

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 755 of 2007**

- Dev Das @ Maheshwar, S/o Ram Lal Dani @ Asharam Kosariya, Caste Satnami, aged about 22 years, R/o Arekeldipa, Basna, PS Basna, District Mahasamund (CG).

---- Appellant**Versus**

- State Of Chhattisgarh, through District Magistrate, Mahasamund, Dist. Mahasamund (CG).

---- Respondent

For Appellant
For Respondent/State

Shri Awadh Tripathi, Advocate
Shri Shashank Thakur, Govt. Advocate

Hon'ble Vacation Judge**Judgment**21/05/2018

1) This appeal arises out of the judgment of conviction and order of sentence dated 24-8-2007 passed by the First Additional Sessions Judge, Mahasamund, in ST No.16/2007 convicting the appellant under Section 459 of the Indian Penal Code and sentencing him to undergo RI for 10 years and to pay a fine of Rs.200/-, in default of payment of fine to further undergo RI for 3 months.

2) Case of the prosecution, in brief, is that on 18-8-2006 at 3.00 am First Information Report (FIR) (Ex.P/7) was lodged by the complainant namely; Anand Ram Madlani (PW-3) alleging therein that on that date at about 2.00 am the accused/appellant tried to break open the lock of his shop; when the complainant reached the spot and tried to stop the accused, he caused injury to him by a crow bar.

3) Based on this FIR, offence under Section 458 of the IPC was registered against the appellant. The victim was medically examined vide Ex.P/5 by Dr. M.K. Naik (PW-2) and following injuries were noticed on his body :

(a) Abrasion on upper part of left knee of size 2 cm x 2 cm.

(b) Pain on joint

(c) Bruises (red) on chin of size 2 cm x 2 cm.

4) Complainant was also referred for x-ray and as per the x-ray report (Ex.P/6) fracture of humerus bone was found.

5) The trial Judge has framed the charge against the appellant under Section 459 of the IPC.

6) So as to hold the accused/appellant guilty the prosecution has examined as many as six prosecution witnesses. In defence, one witness has also been examined. Statement of the accused was recorded under Section 313 of the Cr.P.C.

7) After completion of the trial, the trial Court convicted and sentenced the appellant as mentioned above.

8) Learned counsel appearing for the appellant would submit that :

(i) the appellant has been falsely implicated in the instant case;

(ii) even if the prosecution case is taken as it is no offence under Section 459 of the IPC is made out against the appellant, as there is no evidence that any grievous injury was sustained by the complainant; and

(iii) the sentence imposed upon the appellant is excessive and on higher side.

9) On the other hand, learned counsel appearing for the State would support the impugned judgment. He would submit that the conviction of the appellant is in accordance with law. Learned State counsel further pointed out that as the appellant was never released on bail, by now he must have served the entire sentence.

10) I have heard learned counsel appearing for the parties and perused the record.

11) Anand Ram Madlani (PW-3) is the complainant. He stated that on the date of incident he received a call from one Mukesh that two persons are standing in front of his shop and are trying to break open the lock. He also stated that he along with his son immediately rushed to his shop and during this period he again received yet another call from Mukesh. When he reached to the place of occurrence, he found one person standing outside the shop who after seeing them fled away whereas the other person was inside the shop. The person who was inside the shop when confronted, he assaulted him by a crow bar, as a result of which he sustained injuries.

12) Vijay Madlani (PW-1) is the son of the complainant, who had accompanied the complainant to his shop, has also supported the case of the prosecution.

13) Dr. M.K. Naik (PW-2) medically examined the complainant and noticed the injuries over the body of the complainant, as mentioned in the preceding paragraph of this judgment.

14) Chetan Yadav (PW-4), Head Constable, recorded the FIR. Mukesh Pradhan (PW-5), Home Guard, assisted in the investigation; and Laxmi Prasad Dubey (PW-6) Head Constable, is the Investigating Officer.

15) Digri Lal Seth (DW-1) has stated that there was some dispute between the appellant and the complainant over a recorded cassette.

16) Close scrutiny of the evidence makes it clear that in the intervening night of 18/19-8-2006 the appellant caused injuries to the complainant, as a result of which he sustained grievous injuries. PW-3 Anand Ram Madlani and PW-1 Vijay Madlani duly supported the case of the prosecution and their statements were duly corroborated by the medical evidence.

17) For the foregoing, I am of the opinion that the trial Court has rightly convicted and sentenced the accused/appellant and I do not find any substance to interfere with the impugned judgment.

18) Accordingly, the appeal fails and is hereby dismissed.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Gowri