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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.488 of 2012

Judgment Reserved on : 2.8.2017

Judgment Delivered on : 28.8.2017

Krishna Kumar, S/o Bachan Lal Satnami, aged 38 years, Labour Worker, resident of Village Khamhariya, Police Station Palari, District Raipur (Now Baloda Bazar/Bhatapara), Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Station House Officer Police Station Palari, District Raipur, Now District Baloda Bazar – Bhatapara, Collector, Baloda Bazar/Bhatapara, Chhattisgarh

--- Respondent

For Appellant : Shri Janak Ram Verma, Advocate
For Respondent/State : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal arises out of the judgment of conviction and order of sentence dated 21.5.2012 passed in Sessions Trial No.163 of 2011 by the First Additional Sessions Judge, Baloda Bazar convicting the accused/Appellant under Sections 307 and 294 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 10 years and pay fine of Rs.300/- and undergo rigorous imprisonment for 3 months and pay fine of Rs.100/-, respectively with default stipulation.
2. Case of the prosecution, in brief, is that on 24.4.2011 at about 6:00 a.m. at Village Khamhariya, the accused/Appellant, standing on his roof-top, was abusing Complainant Dayanand and his family members. Complainant Dayanand went in front of the house of the

Appellant and asked him to forbid abusing. On this, the Appellant threatened and asked him who was he to forbid him. In the meanwhile, Jageshwaribai, wife of the Complainant asked the Complainant to get back to home. When the Complainant turned to return to his home, the Appellant shouted saying that he will kill the Complainant and with an intention to kill him, hit him with an Axe on the back of the left shoulder due to which his ribs got severely injured. When Khileshwar, son of the Complainant came to save his father, the Appellant beat him with the handle of the same Axe. Thereafter, the Appellant dropped the Axe and fled from there. The injured Complainant was taken to Palari Hospital from where he was referred to Medical College Hospital, Raipur. First Information Report was lodged by Satanand, brother of the Complainant. After investigation, a charge-sheet was filed against the Appellant under Sections 294, 323, 325, 506B and 307 of the Indian Penal Code. The Trial Court framed charges under Sections 294, 506B, 324 and 307 of the Indian Penal Code.

3. In order to prove the guilt of the Appellant for the crime in question, the prosecution examined as many as 15 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.
4. After affording opportunity of hearing to the parties and appreciation of the evidence available on record, the Learned Additional Sessions Judge convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment.

5. Learned Counsel appearing for the Appellant argued that Satanand (PW-1), Khileshwar (PW-2), Dayanand (PW-3) and Kotwar Mohandas (PW-9) have stated different places of occurrence, therefore, the whole prosecution story is doubtful. It was further argued that victim Dayanand (PW-3) had received only one injury which was on back side just below the shoulder and the said injury was not on a vital part of the body and, therefore, there was no intention to kill him.

In the alternative, it was prayed that the Appellant is in jail since 24.4.2011 and he has undergone period of about 6 years and 3 months. Taking into consideration the facts and circumstances of the case, the jail sentence awarded to the Appellant under the impugned judgment may be modified to the period already undergone by him. Reliance has been placed on **R. Prakash v. State of Karnataka, (2004) 9 SCC 27**, **Ramdas v. State of Madhya Pradesh, (2009) 4 SCC 57** and **Sakharam v. State of Madhya Pradesh, (2015) 10 SCC 557**.

6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence and contended that no interference is called for.
7. I have heard Learned Counsel appearing for the parties and perused the entire record minutely.
8. Dayanand (PW-3) has deposed that at the time of incident, the Appellant was on the top of his roof and was abusing him and his family members. He went to father of the Appellant Bachanlal to complain about his son's behaviour. When he was returning for his house, which was situated in front of the house of the Appellant,

the Appellant came and assaulted him with an Axe on the back of the shoulder. Satanand (PW-1), who is brother of Complainant Dayanand has stated that the incident took place near Dayanand's house ahead of the boring. Kotwar Mohandas (PW-9) has deposed that the incident took place in front of the Appellant's house. Complainant Dayanand (PW-3) has categorically stated that his and Appellant's houses were situated adjacent to each other. Similarly, Kotwar Mohandas (PW-9) also admitted that the incident took place in front of the Appellant's house, that is to say, between the houses of the Appellant and the Complainant. From the above evidence, it is clear that the incident took place between the houses of the Appellant and the Complainant. Therefore, the argument advanced by Learned Counsel appearing for the Appellant that the prosecution witnesses have stated different places of occurrence has no substance.

9. As per the statement of Complainant Dayanand (PW-3), when he was returning for his house, the Appellant assaulted him with the Axe on the back of the shoulder. The above statement of Dayanand (PW-3) is corroborated by Satanand (PW-1), Khilleshwar (PW-2), Jageshwaribai (PW-4) and Mungabai (PW-5). Nothing emerged in their cross-examination to disbelieve their testimony. According to the M.L.C. Report (Ex.P-6), injured Dayanand had received one single blow measuring 6"x3"x1" on the back of the shoulder. As per the statement of Dr. F.R. Nirala (PW-10), ribs No.8, 9, 10, 11 and 12 were broken. Thus, internal broken bones were visible and lower lobe of left lung was also visible. Dr. Nirala opined that the nature of injury sustained by victim Dayanand was grievous and dangerous to his life. Therefore, the above statement

of Dayanand (PW-3) is also supported by the M.L.C. Report (Ex.P-6) and the statement of Dr. Nirala (PW-10).

10. It was argued by Learned Counsel for the Appellant that injured Dayanand had sustained only one injury by the Axe which was caused not on any vital part, but on the part of chest of the body below shoulder. Therefore, there was no intention to kill him. It is true that there was only one blow from the Axe on the back of the chest of the body below shoulder, but it is clear from the evidence that five ribs had broken/cut which were visible from open eyes and the lower lobe of the left lung of injured Dayanand was also visible. This injury was caused by the sharp edged Axe. It is also clear that when victim Dayanand was returning for his house, the Appellant assaulted him. Though only single blow was given yet the weapon of assault used, the manner in which the victim was assaulted and the force with which the assault was made clearly establish that there was an intention to kill victim Dayanand. Therefore, the finding recorded by the Trial Court does not suffer from any infirmity.
11. As regards the prayer for modification of the jail sentence imposed upon the Appellant, from perusal of the record, it is clear that the Appellant was arrested on 24.4.2011 and since then he is continuously in custody. His period of custody comes to about 6 years and 3 months.
12. Looking to the facts and circumstances of the case and that the Appellant has already suffered imprisonment for about 6 years and 3 months, it seems that the interest of justice would be served if the jail sentence awarded to the Appellant is modified and reduced

to the period already undergone by him.

13. In view of the aforementioned discussions, this appeal is partly allowed. The conviction recorded by the Trial Court against the Appellant is upheld, but the substantive jail sentence is modified and reduced to the period already undergone by him. The sentence of fine is upheld.
14. 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