

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1100 OF 2012

Arjun Suryawanshi, S/o Shri Kishun Suryawanshi, aged about 26 years,
R/o Village Nagoi, P.S. Sarkanda, Tahsil & District Bilaspur (C.G.)

... Appellant

Versus

State of Chhattisgarh, through District Magistrate, Bilaspur, District
Bilaspur (C.G.)

... Respondent

For Appellant	:	Ms. Meenu Banerjee, Advocate.
For Respondent-State	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

02/01/2017

1. The Appellant stands convicted and sentenced under Section 307 of IPC for 7 years rigorous imprisonment, under Section 326 of IPC for 3 years rigorous imprisonment and under Section 324 of IPC for 1 year rigorous imprisonment, and to pay fine of Rs.100/- on each count with default sentence of 1 month rigorous imprisonment, as ordered on 31.11.2012 by the Sixth Additional Sessions Judge, Bilaspur in Sessions Trial No. 179 of 2011.

2. The prosecution story in brief is that on 2.8.2011 when the complainant/injured witnesses, PW-2 Shoukhilal and PW-3 Chhotu, were coming after sowing the paddy, the Appellant is said to have charged them with a *tabbal* and started assaulting them, resulting in the injuries sustained to PW-2 and PW-3. An FIR in this regard was lodged by PW-1 Bisun. The matter was put to trial before the Court of the Sixth Additional Sessions Judge, Bilaspur vide Sessions Trial No. 179 of 2011.

3. During the course of trial, 14 prosecution witnesses were examined and no witnesses were examined on behalf of the defence. After conclusion of the trial, the Court below found the Appellant to be guilty of having committed offence under Sections 307, 326 and 324 of IPC and accordingly vide impugned judgment, convicting the Appellant under the said Sections sentenced him to the period as narrated in the first paragraph of this judgment. It is this judgment which is under challenge in the present appeal.

4. Counsel for the Appellant at the outset submits that she does not intend to contest the appeal on its merits and only wants interference with the impugned judgment to the extent of the sentence imposed upon the Appellant and the sentence part may be reduced to the period already undergone by the Appellant. According to her, the Appellant has already remained in jail for a period of 5 years, 4 months and 12 days as he is in jail since 2.8.2011. She submits that taking into consideration the peculiar facts of the case and also the prevailing circumstances which led to the fight between the parties, the Appellant deserves for a sympathetic consideration and the sentence may therefore be reduced to the period already undergone by the Appellant.

5. Counsel for the State however opposing the appeal submits that taking into consideration the fact that the Appellant has assaulted PW-2 and PW-3 both of whom had received head injuries and taking into consideration the nature of injuries which were grievous in nature, the impugned judgment does not warrant interference and thus prayed for the dismissal of the appeal.

6. Having considered the rival contentions put forth on either side and on perusal of the records, certain fact which need consideration from the evidences which have come on record, is that, the mother of the Appellant, namely, Dasmata Bai, had gone to Delhi for employment purpose and staying there with PW-2 Shoukhilal for a considerable long time. Another aspect which cannot be brushed aside is the relationship between the Appellant and two injured witnesses, PW-2 and PW-3. The PW-2 Shoukhilal is the paternal uncle of the Appellant. Likewise, PW-3 Chhotu is the brother of the Appellant. The father of the Appellant, namely, Kisun Suryawanshi, had died some time ago. Subsequent to the death of his father, the mother of the Appellant, Dasmata Bai, is said to have gone with PW-2 to Delhi for earning her livelihood and it is said that they had been staying there together. The record shows that it is this act where the PW-2 had taken the mother of the Appellant to Delhi which had drawn his annoyance which led to the assault by him on the injured persons. Undisputedly, the two injured witnesses did not have to undergo hospitalization for long and were discharged within a short period of time. Another factor which has also to be taken note of, is the period of custody undergone by the Appellant, that is, for a period of almost 5 ½ years, as he is in jail since 2.8.2011. Further, from the evidence of PW-2 Shoukhilal it is also reflected that on the date of incident the Appellant was heavily drunk and was in an inebriated condition when he caused the assault.

7. Taking all these aforesaid factual matrix of the case into consideration, this Court is of the opinion that so far as the incident is concerned, the same has been proved by the prosecution and it stands established and therefore the conviction of the Appellant for the offences for which he has been charged with, does not warrant any interference and

the conviction of the Appellant for the offence under Sections 307, 326 and 324 of IPC is thus affirmed.

8. However, in the peculiar facts and circumstances of the case, taking into consideration the age of the Appellant at the time of incident, the relationship of the Appellant with the two injured witnesses, the plausible reason which led to the assault by the Appellant on the injured, further PW-3 Chhotu got injured when he had gone to save PW-2 Shoukhilal or else there was no reason for the Appellant to assault PW-3 coupled with the fact that the Appellant was in a highly inebriated condition at the time of incident, the sentence imposed upon the Appellant for the offence under Section 307 of IPC deserves to be interfered with and the same is accordingly reduced to be period already undergone by the Appellant. The Appellant is stated to be in jail. He shall be released from jail forthwith, if not required in any other case.

9. With the aforesaid modification of sentence, the appeal stands dismissed.

Sd/-
(P. Sam Koshy)
Judge