

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 394 of 2002

Order reserved on 12.02.2020

Judgment pronounced on 26.02.2020

Ramnath, S/o Bhawani Sahu, aged 38 years, resident of Village
Bawanlakh, P.S. Berla, District Durg (CG) --- **Appellant**

Versus

State of Chhattisgarh, through Police Station Berla, District Durg
(C.G.) --- **Respondent**

For Appellant : Mr. Sudhir Kumar Verma, Advocate

For State/Respondent : Ms Ishwari Ghritlahre, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

The case of the prosecution, in brief, is that on 16.11.1999 the accused/appellant herein along-with co-accused Bhawani acting in furtherance of their common intention caused as many as 33 club injuries to Belchhar (PW-1) (hereinafter referred to as the “victim”). The incident is said to have been seen by Narottam (PW-3) who at the relevant time was grazing cattle in the nearby field. PW-3 in turn informed the incident to Ramkhilawan Chouhan (PW-6) who immediately went to the Village Kotawar namely Asharam (PW-4) and disclosed the incident to him as also to the Village Sarpanch. Meanwhile, the wife of the victim (PW-5) along-with the village Sarpnach and the Village Kotwar (PW-4) reached the spot and thye all saw the victim lying on the ground with number of injuries on his body. Subsequently, the victim was taken to the hospital where on being disclosed by him, Dehati Nalsi (Ex.P-1) was registered by the police constable namely Deendayal Kosle (PW-8). On the basis of Dehati Nalsi (Ex.P-1), FIR (Ex.P-10) came to be recorded against the accused/appellant as also co-accused Bhawani for the offences

under Sections 294, 506-B and 323/34 IPC. After completion of investigation the charge-sheet was filed against them under Sections 294, 506-B, 34 and 307 IPC followed by framing of charge accordingly.

2. Learned Court below by its judgment dated 18.03.2002 passed in Sessions Trial No.171/2000 acquitted both the accused persons of the charges under Sections 307, 294 and 506-B but convicted each of them under Section 325/34 IPC with imposition of sentence of RI for one year and fine of Rs.2000, plus default stipulations. Hence this appeal.

3. It is relevant to note here that during the pendency of this appeal, accused Bhawani died on 07.08.2006 as is clear from the death certificate dated 28.08.2006 and the appeal pertaining to him has abated vide order dated 23.07.2014. Therefore, this appeal as of now relates to the present appellant Ramnath only.

4. Counsel for the accused/appellant submits that the conviction of the accused/appellant under Section 325 IPC is not in conformity with the evidence of the witnesses and therefore, liable to be set aside. He further submits that though the victim is said to have suffered number of injuries on his body yet they all were simple in nature and therefore, at the most he could have been convicted under Section 323 IPC, and as he has already remained inside for about one and a half month, his sentence may be reduced to the period already undergone.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that while slapping the conviction and sentence on the accused/appellant under Section

325 IPC, learned Court below has considered all the aspects of the matter in the light of the evidence adduced by the prosecution and being so, no interference with the same is required by this Court.

6. The evidence of PW-3 who at the time of incident was grazing his cattle in the nearby field categorically supports the case of the prosecution indicating that the accused/appellant along-with the deceased accused opened an assault with the help of club causing injuries on the body of the victim. Likewise, Village Kotwar (PW-4) and the wife of the victim (PW-5) have also stated that when they reached the spot, the victim was lying on the ground with injuries on his body. It is PW-4, PW-5 and the Village Sarpanch (not examined) who had taken the victim to the hospital. Most importantly, the victim (PW-1) has categorically stated that when he was engaged in thrashing the paddy, the present appellant came there, picked-up verbal dispute and thereafter he along-with the deceased accused started showering *Lathi* blows on him, as a result of which he suffered number of injuries on his body and was shifted to hospital. He went on stating that the assault at the hands of accused/persons continued for half an hour and then taking him to be dead, they left the spot. He has further stated that apart from being assaulted with *Lathis*, he was even subjected to stoning by them. Thus the involvement of the accused/appellant in the crime in question is evident. Now the question to be decided by this Court is whether the act of the accused/appellant would fall under Section 325 or 323 IPC. Dr. MC Patel (PW-2) who medically examined the victim and gave his report (Ex.P-2) has found as many as 33 injuries on his body yet he has clearly stated that except two, all other injuries were simple in nature. While answering the query made by the police he

by his report (Ex.P-4) has categorically stated that the head injury was not grievous in nature but the injury noticed by him on the chest was of-course grievous. At the same time, he has stated that none of the injuries was dangerous to life and they all could have been caused on account of fall. It is relevant to note here that though the query report (Ex.P-4) discloses the chest injury to be grievous in nature, the same doctor while deposing in the Court has not stated so. In the Court he has categorically stated that even the chest injury was not grievous in nature. Thus even the medical evidence is not consistent about the nature of injuries and being so, his conviction under Section 325 IPC is not sustainable in the eye of law. It is hereby set aside. However, looking to the injuries, the accused/appellant cannot escape the rigor of Section 323 IPC and being so, he is held guilty accordingly.

7. As regards sentence, keeping in mind the fact that the accused and the victim are in blood relations and the incident appears to have taken place only on account of some property related dispute, and further that the accused/appellant has already remained inside for about one and a half month apart from making payment of fine amount, this Court thinks it proper and in the interest of justice to reduce his sentence to the period already undergone. Order accordingly.

8. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge