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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2840 of 1998

Jabba Alias Jaspal Kumar Ratnani

Versus

The State Of M.P.

C A V JUDGMENT

Post for pronouncement of judgment on...31/10/2017

Sd/-
Sharad Kumar Gupta
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 26.10.2017

Delivered on 31.10.2017

Criminal Appeal No. 2840 of 1998

(Arising out of judgment dated 26.11.1998 in Sessions Trial No.92/98 passed of the Sessions Judge, Rajnandgaon)

- Jabba Alias Jaspal Kumar Ratnani S/o Shri Kishan Chandra Jivatram Ratnani, aged about 27 years, R/o Chokadiapara, Oppo. Paras Furniture, Rajnandgaon, District Rajnandgaon.

---- Appellant

Versus

- The State of M.P. (now Chhattisgarh).

---- Respondent

For Appellant	:	Miss Sangeeta Mishra, Advocate
For State	:	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

CAV JUDGMENT

1. In this Criminal Appeal the challenge levied is to the judgment of conviction and order of sentence passed by the Sessions Judge, Rajnandgaon on 26.11.1998 in Sessions Trial No.92/98 whereby and whereunder the appellant was convicted for the offence under Section 324 of the Indian Penal Code (hereafter called as 'IPC') and sentenced to undergo rigorous imprisonment of 1 year and to pay a fine of Rs. 500/-, in default of payment of fine to undergo additional rigorous imprisonment for 1 month.

2. In brief, unfolded prosecution case follows the subsequent events. The complainant – Nirmala Bai aged about 21 years was the resident of Korimbhata, Rajnandgaon. On 08.06.1998 by 12:00 noon

the complainant – Nirmala Bai was in her house, her husband had gone away outside for the purpose of some work. The appellant had come in her house and tried to molest her. The complainant went to the house of the appellant and reported the matter to his father and his brother. Thereafter, on every day by 06:00 pm, the appellant again came in her house and picked a kitchen knife, tried to cause blow on her head, she bent, thus injury was caused on her back, another injury was also caused on her right hand. The prosecutrix lodged the report in PS-Basantpur which was registered in '0' number. Thereafter, crime No.103/98 was registered. After completion of the investigation, charge-sheet was filed against the appellant under Section 307 of the IPC. A charge under Section 307 IPC was framed against the appellant. He abjured the allegation levelled against him and faced the trial.

3. To bring home the charge, the prosecution examined as many as 12 witnesses. The appellant did not examine any witness in his defence. After conclusion of the trial, he was convicted and sentenced as mentioned herebefore.

4. Miss Sangeeta Mishra, counsel for the appellant urged that the alleged incident does not seem to be probable, the trial Court has failed to see that there are material contradictions among the statement of the complainant, the FIR and her statement recorded under Section 161 of the Cr.P.C., none of the eye witnesses supported the prosecution case, thus aforesaid conviction and sentence are bad in law and not sustainable. The sentence may be altered to the period of undergone.

5. Shri Avinash Singh, Panel Lawyer for the State urged that the said conviction and sentence imposed upon the appellant are just and proper and do not call for any interference.

6. PW-1 the complainant says in para-1 of her statement on oath that the appellant came in her house second time, picked kitchen knife and caused injuries on the back of her neck and on her elbow.

7. There are some omissions and contradictions have been dealt with her statement, police statement Ex.D/1, FIR Ex.P/1 and Ex. P/12. These omissions and contradictions are not material and does not affect the credibility of the aforesaid statement of PW-1, the complainant.

8. There is no such evidence in record on the strength of which it could be said that the said statement of PW-1, the complainant is untrustworthy.

9. PW-10 Dr. B.C. Jain says in paras-1&2 of his statement on oath that on 08.06.1998, he had examined the complainant and found one stab wound on left scapular region, another stab wound on left side of neck, third stab wound on right forearm, all the injuries are caused by hard and sharp object, occurred within 6 hours. Injury number 3 was simple in nature. No definite opinion can be given about the injury numbers 1 and 2, he has advised the X-ray for injury numbers 1 & 2, he had also examined blood stained soil, plain soil, a knife, a blouse and advised for the chemical analysis of the said articles. He had also opined that death could not have been caused due to aforesaid injuries.



10. There is no such evidence on record on the strength of which it could be said that the said statement of PW-10 Dr. B.C. Jain, his reports Ex.P/9A, Ex.P/11A are not believable. Thus, this Court believes said statements of PW-10 Dr. B.C. Jain, Ex.P/9A and Ex.P/11A.

11. Ex. P/1 has been lodged promptly on very day within 45 minutes of the incident. There is a description of alleged incident, role of the appellant. There is no such evidence on record which indicates that Ex.P/1 is not natural, not simple.

12. Looking to the above mentioned circumstances, this Court believes said statement of para-1 of PW-1, the complainant.

13. After the appreciation of the evidence discussed herebefore, this Court finds that the appellant is guilty of the offence punishable under Section 324 IPC. Thus, this Court finds that the trial Court has not committed any error to hold the appellant guilty of Section 324 IPC.

14. In **Manjappa v. State of Karnataka {(2007) 6 SCC 231}** Hon'ble Supreme Court dealing with the case wherein applicant was sentenced by the High Court under Section 325 IPC for simple imprisonment for 1½ months and fine Rs. 1000/- with stipulation clause, held in para-14 as under :-

"14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the facts and

circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and Om Prakash does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed. ”

15. In SPS Rathore v. Central Bureau of Investigation and Another {(2017) 5 SCC 817} while dealing the punishment under Section 354 of the IPC held in paragraph 55 as under :-

“55. With regard to sentence of the appellant-accused, learned Senior Counsel on his behalf has pointed out certain mitigating factors which are - old age of the appellant-accused, health ailments, responsibility of looking after the unmarried daughter suffering from congenital heart disease, past meritorious service and prolonged trial. Keeping in view the aforementioned factors especially the old age and physical condition of the appellant-accused, we do not think it expedient to put him back in jail. While we uphold the findings as to the guilt of the appellant-accused, we are of the opinion that the cause of justice would be best sub-served when the sentence of the appellant-accused would be altered to the period already undergone. We, therefore, reduce the sentence of the appellant to the period already undergone by him as a special case considering his very advanced age.”

16. Considering the above mentioned observations this Court finds that at the time of the incident no minimum imprisonment was provided for the offence punishable under Section 324, IPC. The incident happened on 08.06.1998 i.e. more than 19 years have elapsed. Now the appellant is near about 46 years old. He was in jail

from 09.06.1998 to 11.06.1998, from 26.11.1998 to 05.12.1998 and he was also arrested on 11.04.2016 and sent to the jail. Now, he is in mainstream of society. Sending him again to jail would disturb his life and his family members' life too. Hence, no useful purpose would be served by sending the appellant back to jail. I am of the opinion that the cause of justice would be best subserved when the rigorous imprisonment of one year to the appellant is altered to the period already undergone by him and fine amount is enhanced.

17. Therefore, the rigorous imprisonment of one year under Section 324 of the IPC awarded to the appellant is reduced to the period already undergone by him. The imposed fine of Rs. 500/- is enhanced to Rs. 5,000/- (Rupees five thousand only). The appellant should deposit remaining part of fine amount before the trial Court within a period of two months from receipt of this judgment. In default of payment of fine amount, the appellant will undergo rigorous imprisonment for three months. The entire fine amount so deposited shall be paid to the complainant – Nirmala Bai as compensation under Section 357 of the Cr.P.C.

18. Consequently, the appeal is partly allowed. The bail bond of the appellant should be discharged subject to the provisions contained in Section 437-A of the Cr.P.C.

Sd/-
Sharad Kumar Gupta
Judge