

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 654 of 2008**

- Awadh Ram Sonwani, Age -35 years, S/o Sawant Das Sonwani, By Caste :- Satnami, R/o:- Village :- Nayapara, P.S. - Tumgaon, Tahsil & Distt. Mahasamund (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh, Through The P.S. Tumagon, Distt. Mahasamund (C.G.)

---- Respondent

For appellant : Shri J. A. Lohani, Advocate.

For Respondent/State : Shri H.S. Ahluwlia, Dy. Advocate General.

Hon'ble Shri Justice Gautam Chourdiya
Judgment On Board**17/07/2020**

01. Proceedings of the matter have been taken up through video conferencing.

02. This appeal arises out of the judgment of conviction and order of sentence dated 05.07.2008, passed by Sessions Judge, Mahasamund (C.G.) in Sessions Trial No. 29/2008 convicting the accused/appellant under Section 323 of Indian Penal Code (henceforth "IPC") and sentencing him to undergo rigorous imprisonment for one year with fine of Rs.1,000/-, in default of payment of fine to further undergo rigorous imprisonment of three

months.

03. Case of the prosecution, in brief, is that on the fateful day i.e. on 01.05.2008, at about 20.00 hours at night when complainant – Kishun was going from village – Nayapara to Badgaon, all of a sudden, appellant came there and assaulted the complainant on his head by means of club (*lathi*), as a result of which, he sustained grievous injuries on his left parietal & frontal region, which were sufficient to cause his death. FIR (Ex.P-1) was lodged by the complainant himself on the same day of incident. One bloodstained shirt and one bloodstained towel (*Safa*) were seized from the complainant vide Ex. P/3. One bloodstained club was also seized from the possession of the accused/appellant vide Ex.P-4. Spot map was prepared by Patwari vide Ex.P-5. From the place of occurrence, plain soil, bloodstained soil and one sleeper were also seized vide Ex. P/6. The Complainant was medically examined by Dr. Vipin Rai (PW-5) who noticed one lacerated wound on left parietal in the size of 15"x1"x1", and one lacerated wound on frontal region in the size of 1"x1"x1", which appears to be caused by hard & blunt object vide Ex. P/8.

04. After usual investigation, charge sheet was filed against the appellant under Section 307 of IPC. Thereafter, the trial Court framed charge under Section 307 of IPC against the appellant which was denied by him and he prayed for trial.

05. So as to hold the accused/appellant guilty, the prosecution

examined as many as 7 witnesses namely- Kishun Kumar (PW-1), Bisheshar (PW-2), Jagdish (PW-3), Subhash Chandra Satpathi (PW-4), Dr. Vipin Rai (PW-5), Vijay Kumar (PW-6) & Chandrashekhar (PW-7). 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. No defence witness has been examined on behalf of accused/appellant.

06. The Sessions Court after hearing counsel for the respective parties and after perusal of records held that offence under Section 307 IPC is not made out against the appellant, instead thereof offence under Section 323 of the IPC is made out against the appellant and therefore, by the impugned judgment, convicted and sentenced the accused/appellant as mentioned in paragraph two of the judgment.

07. Learned counsel for the accused/appellant submits that accused/appellant has been falsely implicated in the crime in question as there is no eyewitness to the incident nor any circumstantial evidence available on record connecting the appellant with the offence as alleged. He submits that the trial Court did not appreciate the evidence available on record while convicting and sentencing the accused/appellant as aforementioned. He also submits that there is no injury caused by the appellant to the complainant and, therefore, the learned trial

Court is absolutely unjustified in convicting and sentencing the accused/appellant under Section 323 of the IPC and the appellant deserves to be acquitted of the said charge. Alternatively, he submits that appellant was 35 years of age at the time of incident and now he is above 47 years and looking to the fact that incident happened on 01.05.2008 near about 12 years were lapsed, and he has no criminal antecedents, it is prayed that the appellant may be given benefit of Probation of Offenders Act and may be sentenced to the period already undergone by him as the appellant remained in jail for about two months & three days.

08. On the other hand, learned counsel for the State while supporting the impugned judgment submits that after appreciating the material available on record, the trial Court has convicted and sentenced the accused/appellant as aforementioned, which does not call for any interference.

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

10. Kishun Kumar (PW-1) has stated in paragraph six of his deposition that when he reached near the shop of Kamta, accused stopped him and assaulted him with Club on his head, as a result of which, he sustained head injuries and blood started oozing from his head. Prior to this incident, accused demanded Rs. 20,000/- from him but he (complainant) refused to give him the money as he was not having enough money, therefore, on the

same day accused assaulted the complainant with club. Immediately after the incident, complainant lodged FIR (Ex.P-1) on the same day. Spot map (Ex.P-5) was prepared in his presence and one bloodstained shirt of the appellant and one bloodstained towel (*Safa*) were seized from the possession of the accused/appellant.

11. From careful perusal of the evidence of the complainant which is duly supported by the promptly lodged FIR, his MLC vide Ex. P/8 prepared by Dr. Vipin Rai (PW05) who has proved the same and also the evidence of Bisheshar (PW-2) & Jagish (PW-3) who have supported the version of the complainant this Court finds no reason to disbelieve the evidence of injured complainant. From the medical evidence it is seen that no bony injury was found on the body of the complainant and he suffered only simple injuries.

12. Thus, looking to the overall fact situation of the case, nature & gravity of the offence, and the material collected by the prosecution against the accused/appellant, I am of the opinion that the trial Court is absolutely justified in convicting the accused/appellant under Section 323 of the IPC and, therefore, the finding of the trial Court, convicting the accused/appellant under Section 323 IPC is hereby affirmed.

13. So far as the sentence part of the appellant under Section 323 of the IPC is concerned, considering the fact that the incident

occurred way back in the year 2008, the appellant is facing trial since 2008 and the fact that the appellant has already remained in jail for two months and three days and he has no criminal antecedents and at present he is on bail, *keeping in view the judgment of the Hon'ble Supreme Court in the matter of **George Pon paul Vs. Kanagalet and Others (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone*, this Court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him while keeping the fine amount with default sentence imposed by the trial Court intact.

14. Resultantly, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 323 of the IPC, his jail sentence is reduced to the period already undergone by him. However, the fine amount imposed by the trial Court with default sentence shall remain intact.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge