

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 43 of 2010

Judgment Reserved on 19-9-2018

Judgment delivered on 29-10-2018

- Govind Rai S/o Shailendra Nath Rai, age 34 years, R/o Chathirma, Police Station Gandhi Nagar, Surguja At Present Sorga, Police Station Patna, Korea

---- Appellant.

Versus

- State of Chhattisgarh through Police Station Patna, District Korla (CG).

---- Respondent

For Appellant	:	Mr. D.N. Prajapati, Advocate.
For Respondent/State	:	Mr. Sanjeev Pandey, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 5-1-2010 passed by the Sessions Judge, Korla, Baikunthpur (CG) in Sessions Trial No. 15 of 2007 wherein the said Court convicted the appellant for the commission of offence under Section 324 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.500- with default stipulations.

2. As per case of prosecution, in the midnight of 27-9-2006 at about 2.45 a.m., at Jilmili Colliery, Pandopara prayer of Goddess Durga was going on where the victim N.R. Holkar was sitting. At

the same time appellant reached there and after using abusive language attacked him on his head by chair as a result of which the victim fell unconscious. The matter was reported and investigated. After completion of the trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) The trial Court has not considered the evidence of PW/4 Kamlesh Bahadur, PW/12 B. Kumar and PW/13 D.L. Bhaskar, who have not supported the version of prosecution.
- ii) The trial Court has overlooked major contradictions and omissions in the statement of the victim as well as other prosecution witnesses, therefore, finding of the trial Court is not sustainable.
- iii) Prosecution has failed to prove the case beyond reasonable doubt and the sentence part is harsh looking to the facts and circumstances of the case.

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the lower court in which impugned judgment has been passed.

6. To substantiate the charge, prosecution examined as many as 14 witnesses. In the present case, date of incident is 27-9-2006 and report was lodged on the same day at Police Station Patna by the victim in which name of the appellant is mentioned as culprit. N.R. Holkar PW/1 is victim of the case. As per version of this witness, he was present during function organised near Goddess Durga sitting place. As per version of this witness, appellant assaulted him by chair on his head and when he tried to assault twice, he caught hold chair and people sitting nearby intervened in the matter. The assault resulted in bleeding from the head of the victim and thereafter some people took him to hospital for medical treatment. Version of this witness is supported by version of Awadh Kishore (PW/2), J.S. Mahapatra (PW/3) and Kamlesh Bahadur (PW/4). All these witnesses have been subjected to searching cross examination but nothing could

be elicited in favour of defence. Version of these witnesses is supported by version of Medical Officer Dr. A.K. Sharma (PW/11) who examined the victim on 28-9-2006 and found the following injuries.

- i) Lacerated wound present on left frontal region of scalp, wound is situated 6" above from left supra orbital margin, size 4"x1/2"x bony deepness, margin irregular, blood stained red in colour.
- ii) Bruise & swelling present on dorsal surface of left palm, at middle, size 4"x3", pain and tenderness present.

He opined that patient is semi conscious, pulse 70/mt, BP 100/ 70 mm Hg plantar reflex is flexor, pupils are semi-dilated, reaction to light present.

(1) Advised x-ray of skull view.

(2) Advised x ray of left palm view.

The injury is caused by hard and blunt object. Duration of wound is within 8 hours. Suspected one of head injury. Patient is referred to SECL hospital for further x-ray and treatment.

7. As per version of this witness, injuries were caused by hard and blunt object. Duration of wound is within 8 hours. Injury was head injury. From the statement of this witness, it is established that victim was in semi-conscious condition and as per version of this medical expert, injury was dangerous to life. Version of this

witness is unshaken during cross examination and there is no other medical expert's report contrary to opinion of this expert.

8. There is no material contradiction regarding assault. Minor contradiction which does not go to the root of the case is insignificant. If any witness has not seen the incident that does not suffice to discard version of victim. It is the quality and not the quantity of the witnesses is to be seen. Argument advanced on behalf of the appellant is not acceptable looking to the sterling quality of evidence adduced by the prosecution.

9. True it is that all witnesses have not seen the incident, but the fact remains that the witnesses have reached on the spot and saw bleeding on the head of the victim. From the evidence of medical officer, it is clear that injuries were dangerous to life and therefore, the instrument in the present case was chair which was used as a weapon of offence and it is likely to cause death, therefore, offence under Section 324 of the IPC is established. Case of the appellant does not fall in any of the exceptions mentioned between Section 76 to 106 of the IPC and looking to the incident, it is clear that the appellant had intention or knowledge to cause pain to the victim which is voluntary in nature.

10. The trial Court has elaborately discussed the entire evidence and came to conclusion that offence punishable under Section 324 of IPC is proved against the appellant. This court has no reason to record contrary finding. Conviction of the appellant under Section 324 of IPC is hereby affirmed.

11. Heard on the point of sentence.

Looking to the fact that injury was danger to life, the sentence of one year awarded by the trial Court cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered with by this court.

12. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand cancelled. The trial Court will prepare super-session warrant and issue warrant of arrest against him. After his arrest he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial Court to submit compliance report on or before 24th January, 2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE

