

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 387 of 2014

1. Sushil Ray S/o Late Krishnpad Ray Aged About 20 Years

2. Subrat Ray S/o Tushtpad Ray Aged About 19 Years

Both R/o. P.V. 89, P.S. Bande, Distt. Nort Bastar Kanker (C.G.)

---- Appellants

In Jail

Versus

- State Of Chhattisgarh Through: SHO,P.S. Pakhanjur, Distt. Kanker (C.G.)

---- Respondent

For appellants : Smt. Renu Kochar, Advocate.

For Respondent/State : Shri Ashish Surana, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

30/03/2016

This appeal arises out of the judgment of conviction and order of sentence dated 31.3.2014 passed by the Additional Sessions Judge, Bhanupratappur, Distt. North Bastar, Kanker, in ST No.55/2013, convicting accused/appellant No.1 under Section 307 of IPC, sentencing him to undergo RI for 5 years, fine of Rs.4000/- and appellant No.2 under Section 323 of IPC, sentencing him to undergo RI for 1 year & fine of Rs.500/- with default stipulations.

02. Brief facts of the case are that on 16.4.2013 at 10.05 pm FIR (Ex.P/6) was lodged by Niranjana Bairagi (PW-6) against the appellants

alleging therein that on that day at about 5 pm due to old enmity the accused/appellants have caused injuries to his cousin brothers Sanjeet Bairagi (PW-7) and Mithun Bairagi (PW-3) by club and axe. Based on this FIR, offence under Sections 323, 294, 307, 34 of IPC was registered against the appellants and one juvenile Anup Goldar. Injured Mithun Bairagi (PW-3) was medically examined by PW-11 Dr. DS Nareti vide Ex.P/11 who noticed a cut wound on right side of his shoulder, triceps muscle and vein were cut, complaint of pain by the victim on back side of head and opined that the injury were dangerous to life, the same were caused by hard and sharp object. Likewise, MLC of injured Sanjeet Bairagi was done by PW-11 vide Ex.P/10 wherein the doctor noticed rupture wound on top of his head, complaint of pain on left side of cheek and opined that the said injury was simple in nature, caused by hard and blunt object. After completing investigation, charge sheet was filed under Sections 323, 294, 307, 34 of IPC. While framing charge, the trial Court charged the appellants under Sections 323, 307, 34 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 13 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits as under:

- that statements of PW-3 Mithun Bairagi, PW-5 Vimla, PW-6 Niranjan Bairagi and PW-7 Sanjeet Bairagi are not reliable because they have exaggerated their version while deposing in the Court.
- even if the entire prosecution case is taken as it is, appellant No.1 Sushil Rai cannot be convicted under Section 307 of IPC and considering the nature of injury, the fact that the victim was discharged on the same day, at best he is liable to be convicted under Section 326 of IPC. Further, considering the fact that appellant No.1 is in jail since 17.4.2013, his sentence may be reduced to the period already undergone by him.
- in relation to appellant No.2 Subrat Rai, it is submitted that he has been sentenced for one year RI whereas he has already remained in jail for about two months and therefore, his sentence may also be reduced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that considering the weapon of offence axe used by appellant No.1, the nature of injuries sustained by the victims, the manner in which the appellants assaulted them, conviction of the appellants is strictly in accordance with law and the sentence imposed thereunder are also just and proper warranting no interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-3 Mithun Bairagi, injured witness, while supporting the prosecution case has stated that three days prior to the date of incident while he was returning along with his cousin Niranjana Bairagi (PW-6) on his motorcycle, the accused/appellants who were coming from opposite direction dashed their vehicle and then started quarreling with them. He has stated that on the date of incident at about 5 pm the accused/appellants again started abusing him and when his brother Sanjeet Bairagi (PW-7) intervened, they started quarreling, accused/appellant No.2 Subrat gave a club blow on the head of his brother, as a result of which he started bleeding and thereafter, accused/appellant No.1 Sushil assaulted him with axe, which hit his right shoulder and it started bleeding. Thereafter also the accused persons caused them injuries. In cross-examination, this witness remained very firm and nothing could be elicited from him by the defence to discredit his testimony.

09. PW-7 Sanjeet Bairagi, another injured witness, while supporting the prosecution case has made almost similar statement as has been made by PW-3 Mithun.

10. PW-11 Dr. DS Nareti had medically examined injured Sanjeet Bairagi (PW-7) vide Ex.P/10 and noticed following injuries:

(i) rupture wound on the top of the head which is about 5 cm long and 0.5 cm deep,

(ii) patient complaining pain on left side of the cheek.

In his opinion, the injuries are simple in nature and may be caused by hard and sharp object. The injuries will be healed within 5-6 days.

He had also medically examined injured Mithun Bairagi (PW-3) vide Ex.P/11 and noticed following injuries:

- (i) cut wound on right side of the shoulder which is about 7 cm long and 4 cm deep. The triceps muscle has been cut and vein is also cut.
- (ii) patient complaining pain on back side of the head.

In his opinion, the injury is dangerous to life, the injury may be caused by hard and sharp object and it will be healed within 20-25 days.

He had also given query report Ex.P/12 stating therein that the injuries sustained by the victims could have been caused by the club and axe.

In cross-examination, he admits that after giving primary treatment, the injured were discharged and then he states that he had advised them to go to higher center for their treatment. He has denied the suggestion that the injuries suffered by the victims could be caused due to fall.

11. PW-5 Vimla is also an eyewitness to the incident. While supporting the prosecution case she has stated as to the manner in which the victims were assaulted by the accused persons. PW-6 Niranjana Bairagi, lodger of FIR and eyewitness to the incident has also supported the prosecution case. PW-1 Jagdish Mahato has turned hostile and did not support the prosecution case. PW-2 Kailash Singh Dhruv, Patwari, prepared the spot map Ex.P/2. PW-8 Dilip Mandal and PW-9 Samir Bhale, are witnesses to seizure Ex.P/8 and P/9 whereby weapons of offence were seized. They have supported the prosecution case. PW-13 Pawan Verma, investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that there was

previous animosity between the accused/appellants and the victims (PWs-3 & 7). On the date of incident i.e. 16.4.2013 both the appellants assaulted the victims with club and axe. As per evidence of the eyewitnesses, appellant No.1 Sushil caused injury to PW-3 Mithun on his right shoulder with axe whereas appellant No.2 Subrat assaulted PW-7 Sanjeet with club. Both the injured witnesses have consistently deposed in the Court as to the manner in which they were assaulted by the appellants and their evidence finds due support from the evidence of other eyewitnesses. This apart, medical evidence also corroborates the version of the injured persons. Thus, on the basis of unrebutted ocular and medical evidence on record, it stands proved beyond reasonable doubt that it is the accused/appellants who caused injuries to the victims.

13. As regards conviction of appellant No.1 under Section 307 of IPC, considering the overall facts and circumstances of the case, the manner in which the offence was committed and the nature of injury as defined by PW-11 Dr. DS Nareti, this Court is of the opinion that it will not be safe to hold that appellant No.1 had intention of committing murder of PW-3 Mithun or even had the knowledge that by making such assault he may die. Being so, for his act he can safely be held guilty under Section 326 instead 307 of IPC.

14. So far as conviction of appellant No.2 Subrat is concerned, as discussed above, there is no illegality in it and the trial Court after due appreciation of the entire evidence has rightly convicted him under Section 323 of IPC.

15. The next question which arises for consideration of this Court is as to what would be appropriate sentence which can be imposed on the appellants?

16. As for quantum of sentence in relation to appellant No.1 Sushil Rai under Section 326, considering the fact that he is behind the bars for the last more than three years and that there is no minimum sentence prescribed thereunder, the ends of justice would be served if he is sentenced to the period already undergone by enhancing the fine amount from Rs.4000/- to Rs.15000/- with default stipulation. Similarly, considering the fact that appellant No.2 is a young boy of 19 years and he has been in jail for about two months, it seems to be proper to sentence him also to the period already suffered by him with a direction to pay additional fine amount of Rs.500/- with default stipulation.

17. In the result, the appeal is allowed in part. While acquitting appellant No.1 Sushil Rai of the charge under Section 307 of IPC, he is held guilty under Section 326 of IPC and sentenced to the period already undergone by him. He is also sentenced to pay a fine of Rs.15,000/-, inclusive of fine of Rs.4000/- imposed by the trial Court. In default of payment, he shall suffer additional RI for six months. On deposit of such fine amount, the same shall be given as compensation to PW-3 Mithun Bairagi by the trial Court after due verification/identification.

Similarly, while maintaining conviction of appellant No.2 Subrat Rai under Section 323 of IPC, his jail sentence is reduced to the period already undergone by him. However, he is further sentenced to pay a

fine of Rs.1000/-, inclusive of fine of Rs.500/- imposed by the trial Court, and in default, he shall suffer additional RI for three months. On payment of the said fine amount, it shall be given to PW-7 Sanjeet Bairagi as compensation by the trial Court after due verification/identification.

Sd/

(Pritinker Diwaker)

Judge

Khan