

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 639 of 2009

1. Jeetu @ Jitendra S/o Shri Prahlad Sondhia, aged about 23 years, R/o Molipara, District Raipur (CG)
2. Naushad Qureshi, S/o Mhd. Sadiq Qureshi, aged 24 years, R/o Taj Chowk, Telibandha, District Raipur (CG)
3. Sheikh Sameer, S/o Sheikh Hameed, aged 18 years, R/o Taj Chowk, Telibandha, District Raipur (CG) ----- **Appellants**

Versus

State Of Chhattisgarh through the Police Station Telibandha,
District Raipur (CG) ----- **Respondent**

For Appellant/s	:	Smt. Arpana Singh, Advocate on behalf of Shri Arjun Singrouli, Advocate
For Respondent	:	Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

02/04/2019

Pursuant to the order dated 04.12.2012 passed by Hon'ble the Supreme Court in Criminal Appeal No.1986/2012 arising out of SLP (Criminal) No.8234/2012 preferred by accused – Jeetu @ Jitendra, Naushad Qureshi and Sheikh Sameer, setting aside the judgment dated 17.08.2012 passed by the Coordinate Bench of this Court in Criminal Appeal No.639/2009 and remanding the case for being decided afresh in their respect on its own merits, this Court proceeds to do so.

2. This appeal is directed against the judgment of conviction and order of sentence dated 25.08.2009 passed by Additional Sessions Judge, Raipur in Sessions Trial No.135/2008 convicting the accused/appellants under Sections 147 and 327/149 IPC, plus default clauses.

3. The case put-forth by the prosecution in brief is that on 16.04.2008 at about 11:50 PM FIR (Ex.P-15) lodged by complainant – Arif Hussain (PW-10) to the effect that on that day at about 10 PM when he was going towards Telibandha Police Station, the accused/appellants met him and raised demand of Rs.500 for enjoying liquor. It is also alleged in the report

lodged by PW-10 that when he declined to part with the said amount, appellants shifted him in another auto rickshaw and carried towards Awanti Bihar railway crossing and subjected him to merciless beating. The incident is said to have been witnessed by Nausad (PW-5) and Alamgir (PW-6) who throughout had been with the victim (PW-10). After medical examination of the victim and completion of other procedural formalities, the charge-sheet was filed against the accused/appellants under Sections 147, 327, 364-A, 323 and 34 IPC. However the Court below framed the charge against them under Sections 148, 329/149 and 364/149 of IPC.

4. The prosecution examined as many as 11 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

5. After hearing counsel for the parties and going through the material on record the Court below acquitted the accused/appellants of the charge under Sections 148, 329/149 and 364/149 IPC but convicted and sentenced each of them as described above.

6. Heard counsel for the parties and perused the material on record.

7. Complainant (PW-10) has categorically stated that on the date of incident when he was going towards City Mall in connection with his profession of auto driving and as soon as he reached near the Telibandha railway crossing, the accused/appellants met him and demanded Rs.500 for consuming liquor. Subsequently, he has specified that said demand was made by accused/appellant – Jeetu and at that time PW-5 and PW-6 were also present there. He has further stated that when he showed his inability to part with the amount so demanded, they made him sit in another auto rickshaw and took him towards the Avanti Bihar railway crossing. He has further stated that auto rickshaw in which he was being

carried was followed by one Indica car and that all throughout the accused/appellants were subjecting him to beating. He thereafter lodged the report – Ex.P-15. He has stated that the accused/appellants treated him like this for the reason that they did not want him to take his auto rickshaw on the route where they used to ply their own auto rickshaw. He has reiterated that the demand was made only by accused/appellant – Jeetu. PW-5 and PW-6 who are said to have been in the company of complainant (PW-10) have also supported the case of the prosecution stating that on the date of incident the accused/appellants had carried the complainant (PW-10) in another auto rickshaw to an isolated area and subjected him to beating for the reason that the complainant could not fulfill their demand for consumption of liquor. Doctor (PW-1) who medically examined the complainant noticed swelling over nose, abrasion over right maxillary region in the size of 1.3 cm x 0.4 cm, abrasion over right side of vertebral region of the back and he was also complaining the pain on the right side of lower chest in the mid axillary line. The report given by this witness is Ex.P-1. As far as the injuries over the nose is concerned, this witness had referred the complainant to ENT Specialist for further opinion. ENT Specialist (PW-2) vide his report Ex.P-3 however did not find any fracture etc. on the nose of PW-10. PW-8 and PW-9 who carried forward the investigation have also supported the case of the prosecution. The evidence discussed here-in-above thus safely leads this Court to an irresistible conclusion that on the date of incident the accused/appellants waylaid the auto rickshaw of the complainant (PW-10), raised demand of Rs.500 for consumption of liquor and on his inability being expressed they shifted him to another auto rickshaw, carried him to an isolated area and subjected him to beating. The doctor (PW-1) who medically examined the complainant and also the ENT Specialist (PW-2) have categorically supported the case of the prosecution describing the injuries noticed by them on various parts of the body of complainant (PW-10). Thus the

rioting on the part of the aforesaid three accused/appellants namely, Jeetu @ Jitendra, Naushad Qureshi and Sheikh Sameer and voluntarily causing injuries to PW-10 in order to extort money from him is self evident, and being so their conviction under Sections 147 and 327/149 IPC cannot be said to be at fault. The approach of the learned Court below in holding the accused/appellants guilty for the said offences is fully justified and being so it is hereby maintained.

8. As regards sentence, keeping in mind the fact that the considerable long period has rolled by since the occurrence and that the accused/appellants had already been in jail for 23 days and further keeping in mind the fact that all the accused/appellants are in their youth, this Court thinks it proper and in the interest of justice to reduce the sentence imposed on them to the period already undergone. Order accordingly.

9. Appeal thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge