

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.207 of 2015

Ramesh Kumar Khatri, son of Laxman Das Khatri, aged about 50 years, occupation shopkeeper, R/o Laxmi Nagar, Matan Market, Supela, Bhilai, District Durg (Chhattisgarh)

--- Appellant

versus

1. Smt. Sarwati Devi, W/o Prabhunath Kushwaha, aged about 40 years,
2. Prabhunath Kushwaha, S/o Nathuni Singh, aged about 42 years,
3. Chandan Kumar Kushwaha, S/o Prabhunath Kushwaha, aged about 21 years,
All residents of Laxmi Market, Supela, P.S. Supela, District Durg (Chhattisgarh)
4. State of Chhattisgarh, through Police Station Supela, District Durg, Chhattisgarh

---- Respondents

For Appellant	:	Shri Arun Kochar, Advocate
For Respondents No.1 to 3	:	Shri Mahesh Kumar Mishra, Advocate
For State/Respondent No.4	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

14/1/2016

1. In 2015 AIR SCW 6251 (Satya Pal Singh v. State of Madhya Pradesh), it has been observed as follows:

“13. this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-section (3) to Section 378 of Cr.P.C.”

2. Learned Counsel for the Appellant therefore prays for and is permitted to make necessary incorporation in the memo of appeal seeking leave to appeal. He is permitted to do so during the course of the day.

3. The Stamp Reporter is henceforth required to take note of the excerpt from Satya Pal Singh (supra) in all future acquittal appeals preferred by the victim/complainant and/or his/her relatives.

4. I.A. No.1 of 2015 has been filed to condone delay of 79 days. Considering the duration of delay and after hearing Learned Counsel for the parties, delay is condoned.

5. The Appellant assails conviction of the private Respondents under Sections 325/34 and 323/34 IPC with regard to the assault made on Ramchandra Khatri and Ishwar Khatri, respectively as ordered on 27.7.2015 by the Additional Sessions Judge, Durg in Sessions Trial No.58 of 2010.

6. Learned Counsel for the Appellant submitted that the charge originally was under Section 307/34 IPC. The injuries on both Ramchandra Khatri and Ishwar Khatri were serious in nature evident from the deposition of PW-11, Dr. Rajan Tiwari, who conducted the MLC. The doctor has deposed that there was fracture on the right side of the head of Ramchandra Khatri and small brain hemorrhage which were grievous in nature. Similarly, with regard to injured Ishwar Khatri, PW-11, Dr. Rajan Tiwari has deposed of a fracture on the right side of the face grievous in nature. The assault was made with lathi and bricks. The accused came to the shop of the Appellant/injured with the intention to assault. If the injuries were grievous in nature and there was fracture on a sensitive part of the human body like the head and face, conviction under lesser Sections 325/34 and 323/34 IPC was unjustified and ought to have been ordered under Section 307 IPC. On the question of sentence also, it was contended that sentencing till rising of the Court was also unjustified even in the nature of conviction ordered. Reliance was placed on (1983) 2 SCC 28 (State of Maharashtra v. Balram Bama Patil), 2005 AIR SCW 3511 (State of Madhya

Pradesh v. Saleem alias Chamaru) and (2008) 11 SCC 523 (State of Madhya Pradesh v. Imrat).

7. We have heard Learned Counsel for the State also.

8. Learned Counsel for the private Respondents submitted that according to the prosecution case, the shops of both sides were situated next to each other and there was commercial rivalry between them. The question of the Respondents having come with a premeditated intention to kill simply does not arise as they were present at their own shop. No dangerous weapons of offence have been used. It was a dispute which occurred on the spur of moment preceded by a verbal altercation. The Trial Judge has adequately discussed the contradiction in the evidence of PW-11, Dr. Rajan Tiwari and PW-12, Dr. Shriranjan Rao to arrive at a conclusion for conviction under Sections 325/34 and 323/34 IPC which calls for no interference. The sentence was not till rising of the Court but to the period already undergone. Respondent No.1 is a lady. The fact that she would have indulged in a physical assault when her husband and son were assaulting risking injury to herself in a fracas between several males from both sides is highly improbable. The order under appeal therefore calls for no interference.

9. We have considered the submissions on behalf of the parties.

10. According to the prosecution, the grain shops of the Appellant and the private Respondents were located next to each other. There was business rivalry between them because of the same. A verbal altercation first ensued on 10.9.2009 at 11:00 p.m. when they were closing their shops. The verbal altercation was followed by an assault with bricks and sticks. We therefore find it difficult to accept with the submission that the private Respondents came with an intention and premeditated design to the shop of the Appellant for the specific purpose of the assault. Though there has been seizure of

brick, Exhibit P-5 and a wooden bait, Exhibit P-11 and Exhibit P-12, there is no evidence to support the fact of its having been used for the assault, but nonetheless there are injuries to the two persons. The Appellant failed to prove the charge under Sections 294 and 506B IPC in the same occurrence leading to acquittal from the same and which has not been assailed in this appeal.

11. PW-11, Dr. Rajan Tiwari, who was a Neuro-Surgeon and conducted MLC of Ramchandra Khatri, deposed of a fracture on the left side of the head bone and a small brain haemorrhage describing it as grievous in nature. PW-12, Dr. Shriranjan Rao, who conducted CT Scan of Ramchandra Khatri classified the injury as hairline fracture. The Trial Judge concluded that there was variation in the medical opinion of the two doctors and giving precedence to that of PW-12, Dr. Shriranjan Rao, who carried out the CT Scan as distinct from ocular observation by PW-11, Dr. Rajan Tiwari relied on the former to hold that the injury was not dangerous to life. We find no reason to take any different view of the matter.

12. With regard to the injuries on Ishwar Khatri, PW-11, Dr. Rajan Tiwari deposed that on examining him he did not find any injury, but the X-ray as conducted by the ENT Surgeon opined a grievous nature of fracture on the right side of the face. Dr. Shriranjan Rao, PW-12, who conducted CT Scan on Ishwar Khatri did not find any abnormality. Referring to the opinion of PW-11, Dr. Rajan Tiwari based on the report of the ENT Surgeon, the Trial Judge held that the ENT Surgeon had not been examined and in view of the conflicting reports of PW-11 and PW-12 arrived at the conclusion that the injuries were simple in nature. We find no reason to differ with the same.

13. The Trial Judge has adequately discussed that the origin of the dispute lay in a business rivalry between the parties whose shops were situated next to each other while considering the question of sentence.

14. We have applied our minds both to the acquittal of the charge under Section 307 IPC in conjunction of the nature of the injuries caused and the discussion of the evidence led by the prosecution as done by the Trial Judge along with all surrounding circumstances for the purposes of sentencing and in the facts and circumstances of the present case we find no reason to interfere with. A lathi is not a dangerous weapon of offence but is carried by every villager. There is no allegation that the private Respondents had come armed with bricks. Obviously, it was picked-up on a spur of moment lying on the road when the assault followed a verbal altercation.

15. Each criminal case has to be decided on its own facts with regard to what shall be the appropriate conviction and sentence. In Balram Bama Patil (supra), the facts were with regard to the election of Panchayat Samiti and rivalry between rival fractions, one side suddenly appeared from behind the bushes armed with guns and axes. Death had taken place. Others were injured and some of the accused had been acquitted. The case is clearly distinguishable on its own facts.

16. Likewise, in Saleem alias Chamaru (supra), the Respondents had misbehaved with a police officer on duty in a public place attacking him with a sharp edged weapon. It was in the peculiar facts and circumstances that the Court held that it was the nature of the assault made and not the effect of the same which was relevant and that undue sympathy may render a criminal trial a futility. The case is completely distinguishable on its own facts. Likewise, in Imrat (supra), the assault was made on the head with a farsa, a sharp cutting weapon causing six injuries unlike the present case where a lathi and bricks were used the genesis of which lay essentially in a business rivalry.

17. The Trial Judge at the time of sentencing has adequately discussed that the male Respondents had already undergone four months and sixteen days' custody while the sole female Respondent had undergone two months and fifteen days' custody and considered it prudent to reduce the sentence to the period undergone keeping in mind that the origin of the entire occurrence lay in business rivalry between the parties and therefore a harsher punishment was not called for. The reasoning, in our opinion, is not to be faulted with.

18. The appeal is dismissed.

Sd/-
(**Navin Sinha**)
CHIEF JUSTICE

Sd/-
(**P. Sam Koshy**)
JUDGE