

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 906 of 2015

Shiv Kashyap @ Shiv Pujan Kashyap, S/o. Late Nanku Kashyap, Aged About 30 Years, R/o. Village Lingiyadih, Behinnd Apollo Hospital, Police Station -Sarkanda, District Bilaspur Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh, Through : The Police Station : Sarkanda, District -Bilaspur Chhattisgarh.

---- Respondent

CR.A. No. 982 of 2015

Sukhdev Sahu, S/o. Bishru Sahu, Aged About 35 Years, R/o. Village – Lingiyadih, Behind Apollo Hospital, P.S. - Sarkanda, District - Bilaspur Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : The Station House Officer, Police Station - Sarkanda, Civil and Revenue District - Bilaspur Chhattisgarh.

---- Respondent

AND

CR.A. No. 1325 of 2018

Durgesh Sahu, S/o. Shri Banshi Sahu, Aged About 26 Years, R/o.- Village- Lingiyadih, Behind Apollo Hospital, Police Station- Sarkanda, District- Bilaspur, Chhattisgarh.

---- Appellant

Versus

The State Of Chhattisgarh, Through- The Station House Officer, Police Station- Sarkanda, District- Bilaspur, Chhattisgarh.

---- Respondent

For Appellants

: Mr. Rishi Rahul Soni, Advocate &
Mr. Manoj Kumr Jaiswal, Advocate

For Respondent/State

: Mr. A.N. Bhakta, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/01/2019

1. All the appeals are being heard and decided together by this common order as they are arising out of the same criminal case and the incident.
2. All the appeals have been preferred against the judgment of conviction and order of sentence, passed by the learned 9th Additional Sessions Judge, Bilaspur (C.G.), in Sessions Trial No.11/2015 on 16.07.2015, convicting all the appellants for the offence under Section 307/34, 325/34 and 323/34 of the Indian Penal Code and sentencing them to undergo R.I. 7 years and fine of Rs.20,000/-, R.I. for 3 years and fine of Rs.5,000/- and R.I. for 6 months and fine of Rs.500/- respectively with default stipulations.
3. Facts of the case in brief are this that on 03.11.2014 at about 11.30 PM in the night, the victim Manoj Yadav (P.W.-2) arrived at the place where the appellants in all the cases were gambling. The appellants asked him to sit by their side but the victim refused, because of which, he was abused, threatened and assaulted by the appellants and one co-accused Dashrath Kewat by clubs and slaps and because of the assault made by the appellants, the victim Manoj Yadav (P.W.-2) has suffered injuries on his face and head and he became unconscious. The victim was admitted to the hospital for treatment, where his injuries were examined.

Ramin Yadav (P.W.-1), the mother of the victim lodged FIR vide Ex.P-1. The offences were registered and the case was investigated. Seizure of clubs were made from the appellant Durgesh Sahu vide Ex.P-6 and from the appellant- Shiv Kashyap @ Shiv Pujan vide Ex.P-7. After obtaining medical opinion of the doctor, who had examined and treated the victim, the investigation was completed and charge-sheet was filed before the concerned Court

4. Appellants and one co-accused Dashrath were charged with offence under Section 307/34, 323/34, 325/34, 506/34 and Section 294/34 of the Indian Penal Code. The appellants and the co-accused denied the charges and prayed for trial. The prosecution examined as many as 8 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. The appellant Shiv Pujan himself and one Ram Kumar were examined as defence witness. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid.
5. It is submitted by the learned counsel appearing on behalf of the appellants that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. None of the witnesses of the prosecution can be held reliable and trustworthy. The victim Manoj Yadav, who has admittedly lost eye sight in the

incident, hence, the statement that he was assaulted by these appellants itself became doubtful. Apart from that, he is the person, who is interested to see that the appellants are get convicted and sentenced. Ramin Bai (P.W.-1) is the mother, who is another interested witness and there is no other independent witness examined. It is also submitted that from the report of the injuries of the victim, it is clearly made out that there had been no intention of the persons inflicting injuries on the victim to cause his death because no injury was caused on any vital part of the body. As there is injury of fracture and loss of eye sight, which may be regarded as grievous injuries and the conviction of the appellants at the most would have been under Section 325 of the Indian Penal Code and there is no evidence to support the conviction under Section 307 of the Indian Penal Code, therefore, it is prayed that the order of conviction in the impugned judgment be modified in this appeal. It is prayed in the alternative that in case, this Court is not inclined to allow these appeals and acquit the appellants in that case, at least sentence imposed upon the appellants, which appears to be too harsh may be reduced.

6. Counsel for the State opposes the grounds raised in appeals and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. It is submitted that the quality of the statement of the victim Manoj Yadav (P.W.-2) is unimpeachable and he has not shaken from the statement given before the Court making allegations against the

appellants and one co-accused. His statement is fully corroborated with medical evidence, hence under these circumstances there was no requirement of any evidence of any other independent witnesses. FIR has been lodged in this case with promptness and some delay that is shown had been for the reasons that the victim required immediate hospitalization and treatment, which is sufficient explanation. Therefore, no case is made out for acquittal or reduction in sentences imposed upon the appellants. Hence there is no room for interference in the impugned judgment, therefore, the appeals be dismissed.

7. I have heard the learned counsel for the parties and perused the record of the Court below.
8. The point in issue in these appeals are whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
9. The main and the only witness in this case is Manoj Yadav (P.W.-2) himself, who is the victim. He has stated that on the date of incident, when he was on his way to the washing place, he found the appellants sitting and gambling on the spot of the incident. He was asked to sit with the appellants, to which he refused and then the appellants and the co-accused threatened to kill him. The witness thought that the appellants are making joke of him and proceeded towards his house, then all of a sudden all the appellants and the co-accused started assaulting him and caused

injuries on his head, eyes and jaw, because of which, he became unconscious. He has further stated that because of this incident, he has lost eye sight in both of his eyes. In cross-examination, he has denied all the adverse suggestions given in defence and there is no such admission made by him so as to contradict his statement that has been given in examination-in-chief. Thus he has remained unshaken in his statement against the appellants and the co-accused.

10. Ramin Bai (P.W.-1) is the mother of the victim has narrated about the incident and stated that when she hearing the cries, she came out and saw the appellants running away from the spot, where she found her son Manoj Yadav in injured condition having injuries on his head, face and eyes and her son was unable to see, who was immediately admitted to the hospital for treatment and later on she lodged FIR, Ex.P-1. In cross-examination, she has denied all the adverse suggestions given in defence. Though she has made some improvements, but that are not material or fatal to the statement made by her in examination-in-chief and to held that she is not reliable. According to the prosecution there had been no other witness present on the spot.
11. Dr. Gangaram Bareth (P.W.-7) was first to examine the victim on the date of incident and he found one lacerated wound over the left supra orbital region size 5x1x1 cm. One lacerated wound over chin size 3x1x1 cm. Lacerated wound over the nose (dorsum) size 3x1x1. This witness has also stated that bleeding

was present from the right eye, nose, mouth and ear of the victim. He saw that right eye was bulging out and there had been swelling all over the face. He found his lower incisor, canine, teeth were broken. He opined that this injuries may have been caused by blunt and sharp object. Referring the victim for radiological opinion, he has prepared his report vide Ex.P-4. In cross-examination, his statement has remained unrebutted regarding the finding of the injuries on the body of the victim.

12. Dr. A.K. Gupta (P.W.-8) has stated that on examining the victim, vide report Ex.P-21, he found that victim had multiple facial bone fractures, the right eye ball of the victim had bulged out, he also reported that the victim had lost eye sight in both of his eyes. This statement given by him has not been specifically challenged in any manner. Rest of the witnesses are regarding investigation procedure, which need no further consideration.
13. Considered the statement of the defence witnesses. Shiv Pujan (one of the appellants) has given statement that he arrived on the spot after the incident had taken place and on the request of the Ramin Bai, he had called the ambulance. Ram Kumar (D.W.-2) has also given statement in favour of Shiv Pujan creating alibi in his favour.
14. Victim - Manoj Yadav (P.W.-2) has clearly stated about the presence of the appellant - Shiv Pujan on the spot. Similarly Ramin Bai (P.W.-1) has also given statement that she saw all the

appellants fleeing from the spot. To prove alibi, there is requirement of strict proof according to the principle laid down in this respect. Therefore, by simply making a statement by any of the witness that he was not present on the spot, it can not be held as sufficient evidence and the trial Court has rightly rejected this evidence to come to conclusion against him.

15. After closely scrutinizing all the evidence present on record of the trial Court, I come to this conclusion that the prosecution has proved the guilt against the appellants beyond reasonable doubt that it were the appellants and one co-accused, who have assaulted and injured the victim Manoj Yadav (P.W.-2) causing such injuries to him, which comes under the definition of Section 320 of Indian Penal Code as grievous injuries.
16. Although Dr. Ganga Ram Bareth (P.W.-7) has opined to the query made by the appellants vide Ex.P-18 that had the victim not brought to the hospital, he may have died. It is not sufficient to hold that death could have been the direct result of the injuries caused. The possibility of the occurrence of the death of any person, if found as direct consequence of the injuries caused to such person in that case doctor can opine that the injuries caused to such person were sufficient to cause his death in ordinary course of nature.
17. There are other circumstances, when a person injured may die because of other complications, which may arise on account of

non-treatment or in case no proper treatment is given to the injured person. The examining doctor has not given any explanation with regard to the opinion given by him, hence nothing can be made out as to whether he had any opinion that death would have been in direct out-come of the injuries caused to the victim. It is the burden of the prosecution to prove all the facts of the case beyond reasonable doubt, therefore, the evidence that are available in this case pointed out that the act of the appellants can be considered that the appellants had committed the offence under Section 325 of the Indian Penal Code instead of Section 307 of I.P.C. therefore, on this basis it is held that the conviction against the appellants under Section 307 of I.P.C. is erroneous, which needs interference. Accordingly, the conviction of the appellants under Section 307 of the Indian Penal Code is hereby set-aside.

18. Hence, after due consideration on all the evidence present on record and the facts and circumstances of the case, I feel inclined to allow this appeal in part.
19. The appellants have been convicted by the trial Court for the offence under Section 307/34, along with Section 325/34 and 323/34 of the Indian Penal Code and sentence have been imposed in each of the offences, whereas there was no such requirement because Section 323 and 325 of the Indian Penal Code were inclusive in the offence under Section 307 of the Indian Penal Code.

20. On the basis of the finding in these appeals, the conviction of the appellants under Section 307/34 and 323/34 of I.P.C. are hereby set-aside and the conviction and the sentence awarded under Section 325 of the Indian Penal Code is upheld.
21. The appellants are required to under go the sentence of imprisonment and fine only in accordance with the sentence imposed upon by the trial Court for the offence under Section 325 of the Indian Penal Code..
22. Accordingly, all the appeals are disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge