

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1143 OF 2001

Lebeyan S/o Atiram Munda Isai, age 30 years, Village: Katang Kuapani,
Police Station: Kutra, District- Sundargarh (Orissa)

... Appellant

versus

State of Chhattisgarh, through Police Outpost: Belha, Distt. Bilaspur (C.G.)

... Respondent

For Appellant	:	Ms. Usha Chandrakar, Advocate.
For Respondent-State	:	Mr. Suryakant Nirala, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

07/10/2017

1. The present is a jail appeal preferred by the Appellant assailing the judgment of conviction and order of sentence dated 24.9.2001 passed by the Fifth Additional Sessions Judge, Bilaspur, in Sessions Trial No. 243 of 2001.

2. Vide the impugned judgment, the Appellant has been convicted for the offence punishable under Sections 353, 333 and 307 of IPC and sentenced to undergo R.I. for 6 months under Section 353 of IPC, R.I. for 3 years under Section 333 of IPC and R.I. for 7 years along with fine of Rs.1000/- with default stipulation under Section 307 of IPC.

3. Brief facts of the case as per the prosecution are that on 2.5.2001 the Appellant was caught hold by the villagers in a theft case and was being manhandled by them after tying his hands and feet. The matter was reported to the police authorities and the Complainant, Kunwar Das, a Constable, had gone to the place on the report being received from the villagers. On reaching the spot, the Complainant found the Appellant being manhandled by the villagers for an incident of theft. The Complainant untied the feet of the Appellant and was bringing him to the police station with his hands still tied. While bringing the Appellant to the police station,

the Complainant also asked the Village Kotwar, Nijam Das, to sit at the back of the Appellant in the motorcycle so that he could safely be taken to the police station. En route, the Appellant is said to have put his tied hands around the neck of the Complainant and tried to choke him and in the process the Complainant who was driving the motorcycle got unbalanced and all three on the motorcycle fell down and received injuries. Even after falling from the motorcycle, the hands of the Appellant were still around the neck of the Complainant and the Appellant was still trying to choke him. In the process, while the Complainant tried to get himself released, meanwhile the Appellant is said to have bitten the thumb of his right hand. The Complainant had also become unconscious. However, the villagers rushed to the spot and rescued the Complainant and released him from the clutches of the Appellant. Thereafter, a case was registered against the Appellant.

4. After conclusion of the trial, the Court below vide the impugned judgment, convicted the Appellant for the offence punishable under Sections 353, 333 and 307 of IPC and ordered him to undergo the sentences as mentioned in the preceding paragraph.

5. It is this judgement of conviction and order of sentence which has been assailed by the Appellant in the present appeal.

6. Learned Counsel for the Appellant submits that the offence punishable under Section 307 of IPC is not made out against the Appellant, inasmuch as the injuries sustained are simple injuries. Further, since the hands of the Appellant were tied while he was travelling on the motorcycle he could not have committed the offence. Thirdly, the injuries sustained is because of falling from the motorcycle and not by virtue of any overt-act by the Appellant and thus prayed for setting aside of the impugned judgment.

7. Learned Counsel for the Appellant further submits that even the offence under Section 353 or, for that matter, the offence under Section 333 is not made out, for the simple reason that the Appellant was not in a position to have reacted in the manner as alleged, as his hands and feet were tied up while he was being taken by the Complainant on his motorcycle and on this ground also the impugned judgment deserves to be set aside.

8. Per contra, opposing the appeal, learned Counsel for the State submits that it is a case where the case of the prosecution has been sufficiently proved by both, the injured-complainant as also by the eye-witness to the entire incident, and therefore there is no scope of any interference to the finding of guilt arrived at by the Court below.

9. Having considered the rival contentions put forth on either side and on perusal of the record, undisputedly, from the evidence which have come on record, that is the evidence of PW-4, the Complainant Kunwar Das, and PW-1, the Village Kotwar Nijam Das, the Complainant had reached the spot in exercise of his official duties wherein he was assigned to visit the village from where a complaint was received in respect of some alleged theft and where the villagers had red-handedly caught the Appellant and had tied him up for handing him over to the police authorities. The Complainant, Kunwar Das, a Constable, immediately reached the spot on his motorcycle and was taking the Appellant, an accused, to the police station and in the process the Village Kotwar, PW-1 Nijam Das was also asked by the Complainant to accompany him for dropping the Appellant at the police station. Thus, the incident having occurred while the Complainant was discharging his official duties and the fact that he was a government servant stands established and proved.

10. Further, from the evidence of the PW-4, Nijam Das, the Village Kotwar, and also the deposition of PW-1, Kunwar Das, the Complainant, it clearly reveals that the Appellant whose hands were tied up with a rope had put his arms around the neck of the Complainant and he was trying to choke him then the motorcycle on which they were travelling got unbalanced and all three fell down from the motorcycle. Falling on the ground also is attributable on the act of the Appellant and further even after the fall the Appellant is said to have clinched tight to the neck of the Complainant and was trying to choke him. This aspect also stands corroborated from the evidence of PW-1, Nijam Das.

11. The Complainant has also deposed and the Doctor has also supported his case of having sustained injuries by virtue of a bite that the Appellant had given on the thumb of his right hand as also the choking of the neck. Thus, the injuries suffered by the Complainant as well as by the Kotwar, Nijam Das are attributable to the Appellant. Thus, the necessary ingredients to bring the offence under Section 333 of IPC stands fully established.

12. What is now to be seen is that, whether the nature of injuries sustained can be brought within the ambit of Section 333 of IPC as also one under Section 307 of IPC?

13. A perusal of the deposition of the Doctor examined shows that the nature of injuries sustained were simple in nature. Considering the fact and circumstances of the case and the fact that the injuries were simple in nature, this Court does not find the offence under Section 333 of IPC to be made out, but the offence definitely falls one under Section 332 of IPC instead of Section 333 of IPC.

14. Likewise also, since the nature of injuries were not very grievous except for fracture on the shoulder of the Appellant, this Court is of the

opinion that the said offence also may not attract the offence under Section 307 of IPC but would definitely attract an offence under Section 324 of IPC.

15. Given the factual circumstances of the case, this Court is of the opinion that the conviction of the Appellant for the offence under Section 353 of IPC seems to be proper and justified and the same does not warrant any interference. However, the offence under Sections 333 and 307 of IPC is not made out, but the nature of the act would definitely bring the case under Sections 332 and 324 of IPC instead of Sections 333 and 307 of IPC.

16. This Court accordingly reduces the sentences for both these offences to 3 years each. That it to say, 3 years of R.I. for the offence under Section 332 and 3 years of R.I. for the offence under Section 324 of IPC. The sentence under Section 324 of IPC shall also carry fine of Rs.1000/- in default of payment which, the Appellant shall have to undergo one month additional R.I.

17. In the result, the appeal stands allowed to the extent that the conviction and sentence of the Appellant under Section 353 of IPC stands affirmed. However, his conviction under Sections 333 and 307 of IPC is set aside and instead he stands convicted for the offence under Sections 332 and 324 of IPC. He is now sentenced to undergo R.I. for 3 years under Section 332 of IPC and R.I. for 3 years with fine of Rs.1000/- under Section 324 of IPC. In default of payment of fine of Rs.1000/- under Section 324 of IPC, he is required to undergo additional R.I. for one month.

18. It has been informed by the learned Counsel for the State that the Appellant has already completed his jail sentence and has been released from jail on 26.1.2005. Thus, nothing further needs to be acted upon.

Sd/-
(P. Sam Koshy)
Judge