spot map (Ex. P/4) was prepared. Complainant was medically examined. One spot map made by the Patwari was also prepared. At the instance of appellant Devnath vide memorandum statement (Ex.P/1), one axe was recovered and seized from the possession of Devnath vide (Ex.P/2). Seized articles were sent for Forensic Science Laboratory Examination and report (Ex.P/29) was obtained, according to which the presence of blood stains were confirmed on axe seized from the appellant Devnath. Seized axe was also examined by Dr. Ravi Soni (PW-6) in which he has reported vide (Ex.P/7), that the injuries found on Abhishek Singh can be possibly caused by this axe. Statement of witnesses were recorded and on completion of investigation appellants were charge-sheeted. Juvenile Jagdev was charge-sheeted before the Juvenile Justice Board.

3. Appellants were charged under Section 341, 506 B and 307/34 of IPC. On denial of charge trial was conducted and impugned judgment was passed by which appellants have been acquitted under Section 341 and 506 B of IPC, but have been convicted under the remaining charged offence and sentenced as mentioned above.

4. The grounds in this appeal are these that the trial Court has erred in giving the findings against the appellants. Prosecution has not proved its case beyond reasonable doubt. No independent witnesses have been examined. There is no cogent or clinching evidence on record for holding the conviction against the appellants and prayed that the appeal be allowed and appellants be acquitted from the charge.

5. It is submitted on behalf of the appellants, that firstly the evidence of prosecution is not reliable which could not have been made the basis of conviction against the appellants. It is also argued that the evidence does not disclose any motive or intention of the appellants for the purpose of causing death of the complainant. In the alternative, it is argued that the appellants are in jail since their arrest. Appellant No. 1 was arrested on 25/11/2010 and appellant No. 2 was arrested on 27/11/2010, hence the sentence part of the impugned judgment may be modified to the imprisonment for the period of custody already undergone by them.

6. On the other hand, counsel for the State has argued that in

this case complainant himself and two eye witnesses namely Kannilal (PW-5) and Supriya Singh (PW-4) have supported the case of prosecution. The medical evidence is also very clear and supportive, that attempt was made to cause death of the complainant, hence for these reason, there is no ground to interfere with the impugned judgment.

7. Hearing at length the appellants side and counsel for the State, and perusing the material on record, the question before this appellate Court is this, whether conviction under Section 307/34 of IPC standing against the appellants is sustainable or not?

8. Main witness of this case Abhishek Singh (PW-3) has stated, that on the date of incident at about 4 p.m. he was informed that appellant Devnath and his brother are obstructing the transport of stones from the quarry, which was managed by this witness. Later on at the time of incident this witness was standing near the quarry. Appellants approached him and demanded that for each trip of transporting stones he will be required to pay Rs.100/- to them, which was refused by the complainant, on which appellant Devnath who was carrying an axe, took it out and assaulted this witness who got an injury on back side of his neck and he fell down. Thereafter appellant Devnath assaulted again with axe causing injury on his left cheek, after which he went unconscious. He came to consciousness in District Hospital, Ambikapur and thereafter he was referred for treatment in higher center. He was admitted in Apollo Hospital,

Bilaspur till January 2011, even then he was not cured completely and requires treatment time to time.

9. In cross-examination the questions were put regarding the dispute of the land of stone quarry, which is not considered relevant. The statement given by him in examination-in-chief has remained un-rebutted. He has been confronted with his previous statement vide (Ex.D/1), the discrepancy pointed out are of no consequence. He has again confirmed his statement that on being assaulted by appellant No. 1 he fell down on the ground and after that he was assaulted again by appellant No. 1, after which he went unconscious.

10. Supriya Singh (PW-4) is eyewitness to this incident and narrated about it in his examination-in-chief, in cross-examination the discrepancy pointed out on the basis of previous statement are of no consequence and which cannot be considered as material. Kannilal (PW-5) is eyewitness of this case and his statement is similar to Supriya Singh (PW-4) and his statement is un-rebutted in his cross examination. Sanket Singh (PW-2) is brother of complainant who arrived at the Hospital where his brother was taken and admitted for treatment. He has stated about receiving the information of the incident and lodging the un-numbered FIR (Dehati Nalishi) vide (Ex.P/5).

11. Dr. Ravi Soni (PW-6) examined injured Abhishek Singh and found, that he had one incised wound on left side of his face measuring 7x3 cm and bone deep, another incised wound on back

side of the neck which was of size 3x1 cm vide (Ex.P6). He has reported that the injury was grievous in nature and caused by hard and sharp object. He has admitted that in his cross-examination that such kind of injury could have been caused if the injured fall down on sharp stones. This is only a suggestion and hypothetical question. No question was put to Abhishek Singh (PW-3) in his cross-examination that injuries were caused to him by fall on sharp stones. Neither any suggestion was given in cross-examination to the eyewitness Supriya Singh (PW-4) and Kannilal (PW-5). Apart from that no evidence has led by the defence to support this hypothesis, hence admission in cross-examination of Dr. Ravi Soni is of no consequence.

12. Dr. F.H. Firdousi (PW-13) has stated that injured Abhishek Singh was brought to District Hospital, Ambikapur on 24/11/2010 who was admitted and advised for C.T. Scan Examination, vide report (Ex.P/30) he referred injured Abhishek Singh for Neurological treatment to Medical College Hospital, Raipur. Dr. Kamalkant Bhoi (PW-14) has stated, that injured Abhishek Singh was admitted in Sri Balaji Superficiality Hospital, Mova, Raipur on 25/11/2010, who was discharged on 12/12/2010. He had a fracture on the left side of his jaw coupled with incised wound, for which he was operated and treated. He has proved the report (Ex.P/31), he has opined, that injury was grievous in nature, had he not been treated timely, then it could have caused death. But the statement is not clear to this effect, that the injuries caused to the complainant was sufficient to cause death in ordinary course of

nature which is a different finding and needed to be given for the purpose of ascertaining the intention of causing the injury.

13. Other witnesses who have been examined are Patwari Ramnarayan Dubey (PW-7), he prepared the spot map vide (Ex.P/8). Trainee Sub Inspector Devnarayan Singh (PW-8), who registered FIR (Ex.P/9) on the basis of un-numbered FIR, Inspector, Nilima Tirkey (PW-9) conducted a part of investigation, Assistant Sub-Inspector, Manoj Kumar Singh (PW-10) recorded un-numbered FIR vide (Ex.P/5) in District Hospital, Ambikapur, Sub-Inspector Deepa Kewat (PW-12) assisted in the investigation.

14. Assistant Sub Inspector S.K.S. Kanwar (PW-11) has stated, that appellant Devnath was interrogated and he gave memorandum statement vide (Ex.P/1) by which he informed about the axe to be hidden in his place of residence. Thereafter in presence of witnesses that axe was recovered from his possession. This statement has remained un-rebutted in cross-examination. Raju Kumar Koushik (PW-1) has supported the version of this witness and his statement remained un-rebutted in his cross-examination. This proves that appellant Devnath was found to be in possession of an axe. On the request of investigation officer this axe was examined by Dr. Ravi Soni (PW-6) and vide his report (Ex.P/7) he has given his opinion, that the injuries caused to complainant Abhishek Singh could have been caused by this weapon. On the basis of this evidence there is proof on record that the appellant No. 1 was in possession of an axe, which is sharp edged weapon and there is likelihood of this

article for having been used at the time of incident.

15. Considering all the evidence on record, it appears that according to the evidence of medical experts, none of the injuries caused to the appellants can be regarded as fatal in nature, there is no clear opinion of any of the doctor examined, that the injuries caused to the complainant was sufficient to cause death in ordinary course of nature, even in deposition of Abhishek Singh (PW-3), he has not made any statement appellants intended to cause his death. Similarly Sanket Singh (PW-2) who recorded un-numbered FIR (Ex.P/5), has not stated that appellants intended to cause death of Abhishek Singh (PW-3). Though it is mentioned in (Ex.P/5) that appellants assaulted the complainant with intention to cause his death, but in this regard there is omission in the statement of Sanket Singh (PW-2). After overall consideration of the evidence on record it can be safely concluded, that appellant Devnath was the assailant and appellant Jainath actively assisted him in this incident, in furtherance of common intention. Appellant Devnath who assaulted the complainant Abhishek Singh by using Axe which is a dangerous weapon in sharp cutting object, with which there is likelihood of causing death. The injuries caused to the complainant have been reported to be of a grievous in nature, but appellant required a long treatment for the injury caused on the left side of his face in which he had suffered a fracture of jaw. The gravity of neck injuries has not been explained by any of the doctors examined. The injury caused on the face and jaw of the complainant can be certainly regarded as grievous injury, as

defined in Section 320 of IPC. Hence the argument on behalf of the appellants, that in this case appellants had no intention to cause death of the complainant is acceptable. Coming to this conclusion, it is clear that the act of the appellants is covered under Section 326 of IPC. For this reason, the finding of the trial Court is considered as erroneous and it requires interference. This appeal is allowed in part. The conviction of sentence of the appellants under Section 307/34 is set-aside. Instead of that, appellants are convicted under Section 326/34 of IPC and sentenced with imprisonment of six years along with fine of Rs.1000/-, in default of payment of fine they will be required to undergo further rigorous imprisonment of six months each.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE