

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2893 of 1999

- Bhikham Satnami, aged about 35 years, S/o Anathram @ Damla Satnami, R/o Village Mangla, Dhuripara, P.S. Civil Line, Bilaspur (MP) (Now CG)

---- Appellant

Versus

- The State Of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant	:	Ms. Pushplata Khalkho, Advocate on behalf of Mr. Rajkumar Pali, Advocate.
For Respondent/State	:	Mr. Raghvendra Verma, G.A.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

05/09/2019

This appeal arises out of the judgment of conviction and order of sentence dated 30th August, 1999 passed by the VII Additional Sessions Judge, Bilaspur (M.P.), in S.T.No.251/98 convicting the appellant under Section 325 of IPC and sentencing him to undergo RI for one year, pay a fine of Rs.3000/- and in default to undergo additional RI for four months.

02. Brief facts of the case are that on 22.2.1998 at 00.45 hours FIR (Ex.P/3) was lodged by Dhanesh Kumar, son of complainant/victim Kheeruram, to the effect that about 15-20 days ago there was some quarrel between the appellant and Kheeruram over trivial matter and on account of this, the appellant on 21.2.1998 at about 11.30 pm came

in front of the house of Kheeruram, started abusing him filthily and also assaulted Kheeruram by lathi on his head as a result of which blood started oozing from his head. The appellant also threatened Kheeruram of being killed if he reported the matter to police. The said incident was witnessed by Ratiram, Madhav Satnami and other neighbors. Injured Kheeruram (PW-3) was medically examined by PW-8 Dr. RK Agrawal vide Ex.P/11 who noticed lacerated wound over scalp frontal region caused by hard and blunt object and advised for x-ray. As per x-ray (Ex.P/9 & P/10) done by PW-7 Dr. R. Jeetpure, the victim suffered fracture of left parietal bone of skull. On being produced by the appellant, the lathi was seized vide Ex.P/1. Statement of Ratiram was recorded under Section 161 of CrPC by the police. After completing investigation charge sheet was filed against the appellant under Sections 294, 506B & 307 of IPC. The trial Court framed charges under Sections 307 and 506 Part-II of IPC against the appellant, which were denied by him and he prayed for trial.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 08 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that in this case no independent witness, though available, has been examined by the prosecution. Lodger of the FIR namely Dhanesh Kumar is son of the victim Kheeruram and as such, he is an interested witnesses. It has come in the evidence of the witnesses that there was previous enmity between the complainant party and the appellant and as such, false implication of the appellant in this offence cannot be ruled out. In fact, on the date of incident, Kheeruram (PW-3) had fallen down on the floor as a result of which he sustained injury over his head and just to settle the old scores, by taking advantage of the situation, the appellant has been roped in this crime.

Alternatively, it is submitted that if this Court ultimately comes to the conclusion that conviction of the appellant under Section 325 of IPC is just and proper, considering the fact that the incident occurred long back in the year 1998, the appellant is a young and first offender, he has already remained in jail for about six months, the jail sentence may be reduced to the period already undergone by him by enhancing the fine amount suitably.

06. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the aspects of the matter after due appreciation of the evidence has rightly convicted and sentenced the appellant by the impugned judgment, which needs no interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-3 Kheeruram, victim, states that on the date of incident he was at his house, the appellant came in front of his house and started abusing him. Hearing this, the neighbors came out of their houses. He states that when he came out of his home, the appellant assaulted him with a lathi on his head as a result of which blood started oozing from his head and he fell unconscious and thereafter gained consciousness in hospital.

PW-2 Dhanesh Kumar, son of the victim and lodger of FIR, as also PW-4 Bhagbali supports the version of the victim PW-3 Kheeruram. There is no omission or contradictions in the statements of these witnesses and as such, there is no reason to disbelieve their evidence.

09. The above ocular evidence finds due corroboration from the medical evidence of PW-7 Dr. R. Jeetpure and PW-8 Dr. RK Agrawal. PW-8 Dr. RK Agrawal medically examined Kheeruram (PW-3) on 22.2.1998 vide Ex.P/11 and noticed lacerated wound over scalp frontal region caused by hard and blunt object and advised for x-ray. As per x-ray (Ex.P/9 & P/10) done by PW-7 Dr. R. Jeetpure, the victim suffered fracture of left parietal bone of skull. Soon after the incident FIR (Ex.P/3) was lodged by PW-2 Dhanesh Kumar, eyewitness, who has duly proved the same.

10. Thus, considering the above unrebutted ocular evidence, duly supported by medical evidence, this Court is of the opinion that the trial Court was fully justified in convicting the appellant under Section 325 of IPC.

11. So far as sentence is concerned, considering the facts and circumstances of the case, the fact that the incident occurred way back in the year 1998 i.e. 21 years ago, the appellant has no criminal antecedents and he is a young offender, he has already remained in jail for about 177 days, this Court is of the opinion that the ends of justice would be served if the appellant is sentenced to the period already undergone by him and the fine amount of Rs.3,000/- imposed by the trial Court is enhanced to Rs.5,000/- and directed to be paid as compensation to the victim Kheeruram (PW-3) under Section 357 of CrPC.

12. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Section 325 of IPC, he is sentenced to the period already undergone by him. However, the fine amount of Rs.3,000/- imposed by the trial Court is enhanced to Rs.5,000/- which shall be payable to the victim Kheeruram (PW-3) as compensation under Section 357 of CrPC after due verification. If the said amount is not paid by the appellant, he shall have to suffer additional imprisonment for five months.

Sd/

(Gautam Chourdiya)

Judge