

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 122 of 2015

- Prem Sai S/o Budaru Uraon Aged About 37 Years R/o Village Bazarpara, Bariyo, Out Post Bariyo, PS- Balrampur, Distt. Balrampur- Ramanujganj C.G., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, PS- Rajpur, Distt. Balrampur-Ramanujganj C.G., Chhattisgarh.

---- Respondent

For the Appellant : Shri Krishna Kumar Khatri, Advocate.

For the Respondent/ State : Shri Anil S. Pandey, GA.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

JUDGMENT ON BOARD

14.04.2018.

1. Heard.

2. This appeal has been preferred against the judgment of conviction and order of sentence dated 21.11.2014, passed by the Court of Learned Additional Sessions Judge, Ramanujganj to Additional Judge, Ramanujganj, Surguja, (Ambikapu), C. G, in Session Trial No.11/2013, whereby the appellant has been

convicted under Section 506-B & 307 of the IPC and sentenced to undergo RI for 01 year and to pay fine of Rs.100/-, and to undergo RI for 7 years and to pay fine of Rs. 500/- respectively, with default stipulation, for each default in payment of fine.

3. Brief facts of this case are these, that on 9.10.2012 at about 8.30 in the night the accused/appellant abused injured Chhanduram (PW-1) filthily, threatened him for life and thereafter caused axe injuries on his head, nose and below left eye. At the instance of Suresh Tirki (PW-4), FIR under Section 506B & 307 of IPC was registered against the accused/appellant. The injured was admitted in the hospital for treatment. After completion of investigation, the charge-sheet has been filed against this appellant before the Court below concerned.
4. The appellant denied the charges and sought for trial. The prosecution examined 12 witnesses in all. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C. in which he has pleaded innocence and false implication. No evidence was adduced in defence. On completion of trial, the impugned judgment was passed convicting and sentencing the appellant in the manner as mentioned above.
5. Learned counsel for the appellant submits that the impugned judgment of conviction passed against this appellant is bad in law. Statements of prosecution witnesses including Chhanduram (PW-1) being unbelievable ought not to have been relied upon by the trial Court for convicting the appellant. Main prosecution witness are in relation with each other and with intent to grab the

property of the appellant, they have roped him in a false case. Further, the witnesses to memorandum and seizure have not supported the prosecution case and therefore recovery of axe allegedly at the instance of appellant is highly doubtful. He further submits that the appellant is in jail since 16.12.2012 i.e. for the last more than 05 years 06 months, hence, the sentence imposed upon the appellant may be reduced to the period already undergone.

6. Learned counsel for the State opposes the prayer made and submits that prosecution has proved its case beyond reasonable doubt. Statement given by the witnesses are corroborative in nature and sufficient to prove the guilt of the appellant. Hence, there is no scope for interference in the impugned judgment passed by the trial Court.
7. Heard counsel for both the parties and perused the case diary.
8. Chhanduram (PW-1) is the injured witness in this case. He has stated that on the date of incident he was sleeping alongwith the appellant in the house, all of sudden the appellant started abusing him, threatened him for life and assaulted him by an axe causing injuries on his head, neck & left eye. He somehow managed to flee from there and reached the house of Suresh Tirki (PW-4), where he informed him about the incident. Thereafter, he was taken to the hospital for treatment. In the cross-examination this witness remained firm and nothing could be elicited by the defence to make his testimony unreliable or untrustworthy.

9. Though Kumari Babli (PW-2) did not support the prosecution case and turned hostile, however, she has admitted that she has heard the injured shouting that accused/appellant had assaulted him by axe. She has further stated that she also saw injuries on the person of injured Chhanduram (PW -1)

10. Smt. Tara Bai (PW-3), wife of injured, did not support the prosecution and as such was declared hostile.

11. Suresh Tirki (PW-4) has stated that Chhanduram (PW-1) came to his house and informed him that this appellant had firstly threatened him for life and thereafter caused axe injuries to him. This witnesses saw the injuries on the head, neck and left eye of Chhanduram (PW-1). In the cross-examination this witness has denied the suggestion that the injured did not disclose the incident to him.

12. Aman Kumar (PW-5) has also stated about presence of injuries on the body of injured. Mangal Sai (PW-6) has stated that he was informed by PW-1 that the appellant had assaulted him by axe, and he also saw injuries on the person of PW-1. Smt. Fulo Bai (PW-7) has not made any clear statement and thus declared hostile by the prosecution. Manoj (PW-8) is witness of narration given by injured person. Immediately after the incident, all these witnesses were informed by the injured about the assaults made by the accused/appellant.

13. On 09.10.2012 Dr. A.Kachhap (PW-11) examined injured Chhanduram (PW-1) and noticed (1) one incised wound on left

part of the head 05 x 04 x 01. cm on back side. (2) one incised wound of 02 x ½ x 02 cm on back side of the head, (3) one incised wound on upper part of nose 02 x ½ x ½ cm, and one incised wound under his left eye 01 x ½ cm. The doctor has advised for further treatment of injured by the Orthopaedic Surgeon and ENT specialist.

14. Ashok Pandey (PW-12) is the investigating officer who has recorded FIR (Ex.P1) on the information given by Suresh Tirki (PW-4) and during investigation, on the basis of the memorandum statement (Ex.P-6) given by the appellant, recovered one axe vide Ex.P-7 from the possession of appellant at his instance. This statement was unrebutted in the cross-examination.

15. The independent witness Jal Dhari PW-09 and Rameshwar (PW -10) have not clearly supported the procedure of memorandum statement & seizure. They have stated that in their presence the appellant had admitted that the axe by which he caused injuries to the injured is kept in his house. Rameshwar (PW -10) has clarified the statement further that in his presence the axe was seized from the possession of the appellant. This statement of these two witnesses to some extent supports the version of Sub-Inspector PW -12 that seizure of Axe was made from the possession of this appellant.

16. Dr. A. Kachhap (PW-11) had examined the seized Axe and vide his report Ex. P-4 he has opined that this Axe could have been used to cause injuries to injured and the injuries present on the person of injured could have been caused by this axe. This

statement has not been challenged in his cross-examination.

17. After close scrutiny of the statement of all the prosecution witnesses, it is clear that on the fateful day the accused/appellant had caused axe injuries to the injured Chhanduram (PW-1). The incident was immediately disclosed to other prosecution witnesses and they have duly supported the prosecution case to the extent that they were informed by the injured Chhanduram (PW-1) that accused/appellant had assaulted him by an axe and caused injuries to him. Version of Chhanduram (PW-1) also gets corroboration from the medical evidence, according to which, incised wounds caused by sharp edged weapon was noticed. On a query being raised by the prosecution, the doctor has opined that the injuries present on the person of the injured could be caused by the axe recovered from possession of the appellant. Thus, the complicity of this accused in the crime in question is proved beyond doubt.

18. As regards the quantum of sentence, considering the fact that the incident occurred in a spur of moment, without any premeditation, the injuries caused to the injured were not found to be fatal to life by the treating doctor, the appellant is facing agony of trial for the last six years and he was the first offender, this Court is of the considered view that the prayer for reduction of sentence to the period already undergone can be allowed.

19. Accordingly, the appeal is allowed in part. While maintaining the conviction under Section 307 of IPC, the sentence imposed under that section is hereby reduced to the period already undergone by

the appellant. Conviction and sentence of appellant under Section 506B of IPC are hereby maintained. The appellant is reported to be in custody. He be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd /-

(Rajendra Chandra Singh Samant)

Judge

Jamal