

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.771 of 2010**

1. Omprakash Kenwat @ Luko @ Ghoghi Kenwat, S/o. Dashrath Kenwat, aged about 22 years,
2. Dasrath Kenwat, S/o. Badku Kenwat, Aged about 45 years,
Both are R/o. Village Sethi Nagar, Ward No.14, Shivrinarayan,
PS Shivrinarayan, distt. Janjgir Champa (CG)

---- Appellants

Versus

- State Of Chhattisgarh through , Police Station Shivrinarayan,
Distt. Janjgir-Champa (CG)

---- Respondent

For the appellants : Ms. Anjali Singh Chouhan, Advocate

For the State : Smt. Shubha Shrivastava, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****11.02.2019.**

1. The appeal is directed against judgment dated 30.9.2010 passed by Additional Sessions Judge, Janjgir, Distt. Janjgir-Champa (CG) in Session Trial No.55/2010 wherein the said Court convicted both the appellants for commission of offence under Section 452, 506 Part II, 325 read with Section 34 and 307 read with Section 34 of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for three years and to pay fine of 200/- each and RI for three years and to pay fine of Rs.200/- each, RI for five years and to pay fine of Rs.600/-, RI for seven years and to pay fine of Rs.1000/- with default stipulations with a direction to run the sentences concurrently.

2. In the present case, name of the victim is Ramesh Kesharwani. Date of incident is 27.11.2009 and place of incident is village Shivrinarayan. It is alleged that in the intervening night of 26-27/11/2009 at about 12.15 am, appellant Omprakash entered into the house of the complainant, dragged him out of his residence and thereafter both the appellants assaulted him as a result of which he sustained several injuries on his body. Medical expert found one of the injuries to be fatal to life. The matter was reported and investigated and the appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for appellants submits as under:

(i) It has come in the evidence that earlier quarrel has taken place between the complainant and the appellants, and therefore, this report is a counter blast of the report earlier filed by the appellants against the complainant and they have been falsely implicated.

(ii) The trial Court overlooked the material contradictions in the statements of the prosecution witnesses therefore, finding of the trial Court is not sustainable.

(iii) The club seized was never sealed and no blood was found on the said club which indicates that the club was never used as weapon of offence in the instant case.

(iv) The trial Court has not evaluated the evidence in its right perspective and therefore, it is liable to be reversed.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the

same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Ramesh Kesharwani (PW-1), Kshama Bai (PW-2), Arvind Kesharwani (PW-3) and Anil Kesharwani (PW-4) deposed before the trial Court that appellant Omprakash assaulted victim Ramesh and he sustained injury on different parts of his body. Though it is stated by these witnesses that appellant Dashrath also assaulted the victim by fists and legs, but it is not clear as to which part of the body of the victim is affected by the assault of the Dasrath. Dr. Narayan Prasad (PW-7) examined victim Ramesh on 27.11.2009 and noticed following injuries:

(1) lacerated wound of 5 x 3 x bony deep on the left side of the parietal region

(2) multiple abrasion on the left side over the cheek.

(3) swelling and tenderness over the left wrist joint
suspect fracture of left wrist joint

(4) swelling over back of the right hip joint

(5) swelling over the frontal region of head/

(6) bruise of 10 x 2 cm over the front of the chest

(7) swelling over the lower region of the thigh

He advised for x-ray of skull and left wrist.

7. Dr. Archana Singh who is the radio-diagnosis deposed that after CT scan of the victim she found fracture in his left zygomatic arch & the lateral wall of the maxillary sinus. She again found fracture on radius bone of the victim. Dr. Narayan Prasad opined

regarding injuries on head and same is fatal in nature. Looking to the injuries on the head of the victim it is clear that the same is caused by appellant Omprakash by club and it is not caused by appellant Dasrath because he used only fists and legs and that too it is not clear on which part of the body of the victim is affected by the assault of this appellant. Therefore, finding against appellant Dasrath that he had any intention to cause fatal injury to the victim is not established. Again there is no evidence that appellant Dashrath had preparation before commission of offence or he threatened the victim to kill. There is evidence against appellant Omprakash that he entered into the house of the victim with club, threatened him to kill and assaulted.

8. After reassessment of the evidence, it is established that appellant Dashrath had no common intention with Omprakash and he caused only simple injury to the victim which falls within the mischief of Section 323 IPC. Therefore, his conviction for offence under the above said Sections is not established and he is acquitted of the said charges and is convicted under Section 323 IPC.

9. So far as appellant Omprakash is concerned, all the charges have been established by the evidence adduced against him, therefore, finding arrived at by the trial Court is not liable to be interfered with. His conviction is hereby affirmed. The trial Court awarded sentence of seven years to appellant Omprakash which cannot be termed as harsh, disproportionate and unreasonable looking to the attempt to kill the victim. Therefore, his sentence is not liable to be interfered with. Accordingly,

appeal filed by appellant Omprakash is liable to be and is hereby dismissed. As he is reported to be in jail, therefore, no further order for his arrest etc. is required.

10. So far as appellant Dasrath is concerned, he suffered jail sentence from 30.9.201. to 22.11.2010 i.e. one month and eleven days. Considering all the facts and circumstances of the case, this Court is of the view that ends of justice would be served if the sentence is reduced to the period already undergone by the appellant Dasrath. Now the appellant Dasrath is sentenced to the period already undergone by him under Section 323 IPC. He is reported to be on bail and his bail bonds shall continue for further period of six months as per Section 437A CrPC.

11. With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
JUDGE