

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 892 of 2002

1. Bodhi Ram, S/o. Pudku Sahu, Aged about 52 years, R/o. Village Kodwabani, Police Station Lalpur, District Bilaspur (C.G.)

(Dead)

2. Ramnath, S/o. Hardev Prasad Sahu, Aged 32 years, R/o. Village Bhusandi, Police Station Lalpur, District Bilaspur (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Police Station Lalpur, District Bilaspur (C.G.)

---- Respondent

For Appellants : Mr. Vikash Pandey, Advocate
For Respondent/ State : Mr. Vivek Singhal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

20.11.2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 20.08.2002 passed by the Additional Sessions Judge, Mungeli, Session Division- Bilaspur in Sessions Trial No. 367/2000, whereby the learned Additional Sessions Judge, convicted the appellants for the offence punishable under Section 323 read with 34 IPC and sentenced each of them to

undergo rigorous imprisonment for 6 months and to pay fine of Rs. 500/- with default stipulation.

2. Appellant Bodhi Ram died during pendency of this appeal on 27.12.2006, therefore, the instant appeal so far as it relates to him is abated.

3. The case of the prosecution in brief is that on 07.07.2000 at about 8.00 AM at village Kodwabani injured Jodhram was proceeded to Mungeli along with his relative Parmesh and Mahesh for treatment. When they stopped at the place of incident, at that time accused/appellants came there and assaulted injured Jodhram. The matter was reported to police station Lalpur. After registration of First Information Report Ex.P-16, the matter was investigated by Police, certain articles were seized from the place of incident. Injured Jodhram was sent for medical examination. After completion of investigation, charge sheet was filed before the trial Court wherein the trial Court framed charges as mentioned above to which the appellants did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the appellants under Section 313 of the Cr.P.C. were recorded and after completion of trial, the Additional Sessions Judge considering the material available on record by the impugned judgement convicted and sentenced the accused/appellants as mentioned above.

4. Learned counsel appearing for the accused/appellants submit that the witnesses of the prosecution are interested

witnesses and their version is not reliable. He submits that it is a case of assault by the complainant party and another case arises out of one incident, therefore, the accused/appellants have not committed any offence as they are not aggressor on the complainant party. Learned counsel for the appellants further submits that the version of the witnesses are contradictory in nature that creates serious doubt about the injury sustained by the injured Jodhram.

5) *Per contra*, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of appeal.

6) I have heard counsel for the parties and perused the material on record.

7) To substantiate the charge prosecution has examined as many as 7 witnesses in their support. The appellants did not examine any witnesses in his defence.

8) As per version of Jodhram (PW-4), Mahesh Kumar (PW-3), Parmesh Sahu (PW-6), Appellants Bodhiram and Ramnath assaulted complainant Jodhram by club. Version of all these witnesses is remained unshaken during the cross-examination even after searching cross-examination nothing could be elicited in favour of the appellant. Again version of all the witnesses supported by the version of Dr. Vibha Sindur (PW-1) who found

injury on the head of Jodhram. As per version of doctor injuries were simple in nature as the x-ray of the head does not reveal fracture on the head.

9) There is no force in the argument of learned counsel for the appellants that the case of the prosecution be thrown over because there are some contradictions. In view of this Court, there is no material contradiction on the statement any other witnesses, minor contradiction are bound to occur because evidence of the witnesses recorded before the Court after lapse of time. The witness has limited memory and ocular evidence is not equivalent to tape recorder. From the evidence it cannot be inferred that any of the members of the complainant party assaulted the appellant first. In absence of such evidence it cannot be inferred that the complainant party was aggressor and accused/appellant was acting in self defence of body. Case of the appellants/accused does not fall in any section mentioned between Section 76 to 106 of the IPC.

10) The accused/appellants was aware of the fact that causing injury by club will cause pain to the injured and same is done knowingly, act of the accused/appellants is involuntary causing simple hurt to the injured and the act of the appellants falls within the mischief punishable under Section 323 read with section 34 of the IPC, this Court is of the considered opinion that the findings recorded by the trial Court convicting the appellant under Section 323 read with Section 34 of the IPC are based on due appreciation of the evidence on record and there is no

illegality or infirmity in the same. The appeal is without any substance and the conviction of the appellants imposed by the trial Court under Sections 323 read with section 34 of the IPC is hereby affirmed.

11) Heard on sentence part. Appellant Ramnath has been charged for causing simple injury to the injured Jodhram and he suffered jail sentence during the trial from 08.07.2000 to 01.08.2000 i.e. 24 days. The incident happened in the year 2002 and after 15 years it would not be proper to send him back jail again. Appellant Ramnath is sentenced to the period already undergone by him for the offence under Section 323 read with section 34 of the IPC, fine amount will remain intact.

12) Accordingly, the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Santosh