

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 390 of 2015

1. Jumman @ Wasim Ahmad, S/o. Late Shri Habib Ahmad, Aged About 35 Years, R/o. Near Majar Kelabadi, Police Station - Durg, Civil and Revenue District Durg Chhattisgarh
2. Shamin Ahmad @ Buddhu, S/o. Late Shri Habib Ahmad, Aged About 38 Years, R/o. Near Majar Kelabadi, Police Station Durg, Civil and Revenue District Durg Chhattisgarh.

---- Appellants

Versus

State of Chhattisgarh, Through : P.S. Durg, Civil and Revenue District Durg Chhattisgarh.

-----Respondent

For Appellants	: Mrs. Savita Tiwari, Advocate
For Respondent/State	: Mr. Anil S. Pandey, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/10/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the 6th Additional Sessions Judge, Durg, District Durg (C.G.), in Sessions Trial No.305/2013 on 07.02.2015, convicting the appellants for the offence under Section 307/34 of the Indian Penal Code and sentencing them to under go R.I. for 10 years along with fine of Rs.1000/- and for the offence under Section 323/34 of the Indian Penal Code and sentencing them to under go R.I. for 3-3 months along with fine of Rs.500/- with default stipulations.

2. The prosecution case in brief is this that on 29.08.2013, Sayed Ikbali (P.W.-2) was going to make complaint against the appellants about their conduct and behavior because of which at about 7.15 PM in the evening an exchange of words took place between Sayed Ikbali (P.W.-2) and the appellants. All of sudden, the appellant No.1 brought a Butcher knife and assaulted Sayed Ikbali Ali on his head and other places causing injuries. The appellant No.2 also assaulted the injured with iron rod causing injuries to him. Complainant Mohd. Javed (P.W.-3) came on the spot at the time of incident and intervened, but he was also assaulted by both the appellants with rods and Butcher knife causing injuries to him. Mohd. Javed (P.W.-3) lodged FIR (Ex.P/3) against the appellants. After completion of investigation, charge-sheet was filed before the concerned Court.
3. Appellants were charged with offence under Section 307, 323, 34 of the Indian Penal Code and Section 25 (1-B) B. read with Section -4 and Section 27 of the Arms Act. The prosecution examined as many as 12 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. Two witnesses were examined in defence. On completion of trial, judgment has been delivered, in which, the appellants stands convicted and sentenced as mentioned aforesaid.

4. It is submitted by the learned counsel appearing on behalf of the appellants that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. It is also submitted that even, if the, prosecution case is taken as it is, in that case, the offence under Section 307 of the Indian Penal Code would not be made out in any respect, as none of the doctors examined have stated that the injuries caused to any of the injured persons were fatal in nature and neither there is evidence of witnesses of prosecution that the appellants had intended to cause death of Sayed Ikbal Ali (P.W.-2). At the most, the appellants could have been convicted for the offence under Section 325 of Indian Penal Code. Hence, it is prayed that the appeal be allowed and the appellants be acquitted of the charge. In alternative, it is prayed that in case, this Court is not inclined to allow this appeal and acquit the appellants, in that case, the sentence of imprisonment of the appellants be reduced to the period of detention already undergone by them in jail.
5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Sayed Ikbal Ali (P.W.-2) and Mohd. Javed (P.W.-3) had given clear statement, which is supported by the statement given by other witnesses. Hence, there is no infirmity with the finding given by the trial Court in the impugned judgment, hence, the appeal be

dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charge against the appellants on the basis of the evidence beyond reasonable doubt?
8. The main witness in this case is Syed Ikbali Ali (P.W.-2) and Mohd. Javed (P.W.-2). Witness Syed Ikbali Ali (P.W.-2) has stated that his sister had complained that the appellants used to tease her, hearing this he was going to make a complaint about it and met with the appellants in between. When this witness informed that he was going to complain, a quarrel took place in which the appellant No.1 took out a Butcher knife and assaulted him on his head and has caused injuries to him. At the same time also, the appellant No.2 brought iron rod and assaulted him causing injuries on his body. Then he became unconscious. In cross-examination, his statement has remained un-rebutted and there is no such statement present on record so as to assume his statement in examination in chief has been contradicted or rebutted.
9. Mohd. Javed Khan (P.W.-3) has stated that when he was coming home, he saw the appellants assaulting and injuring the victim Syed Ikbali Ali (P.W.2) with a Butcher knife and iron rod, when he tried to intervene, he was also assaulted by the appellant No.2

with road due to which he suffered injuries. He has stated that he got the injured Sayed Ikbali (P.W.-2) hospitalized and thereafter, he has lodged FIR (Ex.P-3). In cross-examination, his statement has remained un-rebutted and there is no such other statement made by him so as to contradict and rebut the statement given by him in examination-in-chief.

10. Junaid Ali (P.W.-4) is also eye-witness and has stated about witnessing the incident, wherein the appellants assaulted and injured Syed Ikbali (P.W.2) and Mohd. Javed Khan (P.W.-3). On some point, he has omitted to make statement before the Court because of which, he has been declared hostile by the prosecution, but other than that, the statement given by him about witnessing the incident has remained un-rebutted.
11. Rahila Parveen (P.W.-6) is cousin sister of Syed Ikbali (P.W.-2), to whom she complained about the teen teasing made by the appellants No.2. This witness has also stated about witnessing the incident, in which the appellants assaulted and injured Syed Ikbali (P.W.-2) and Mohd. Javed Khan (P.W.-3) and her statement has remained un-rebutted in her cross-examination and the adverse suggestion given to her by the defence counsel has been denied by this witness. Similar statement has been given by Najmin Begum (P.W.5) about witnessing the incident and her statement has also remained un-rebutted in her cross-examination. Salma Begum (P.W.-7) is hearsay witness. Shahbaj

Ali (P.W.-9) is not a witness of the incident. Rest of the witnesses examined by the prosecution are procedural witnesses.

12. Statement made by Syed Ikbali Ali (P.W.-2) and Mohd. Javed Khan (P.W.-3) have been corroborated by the medical evidence, which has been brought on record by the statement of Dr. P. Janbandhu (P.W.-10), who examined Mohd. Javed Khan (P.W.-3) and found lacerated wound on the arm of the right hand, which was caused by hard and blunt object vide his report Ex.P-18. He has given no opinion in his examination-in-chief, but in the cross-examination, he admitted that the injuries were appeared to be simple in nature. Dr. Prachi Nene (P.W.12) examined Sayed Ikbali Ali (P.W.-2) and found 11 lacerated wound on head, by the side of the right eye, on lobe of right ear, on forehead, on cheek, on left wrist, middle finger of left hand, on ring finger of left hand, and on right upper arm, and behind the right elbow, regarding which she has given opinion that injuries were caused by hard and blunt object vide her report Ex.P-20-A. No further opinion has been given by this witness regarding the nature of injuries caused to the injured persons.
13. Dr. Pratibha Issar (P.W.-8) has examined the X-ray report (Ex.P-16) of Syed Ikbali Ali (P.W.-2) and reported that he had suffered grievous bony injuries namely fracture on humerus bone and fracture on proximal phalanx in right hand. Similarly she also examined C.T scan report (Ex.P-17) of Syed Ikbali Ali and found

fracture of parietal bone, which was coupled with subdural hematoma. In cross-examination, her statement has not been challenged.

14. On scrutinizing the evidence of relevant witnesses, it is found that the statement given by Syed Iqbal Ali (P.W.-2) and Mohd. Javed Khan (P.W.-3) is supported with evidence of eye-witnesses and also the medical evidence. According to the medical evidence, it has appeared that Butcher knife has been used in this incident, but it was not used from sharp edged side to cause injuries to the victim and the other injured person. Had it been such the injuries would have been of incised wound which is not found in this case. It is clearly reported that injuries were caused by hard and blunt object. The gravity of injuries has been proved in the medical evidence, according to which bony injury have been found to both the injured persons namely Syed Iqbal Ali (P.W.-2) and Mohd. Javed Khan (P.W.-3).
15. Sanjay Soni (D.W.-1) has stated that on the date of incident, Syed Iqbal Ali (P.W.-2) along with 6-7 other persons had forcefully entered into the house of the appellant No.2 and was abusing him and they started assaulting and beating the appellant No.2 in between appellant No.1 came on the spot and tried to intervene and then some injuries were suffered by the injured and victim and also by the appellants. In cross-examination, the witness has denied all the suggestion given by the prosecutor.

16. Malka Begum (D.W.-2) has stated similarly and she has stated about submitting a written complaint (Ex.D-1) in police station regarding assault and beating given by the complainant. Ex.D-1 i.e. placed on record does not show any receipt of the concerned police station, hence, its authenticity gets disputed. Similarly the statement which is said to have been submitted before the police station also gets disputed.
17. In the prosecution case, does not have any documents or witness to show that the appellants themselves were injured in this incident and neither the defence has made any effort to bring evidence to show that the appellants were also the persons injured in the same incident, hence, the probability of the story brought forth by the defence witnesses appears to be remote and this evidence can not be considered as sufficient so as to rebut the prosecution case.
18. After due consideration and close scrutiny of the evidence on record, it appears that both the appellants are engaged in assaulting, beating and causing injuries to Syed Ikbali (P.W.-2) and Mohd. Javed Khan (P.W.-3) and because of this thrashing given by the appellants, injured witnesses have suffered grievous injuries with fracture on some body parts.
19. To make out a case under Section 307 of the Indian Penal Code, it is to be held that the accused persons intended to cause death. Already the finding has been given that although the appellant

had an opportunity to use Butcher knife from sharp edge side but they choose to use it from blunt side and secondly, there is no statement given by the victim and the complainant to show that the appellants have intended to cause their death and thirdly doctors have not clearly opined that the injuries caused to any of the victim or injured persons was fatal in nature.

20. Hence, under these circumstances, it appears to be a case of simple assault, which has resulted in suffering of grievous injuries to the complainant and the victim. As the articles used also are Butcher knife and rod, which can be regarded as dangerous weapons. Hence, after over all consideration, it appears that this case rightly fits in the definition of offence under Section 326 and not under Section 307 of the Indian Penal Code.
21. On the basis of the findings herein above, the appeal is allowed in part. The conviction of the appellant under Section 307 of the I.P.C. is set-aside but instead of that they have been convicted for the offence under Section 326 of the Indian Penal Code and sentenced with the period already under gone by them in jail and the conviction of appellants under section 323 of I.P.C. is maintained as it is. The appellants are reported to be in jail. They be set at liberty forthwith, if not required in any other case.
22. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge