

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 52 of 2010

Reserved on 10-9-2018

Delivered on 1-10-2018

1. Bugul @ Medhendra S/o Yashwant Singh, aged about 37 years, R/o Vill. Siud, Police Station Nawagarh, Janjgir Champa (CG).
2. Bhaiji @ Surajpratap Singh S/o Harshvardhan Singh aged about 25 years r/o Vill. Siud, Police Station Nawagarh, Janjgir Champa (CG)

---- Appellants.

Versus

- State of Chhattisgarh through the Police Station Nawagarh, District Janjgir Champa (CG).

---- Respondent

CRA No. 65 of 2010

- Sikku @ Jeevendra Pratap Singh S/o Bhagirathi Singh aged about 26 years, R/o Vill. Siund, Police Statkion Navagarh, District Jangjir Champa, CG

---- Appellant

Versus

- State of Chhattisgarh through Police Station Navagarh, District Janjgir Champa (CG).

---- Respondent

For Appellants in CRA : Mr. Malay Kumar Bhaduri Advocate
No. 52 of 2010

For appellant in CRA : Mr. Rajkamal Singh, Advocate.
No. 65 of 2010

For Respondent/State : Mr. Suryakant Mishra Panel Lawyer

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

(CAV Judgment)

1. Since both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.
2. Both the appeals are preferred under Section 374 (2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 4-1-2010 passed by the 2nd Additional Sessions Judge, (FTC), Janjgir in Session Trial No. 175 of 2009 wherein the said Court convicted the appellants for commission of offence under Sections 324 read with Section 34 of the IPC and sentenced them to undergo RI for one year and fine of Rs.100/- and convicted under Section 323 read with Section 34 of the IPC and sentenced them to undergo RI for six months each with default stipulations.
3. As per prosecution case, on 22-2-2008 Ravindra Singh had gone to village Jagmahant to attend the marriage of one Yashpal Singh along with Kavindra Singh and Yogendra Singh. Ravindra Singh, Kavindra Singh and Yogendra Singh were standing near the road at about 11.00 pm in the night and at the same time some persons of the marriage party started pushing them to which they objected and thereafter appellant Bugul started to utter filthy abuses and at the same time appellants assaulted all the three persons with club, belt and fanta and Yogendra Singh

sustained grievous hurt and became unconscious and he was immediately shifted to District Hospital, Janjgir for medical treatment. The matter was reported and investigated and after completion of trial, the trial Court convicted and sentenced the appellants as mentioned above.

4. Learned counsel appearing for the appellants submits as under:

- i) The trial Court has misread the testimonies of prosecution witnesses and ignored contradictions and omissions in their statements.
- ii) All the material witnesses are interested witnesses and their version is not liable to be accepted.
- iii) As the offence took place in the dark and it took place at Baraat procession, therefore, it was not established that actually who assaulted the victim.
- iv) FIR lodged by the complainant is not proved in accordance with law, therefore, finding of the trial Court is liable to be reversed.

5. As against the aforesaid submissions, State counsel submits that the finding arrived at by the trial Court is based on proper marshalling of evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.
6. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial court.
7. The first question for consideration of this court is as to who caused injury on the person of Yogendra Singh, Kavindra Singh and Ravindra Singh.
8. PW/2 Yogendra Singh deposed that appellant Bugul assaulted him on his head by wooden fanta and when he attacked for second time he stopped him from his hand, but it struck on his back side and he fell down. Though this witness has been subjected to searching cross-examination, but the witness has not deviated on material point. Though there is some exaggeration on the statement of this witness, but even if the exaggeration part is excluded, it is clearly established that appellant Bugul assaulted him by wooden fanta twice. Version of this witness is supported by the version of PW/4 Dr. Ramayan Singh who examined Yogendra Singh on 23-2-2008 at District Hospital, Janjgir and noticed the following injuries.

- i) Lacerated wound in the size of 4" x 2 cm over occipital region and bone deep upto parietal

region of 2"x1cm and advised for x ray.

ii) Abrasion 2 x 1 cm over left wrist

Version of this medical expert is subjected to cross examination, but version of this witness in examination-in-chief is unrebutted and there is no other medical expert's opinion contrary to the opinion of this witness. From the direct evidence of Yogendra Singh (PW/2) and Ravindra Singh (PW/1), it is established that Yogendra Singh sustained head injury on occipital region upto bone deep. Ravindra Singh (PW/1) lodged FIR (Ex.P/1) and he proved FIR in which name of Bugul is clearly mentioned as culprit.

9. Looking to the evidence in its entirety, argument advanced against conviction of the appellant Bugul is not sustainable as from the date of incident he has been identified as culprit and his name is mentioned in the FIR and again this witness has deposed his name as culprit. In absence of material contradictions and omissions, evidence against appellant Bugul is not liable to be rejected. As per evidence he used wooden article fanta and looking to the deep injury on occipital region of Yogendra Singh, it can be inferred that the said instrument which is used as weapon is likely to cause death. Case of the appellant Bugul does not fall within any of the exception under IPC and his

act with knowledge of causing pain or injury to Yogendra Singh falls within the ambit of Section 324 of the IPC for which the trial court convicted the appellant Bugul. This court has no reason to record contrary finding and therefore, conviction of the appellant Bugul under Section 324 of IPC for causing injury to Yogendra Singh is hereby affirmed.

10. Ravindra Singh (PW/1) though deposed that appellant Sikku @ Jeevendra Pratap Singh assaulted him by belt and he sustained injury on his eye but Dr. Ramnarayan (PW/4) did not find any injury on the eye of Ravindra Singh. Therefore, version of this witness is contradicted by version of medical expert and looking to the contradiction, it is not safe to record finding that any assault was made by the appellant Sikku for causing simple hurt to Ravindra Singh.
11. Kavindra Singh deposed that 3 – 4 persons were running chased him and thereafter they assaulted him as a result of which he sustained injury on eye and head, but from his evidence, it is not clear as to who actually assaulted him (para 1). As version of this witness is not specific against any of the appellant, it cannot be concluded that any of the appellant assaulted Kavindra Singh.
12. Looking to the entire evidence on record, charges levelled against appellant Sikku @ Jeevendra Pratap Singh and

appellant Bhaiji @ Surajpratap Singh is not established. Their conviction and sentence is not sustainable.

13. Accordingly, Criminal appeal No. 65 of 2010 preferred by appellant Sikku @ Jeevendra Pratap Singh and Criminal appeal No. 52 of 2010 preferred by appellant Bhaiji @ Surajpratap Singh are allowed and their conviction and sentence passed by the trial Court is set and they are acquitted of the charge as levelled against them. They are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

14. So far as appellant Bugul @ Medhendra is concerned, the trial Court awarded the sentence RI for one year and fine of Rs.100/- for commission of offence under Section 324 read with Section 34 of the IPC and looking to the injuries on vital part of victim Yogendra Singh, it cannot be said that sentence awarded by the trial Court appears to be disproportionate, harsh or unreasonable. So far as conviction under Section 323 of IPC is concerned, his participation in assaulting others is not established and therefore, his conviction under Section 323 read with Section 34 of IPC is not sustainable and he is acquitted of the said charge.

15. Accordingly the appeal (CRA No. 52 of 2010) preferred by appellant Bugul @ Madhendra is partly allowed and his

conviction and sentence of RI for one year and fine of Rs.100/- under Section 324 of IPC is maintained and he has to suffer the same as he was never in custody during investigation/trial. He is reported to be on bail and his bail bonds shall stand cancelled.

16. The trial Court will prepare super-session warrant and issue warrant of arrest against appellant Bugul and after his arrest he will be sent to concerned jail to serve out the jail sentence of one year for commission of offence under Section 324 of IPC. The trial Court to submit compliance report upto 4th January, 2019.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju_