

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.139 of 2003

Judgment Reserved on : 10.8.2017

Judgment Delivered on : 27.10.2017

Dhiraj Kumar Sharma alias Golu, aged about 25 years, S/o Suresh Kumar Sharma, R/o Chhattisgarh State Electricity Board Quarter No.E-110, Darri, Police Station Darri, District Korba, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the District Magistrate, District Korba, Chhattisgarh

--- Respondent

For Appellant	:	Shri Rajendra Tripathi, Advocate
For Respondent/State	:	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 23.1.2003 passed in Sessions Trial No.26 of 2002 by the Additional Sessions Judge, Korba convicting the accused/Appellant under Section 307 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 4 years and to pay fine of Rs.500/- with default stipulation.
2. Case of the prosecution, in brief, is that on 18.5.2001, Rishi Kumar Rai (PW1) had arranged a Sumo Jeep through the accused/Appellant to attend a marriage ceremony at Banaras. For driving the said Sumo Jeep, an altercation had taken place between the Appellant and Rishi Kumar Rai. On 22.5.2001, at about 10:20–10:30 p.m., Rishi Kumar Rai was standing with his

friends Avinash and Sudhir (both have not been examined by the prosecution) near a betel shop in the shopping complex of MPEB. At that time, the Appellant reached there and assaulted Rishi Kumar Rai with an iron rod. As a result of the assault, he sustained injuries on the nose and head and fell down. His friends Avinash, Sudhir and Subrat (PW8) took him to the hospital. At about 10:30 p.m., Pramod Kumar Chouksey (PW3) informed father of the injured Ram Chand Rai (PW2) about the incident. Ram Chand Rai (PW2) went to the MPEB Hospital, where he was informed that the injuries sustained by his son/injured Rishi Kumar Rai were grievous in nature, therefore, the injured was shifted to Korba Hospital. On 23.5.2001, at about 6:30 p.m., Dehati Nalishi (Ex.P4) was lodged by Ram Chand Rai, on the basis of which, First Information Report (Ex.P3) was registered. The injured was referred to and admitted in MMI Hospital at Raipur. After investigation, a charge-sheet was filed against the Appellant under Section 307 of the Indian Penal Code. Charge was framed against him under Section 307 of the Indian Penal Code.

3. So as to hold the accused/Appellant guilty, the prosecution examined as many as 12 witnesses in support of its case. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied the charge and pleaded that at the time of incident, Rishi Kumar Rai came with his friends and assaulted him and while he was running away, Rishi Kumar Rai chased him on his motorcycle. While chasing, the motorcycle dashed with an electric pole as a result of which Rishi Kumar Rai sustained injuries. The Appellant examined 6 witnesses in his defence.

4. After trial, the Trial Court convicted and sentenced the accused/Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the accused/Appellant argued that the evidence of the eyewitness has not been considered and appreciated properly by the Trial Court. All the prosecution witnesses have not supported the case of the prosecution and there are material contradictions and omissions in the statements of the prosecution witnesses. Injuries sustained by Rishi Kumar Rai were not grievous in nature. No seizure of any weapon has been made by the prosecution. The prosecution has failed to prove its case beyond reasonable doubt.
6. Per contra, Learned Counsel appearing for the State supported the impugned judgment and submitted that the same does not warrant any interference by this Court.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. Rishi Kumar Rai (PW1) has deposed that on 22.5.2001 at about 10:00 p.m., he went near his betel shop. At that time, the Appellant called him, threatened him of life and assaulted him due to which he suffered injuries on the nose, face and head. As a result of the assault, he fell down. Thereafter, his friends took him to the MPEB Hospital. From there, he was referred to 100 bedded hospital at Korba. From there also, he was referred to the hospital at Raipur, where he remained hospitalised and received treatment for about 1

month.

9. Ram Chand Rai (PW2), father of injured Rishi Kumar Rai has deposed that at about 10:30 p.m., P.K. Chouksey (PW3) came his house and informed him about the incident. He along with him went to the MPEB Hospital and saw that his son/injured was lying unconscious and was bleeding from the nose and head.
10. Pramod Kumar Chouksey (PW3) has corroborated the above statement of Ram Chand Rai (PW2) and deposed that at about 10:20 p.m. he was chewing betel at the betel shop,. At that time, he heard the voice of "*bachao bachao*" (save save) from his behind. He turned towards his back and saw that the Appellant was assaulting Rishi Kumar Rai. Subrat (PW8), Avinash and Sudhir intervened. He asked them to take Rishi Kumar Rai to the hospital and he himself went to the house of Rishi Kumar Rai to inform about the incident to his father.
11. Mohd. Rafiq Memon (PW6) has also supported the prosecution case and deposed that at the time of incident he was in his shop. At that time, he had seen the injured bleeding from the head and face.
12. Subrat (PW8) has also deposed that at about 10:30 p.m. he was near the shopping centre. At that time, he saw people running away. He went to the spot and saw that Rishi Kumar Rai was lying down in front of the betel shop and he was smeared with blood. He further deposed that later on he came to know from Rishi Kumar Rai and other boys that the Appellant had assaulted Rishi Kumar Rai.

- 13.** Jeetram Sahu (PW4) has not supported the case of the prosecution and he has been declared hostile by the prosecution. Mohd. Rafiq Memon (PW6) has only deposed that he had seen the injured bleeding from the head and face. This witness has also been declared hostile.
- 14.** As per the prosecution story, injured Rishi Kumar Rai was first examined by Dr. Keshar at the MPEB Hospital, but Dr. Keshar has not been examined by the prosecution. Dr. M.S. Paul (PW5) has deposed that on 23.5.2001 at about 1:10 a.m., injured Rishi Kumar Rai was brought to the District Hospital at Korba. At that time, his condition was critical, but he was conscious. He was advised for x-ray examination of his skull and nose. Dr. Paul further deposed that after the x-ray examination, no bony injury was found on the skull and the nasal bone was found to be fractured.
- 15.** Injured Rishi Kumar Rai was further treated at MMI Hospital at Raipur. Dr. S.N. Madharia (PW9) has deposed that injured Rishi Kumar Rai was admitted in MMI Hospital, Raipur on 24.5.2001 and was discharged on 18.6.2001. Dr. K.D. Mishra (PW11) has also supported the above statement and deposed that after examination of the injured, he found that his nose had stopped functioning and became ugly. Therefore, he referred the case of the injured for plastic surgery. Dr. M.L. Jain (PW10) has also deposed that it was found that the nose of the injured was broken and septum was also broken. Therefore, he did a surgery of the injured.
- 16.** From the above statements of Dr. M.S. Paul (PW5), Dr. S.N. Madharia (PW9), Dr. K.D. Mishra (PW11) and Dr. M.L. Jain (PW10) and bare perusal of the medical reports (Ex.P1 and P6), it is clear

that there were only two injuries found on the body of injured Rishi Kumar Rai. One injury was found on the skull and the other was found on the nose. There was no bony injury on the skull. As per Ex.P1 and P6, the nasal bone was fractured which was operated by Dr. M.L. Jain (PW10).

17. It was argued by Learned Counsel appearing for the Appellant that the injuries which were found on the body of injured Rishi Kumar Rai were not caused by the Appellant. At the time of occurrence, when injured Rishi Kumar Rai was chasing the Appellant, his motorcycle had slipped and dashed with an electric pole and as a result of which Rishi Kumar Rai had fallen down and sustained the injuries. So called eyewitness Avinash has been examined as Defence Witness No.2. He has deposed that at about 10:30 p.m., a party was going on in his shop. They were consuming liquor. Rishi Kumar Rai had also consumed some quantity of liquor. After that, Rishi Kumar Rai went somewhere. Thereafter, he saw that near a betel shop, Rishi Kumar Rai was abusing the Appellant. Thereafter, Rishi Kumar Rai chased the Appellant on his motorcycle. The motorcycle slipped on the road and dashed with an electric pole and fell down.
18. The above statement of Avinash (DW2) is corroborated by Mahendra (DW3) and Mohd. Yasin (DW4). But, during the cross-examination of Dr. M.S. Paul (PW5), Dr. S.N. Madharia (PW9), Dr. K.D. Mishra (PW11) and Dr. M.L. Jain (PW10), not a single question or suggestion was put to them by the Appellant that the injuries suffered by Rishi Kumar Rai could have been caused or occurred due to his falling down after dashing with the electric pole.

Rishi Kumar Rai (PW1) has categorically stated that due to the assault by the Appellant, he sustained injuries on the face, head and nose. This statement of Rishi Kumar Rai (PW1) is duly corroborated by Pramod Kumar Chouksey (PW3) and Subrat (PW8). The medical reports (Ex.P1 and P6) also corroborate the statements of these witnesses. There is no evidence on record to suggest that the injuries suffered by Rishi Kumar Rai occurred due to his dashing with the electric pole. Therefore, it is clearly established that the injuries sustained by Rishi Kumar Rai were caused by the Appellant only.

19. From a bare perusal of the medical reports (Ex.P1 and P6) and the statements of Dr. M.S. Paul (PW5), Dr. S.N. Madharia (PW9), Dr. K.D. Mishra (PW11) and Dr. M.L. Jain (PW10), it is further clear that only two injuries were found on the body of the injured; one on the skull and the other on the nose. As per the medical evidence, the injury on the skull was of simple in nature. Only the injury on the nose was found to be grievous in nature. It is also clear that due to the nose injury, nose of the injured had stopped functioning and, therefore, it was treated by a plastic surgery. Apart from the above injuries, no other injury was sustained by Rishi Kumar Rai. It is also evident from the record that an altercation had taken place between the Appellant and the injured on 18.5.2001 before taking place of the incident and due to which the occurrence took place on 22.5.2001. There is nothing on record to suggest that the injuries were caused to Rishi Kumar Rai with an intent to cause his murder. The injury on nose was dangerous to his life is not opined by any of the doctors who treated the injured. Therefore, in my opinion, the present case does not fall within the purview of

Section 307 of the Indian Penal Code. Instead, it falls within the purview of Section 326 of the Indian Penal Code.

20. The conviction imposed upon the Appellant is, therefore, altered to Section 326 from Section 307 of the Indian Penal Code.
21. So far as sentence part is concerned, it was argued by Learned Counsel for the Appellant that there has been out of Court settlement between the parties for compounding the offence. Besides this, the Appellant is facing the *lis* since 2001 and he has already undergone for about 4 months and has no criminal antecedent. Therefore, he may be sentenced with the period already undergone by him.
22. From a bare perusal of the record, it is clear that on 31.8.2009, a compromise petition was jointly filed by the parties supported by their affidavits.
23. In **(1999) 5 SCC 238 (Surendra Nath Mohanty v. State of Orissa)**, it has been observed thus:

“4. It is vehemently contended by the learned counsel for the appellants that as the dispute was amicably settled and the matter was compromised, the High Court ought to have granted permission to compound the offences and ought not to have convicted the appellants and imposed the sentence. For this purpose, reliance is placed upon the decisions of this Court in *Ram Pujan v. State of U.P.*, (1973) 2 SCC 456 and *Mahesh Chand v. State of Rajasthan*, 1990 Supp SCC 681. As against this, learned counsel

for the respondent submitted that the offence under Section 326 is not compoundable and the High Court has rightly rejected the application for compounding the same. He, for this purpose, relied upon the judgment of this Court in *Ram Lal v. State of J&K*, (1999) 2 SCC 213 wherein after referring to Section 320(9) of the Code of Criminal Procedure, the Court observed that the decision in *Mahesh Chand*, 1990 Supp SCC 681 was rendered per incuriam.

5. In our view, the submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under the Indian Penal Code, a complete scheme is provided under Section 320 of the Code of Criminal Procedure, 1973. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column 3 of the said table. Further, sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, sub-section (9) specifically provides that “no offence shall be compounded except as provided by this section”. In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under the Indian Penal Code could not be compounded.

6. Further, the decision in *Ram Pujan case*, (1973) 2 SCC 456 does not advance the contention raised by the appellants. In the said case, the Court held that the major offences for which the accused

have been convicted were no doubt non-compoundable, but the fact of compromise can be taken into account in determining the quantum of sentence. In *Ram Lal*, (1999) 2 SCC 213 the Court referred to the decision of this Court in *Y. Suresh Babu v. State of A.P.*, JT (1987) 2 SC 361 and to the following observations made by the Supreme Court in *Mahesh Chand v. State of Rajasthan*, 1990 Supp SCC 681 and held as under: (SCC p. 682, para 3)

“3. We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial court shall permit them to compound the offence.”

7. In the case of *Y. Suresh Babu*, JT (1987) 2 SC 361 the Court has specifically observed that the said case “shall not be treated as a precedent”. The aforesaid two decisions are based on facts and in any set of circumstances, they can be treated as per incuriam as pointed attention of the Court to subsection (9) of Section 320 was not drawn. Hence, the High Court rightly refused to grant permission to compound the offence punishable under Section 326.

8. We reiterate that the course adopted in *Ram Pujan v. State of U.P.*, (1973) 2 SCC 456 and *Mahesh Chand v. State of Rajasthan*, 1990 Supp SCC 681 was not in accordance with law. However, considering the fact that the parties have settled their dispute outside the court and the fact that 10 years have elapsed from the date of the incident and the further fact that the appellants have already

undergone 3 months' imprisonment as per the sentence imposed on them, we think that the ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs.5000 on each of the accused under Section 326 read with Section 34 IPC. We reduce the sentence as indicated above and direct that in default of payment of fine, the appellants concerned shall undergo simple imprisonment for a further period of three months. We also refrain from imposing any separate sentence on the other counts of offences. Out of the fine amount, if realised, a sum of Rs.9000 also be paid to the injured as compensation.”

- 24.** In the light of above, the appeal is allowed in part. The conviction imposed upon the Appellant is altered to Section 326 from Section 307 of the Indian Penal Code and he is sentenced with the period already undergone by him. He is also sentenced with fine of Rs.500/-. It is submitted that the said amount has already been paid towards fine.
- 25.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE