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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 122 of 2000**

1. Prabhu Shrivastava son of Ramesh Shrivastava, aged about 22 years;
2. Rajesh Bihari alias Kullu, son of Shyam Bihari Ghore, aged about 32 years; (dead)
3. Raju alias Virendra Bihari, S/o Shyam Bihari Ghore, aged about 24 years,
4. Rajendra Bihari alias Nanka son of Shyam Bihari Ghore, aged about 22 years, (dead)

All residents of Dayalband, police station City Kotwali, Bilaspur.

---- Appellants

Versus

State of Madhya Pradesh (now Chhattisgarh).

---- Respondent

For the Appellants	:	Ms. Pritha Goshal, Advocate.
For the Respondent/ State	:	Shri O.P. Sahu, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

20.2.2017

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 23.12.1999 passed by the Second Additional Sessions Judge, Bilaspur, District Bilaspur, Chhattisgarh in Sessions Trial No. 390 of 1998, whereby and whereunder the learned Second Additional Sessions Judge has convicted appellants No. 1 and 3 under Section 325 read with Section 34 of the Indian Penal Code (for short 'IPC') and appellants No. 2 and 4 under Section 325 of the IPC and sentenced them to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- each, in default of payment of fine to further undergo SI for one

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month. Appellant No.2 – Rajesh Bihari @ Kullu and Appellant No.4 – Rajendra Bihari have expired during the pendency of this appeal. Hence, the appeal, so far as it relates to Appellants No.2 and 4, stands abated.

Sand Quayside

2. The case of the prosecution, in brief, is that on 30.4.1998 at about 11:15 pm, complainant – Jitendra Soni (PW-3) went to Dayalband to inspect his sand quarry and near Gurunanak school, he saw the accused persons transporting sand in a truck. The complainant stopped the said truck and asked for receipt, upon which the accused persons assaulted him with clubs and hockey sticks causing injuries to him. He lodged the First Information Report Ex. P/6 in police station City Kotwali on the same day at about 11:30 pm. He was medically examined by Dr. G.K. Khetrapal (PW-2) vide Ex. P/2. Vide X-ray report Ex. P/5, Dr. R. Jeetpure (PW-1) found grievous injuries on patella of the left leg of the complainant. After registering the offence under Section 307 of the IPC, the case was investigated and a club was seized at the instance of Rajesh Bihari alias Kullu (now deceased) vide memorandum Ex. P/12 and seizure memorandum Ex. P/10. One hockey stick was seized at the instance of Rajendra Bihari alias Nanka (now deceased) vide memorandum Ex. P/13 and seizure memorandum Ex. P/11. Dr. G.K. Khetrapal (PW-2) examined the club and hockey stick and submitted that the injuries caused to the complainant may have been caused by these articles vide report Ex. P/4 and replied to the query vide Ex. P/5 that the injuries caused to the complainant were of grievous in nature. Blood stained clothes of complainant – Jitendra Soni (PW-3) was seized vide Ex. P/7 and the truck used for transport of sand by the accused persons was seized vide Ex. P/8. Spot map Ex. P/15 was prepared. A receipt book regarding the entries of

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sand was seized vide Ex. P/16. Statements of the witnesses were recorded and on completion of the investigation, appellants No. 1 and 3 were charge-sheeted for the offence punishable under Sections 325/ 34 of the IPC and appellants No. 2 and 4 were charge-sheeted for the offence punishable under Section 325 of the IPC.

3. The appellants pleaded innocence and denied the charges. On denial of charges, the trial was conducted. The prosecution examined as many as ten witnesses. The appellants in their statements under Section 313 Cr.P.C. have claimed that they have been falsely implicated in this case. The impugned judgment has been passed by which the appellants have been acquitted under Section 307 of the IPC, however on the basis of evidence on record, they were convicted and sentenced for lesser offence as mentioned above.

4. The grounds in this appeal are that the trial court has failed to appreciate the evidence of the prosecution which was not trustworthy. The statements of the witnesses had been full of contradictions and omissions which could not have been relied upon for conviction of the appellants. Thus, there was no legally admissible evidence against the appellants to convict them. On these grounds, the appellants may be acquitted.

5. Learned counsel for the appellants submits that the contesting appellants are appellant No.1 - Prabhu Shrivastava, has undergone in custody for a period of 2 months and 28 days and appellant No.3 - Raju @ Virendra Bihari, who has undergone in custody for a period of 3 months and 12 days. Learned counsel submits that looking to the facts that the incident took place



in the year 1998 i.e. more than 18 years have passed since then and there had been no gravity in the offence committed by the appellants, the sentence imposed upon them may be reduced to the period of custody already undergone by them in jail. It has been further argued that the statements of the prosecution witnesses do not inspire confidence which may be appreciated and by extending the benefit of doubt, the appellants may be acquitted of the charges.

6. Learned State counsel has opposed the grounds and the arguments advanced on behalf of the contesting appellants and submitted that the prosecution has proved its case against the appellants beyond reasonable doubt and there is no infirmity in the impugned judgment.

7. Considering the material on record and the arguments advanced by both the sides, the question which arises in this appeal is, whether the conviction against the appellants is supported by evidence of the prosecution beyond all reasonable doubt?

8. The main witness in this case is complainant Jitendra Soni (PW-3). He stated that on the date of incident he stopped the truck which was transporting sand and asked appellant No.4 – Rajendra Bihari alias Nanka (now deceased) and appellant No.1 – Prabhu Shrivastava to show the papers for transporting sand. After some conversation, all the appellants/ accused persons assaulted the complainant with sticks and bricks causing injuries to him. At his instance, FIR Ex. P/6 was recorded. In cross-examination, he denied the suggestions given in defence and his statement that the appellants assaulted him with sticks and other things has remained

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unrebutted.

9. Kishore Jaiswal (PW-4) is the eyewitness of the incident and supported the version of the complainant and remained consistent with his statement in examination-in-chief.

10. B.S. Parihar, SHO, (PW-8) stated about recording of the FIR by Jitendra Soni (PW-3) and conducted the investigation. Dr. G.K. Khetrapal (PW-2) has examined the injured Jitendra Soni on 30.4.1998 and found the injuries i.e. one abrasion on left knee, one contusion on left temporal region, one cut wound on right cheek and one contusion on right mandibular region vide Ex. P/2. His statement has remained unrebutted in cross-examination.

11. Dr. R. Jeetpure (PW-1) conducted the X-ray on Jitendra Soni (PW-3) and found one bony injury on the patella of his left knee vide his report Ex. P/1. As per evidence of the doctor, presence of injuries on the body of the complainant supports and corroborates the statement of Jitendra Soni (PW-3) and there is no need to discuss about the remaining witnesses examined by the prosecution as they are related to investigative procedures. The statement of complainant Jitendra Soni (PW-3) is fully supported and corroborated by the independent witnesses as well as medical evidence including the Investigating Officer. Soon after the incident, FIR Ex. P/6 was recorded by the complainant. Thus, the evidence of the prosecution in this case appears to inspire the confidence. There is no evidence in defence to rebut or disclose a parallel theory in defence, as the defence of the appellants had been of simply denial.

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12. Thus, the finding of the trial court on the basis of this evidence is correct and there is no such kind of contradiction or omission which can be regarded as material so as to effect the credibility of the witnesses of the prosecution. Thus, the finding of conviction against the contesting appellants by the trial court is held to be proper.

13. The submission of counsel for the appellants needs consideration. Appellant No. 1 – Prabhu Shrivastava is represented although he is presently absconding and undergone a period of 2 months and 28 days in custody during the pendency of the trial and this appeal. Similarly, appellant No.3 – Raju @ Virendra Bihari has undergone a period of 3 months and 12 days in custody during the pendency of the trial and this appeal. The incident took place on 30.4.1998 i.e. more than 18 years back. On going through the record of the appeal, it is disclosed that one compromise petition was also filed by the complainant/ injured Jitendra Soni (PW-3) on 7.10.2009 which could not be considered and decided by this court.

14. Looking to the facts and circumstances of this case, it appears to be a fit case where the sentence awarded to the contesting appellants i.e. appellant No.1 Prabhu Shrivastava and appellant No.3 Raju alias Virendra Bihari under Section 325/34 of the IPC should be reduced to the period of custody already undergone by them in jail.

15. In view of the above, this appeal is allowed in part. The conviction of appellants No.1 and 3 is maintained, however the sentence imposed upon them is reduced to the period of custody already undergone by them. The

fine amount shall remain the same which has been awarded by the trial court. They need not surrender and be set at liberty if not required in any other case.

SD/-
(Rajendra Chandra Singh Samant)
Judge

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