

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 17 of 2008

Om Prakash, S/o Sobhnath Biyar, R/o Village Nagar, P.S. Charcha, Distt.-
Koria, Chhattisgarh. **---- Appellant**

Versus

State of Chhattisgarh through Police Station Charcha, District Koria,
Chhattisgarh. **---- Respondent**

For Appellant	:	Shri D.N. Prajapati, Advocate
For Respondent	:	Shri Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on board

25.08.2020

FIR (Ex-P/1) lodged by victim Shobharam (PW-1) cause to show that on 27.05.2005, in the early morning, when he had come back home from the railway station after making his brother-in-law board the train, the deceased-accused Shobhnath was found hurling abuses by standing near his house. When Shobharam (PW-1) objected to the abuses hurled by deceased-accused Shobhnath, both the accused persons had scuffled with him and the present accused/appellant took out an axe and dealt a blow on his both arms. As a result of the axe blow inflicted by the present accused/appellant the victim fell down on the ground and blood started oozing from his wound. FIR further indicates that on hearing the screams of the victim, his wife namely Hulaso Bai (PW-4) rushed to the spot and intervened in the matter. During the course of intervention by Hulaso Bai (PW-4) the deceased-accused Shobhnath caused a club injury on her left temple, which started bleeding. It is alleged that, on hearing the screams of Shobharam (PW-1), three persons namely Chaitu @ Chandrapratap (PW-2), Goverdhan (PW-6) and Shivprasad

(PW-9) came to the spot and saved the victim from the clutches of the accused-appellants, otherwise they would have killed him. Both Shobharam (PW-1) and Hulas Bai (PW-4) were sent for medical examination which was done by Dr. Ashok Kumar (PW-11). Orthopedic Surgeon Dr. Ashish Karan (PW-3) also examined the victim Shobharam (PW-1) and gave his report (Ex-P/10) stating that there was fracture on his right shoulder. After completion of investigation, charge-sheet was filed against accused/appellants for the offence under Sections 307, 325, 324, 34 IPC followed by framing of charges accordingly.

2. Learned Court below vide judgment impugned dated 19.12.2007 passed in Sessions Trial No.15/2006 convicted the accused/appellants under Sections 307/34 and 323/34 of IPC by imposing the sentence on each of them of R.I. for three years with fine of Rs.500/- and R.I. for three months with fine of Rs.200/-, with default stipulations. Hence this appeal.

3. It is relevant to note here that one of the accused namely Shobhnath died during the pendency of this appeal and the appeal in his respect has been dismissed as abated by order dated 06.07.2015, and, therefore, this appeal for the present relates to accused/appellant Om Prakash only.

4. Counsel for the accused/appellant submits that the conviction of the accused/appellant under Sections 307/34 and 323/34 is not based on proper appreciation of the evidence of the witnesses and, therefore, liable to be set aside. According to the counsel for the accused/appellant that two of the so called eye witnesses have not

supported the case of the prosecution and have been declared hostile but even then the Court below has placed implicit reliance on the testimony and held the accused/appellant guilty under Sections 307/34 and 323/34 of IPC, which is not sustainable in the eye of law. He submits that one Rajesh Kumari who was present on the spot at the relevant time and tried to resolve the dispute between the parties has been given up by the prosecution for the reasons best known to it, otherwise her testimony could have been more beneficial to the accused/appellant.

5. State counsel however supports the judgment impugned and submits that the finding recorded by the Court below are strictly in accordance with law and no infirmity or irregularity can be attributed to the same. He submits that the Court below has already dealt with all the relevant facts and evidence of the witnesses and, therefore, there is no room for an interference with the well reasoned judgment impugned.

6. Heard learned counsel for the parties and perused the judgment impugned and record of the Court below.

7. The victim Shobharam (PW-1) while supporting the case of the prosecution has categorically stated that when he returned home from the railway station after making his brother-in-law board the train, the accused/appellant was found hurling abuses while standing in front of their house. On objection being raised by victim, accused/appellants scuffled with him and continued hurling abuses at him. In the meanwhile, the present accused/appellant brought an axe and inflicted injury with it on the left arm and right shoulder of the

victim, which resulted in profuse bleeding. His evidence further demonstrates that during hospitalization, stitches were also applied on the injuries suffered by this witness. When, the wife of the victim namely Hulas Bai (PW-4) came to intervene in the matter deceased-accused Shobhnath dealt a club blow on her head. He has stated that Chaitu @ Chadrapratap (PW-2), Goverdhan (PW-6) and Shivprasad (PW-9) also came to the spot little later and saw him in the injured condition. He has clarified that on account of the injury in his hand, he was required to put a thumb impression on the report lodged by him. Hulas Bai (PW-4) wife of victim Shobharam (PW-1) has also stated almost the same things like Shobharam (PW-1). She has however stated that when her husband objected to the abuses being hurled by deceased-accused Shobhnath, he scuffled with him and in the meanwhile the present accused-appellant brought an axe with him and caused injuries on both of his arms with it. She has also stated that when she tried to rescue her husband, deceased-accused Shobhnath inflicted a club injury on her head which resulted in profuse bleeding. Chaitu @ Chandrapratap (PW-2) and Shivprasad (PW-9) have however not supported the case of the prosecution and have been declared hostile. Dr. Ashok Kumar (PW-11) vide his report Ex-P/10 has found two bleeding injuries on the right shoulder and left arm of the victim Shobharam (PW-1). According to him, they were simple in nature. Likewise, the injuries caused to Hulas Bai (PW-4) have also been opined to be simple in nature. This witness however has opined that the injuries to Shobharam (PW-1) could have been caused by hard and sharp edged weapon, however, seriousness of the injuries can be determined only after receiving X-ray report.

Orthopedic Surgeon Dr. Ashish Karan (PW-3) however vide his report Ex-P/10 opined the fracture on the right shoulder bone of Shobharam (PW-1), but in the cross examination he has admitted that the said injury was not dangerous to life. Though the injuries suffered by the victim have been opined to be simple in nature yet the intention of the accused-appellants can very well be gathered from the weapon used by them in the commission of crime while assaulting Shobharam (PW-1). Deceased-accused Shobhnath could have stopped his son Om Prakash from causing injuries to Shobharam (PW-1) but instead of doing so, he himself indulged in the crime and pounced upon Hulas Bai (PW-4) when she came to rescue her husband the deceased-accused Shobhnath caused a club injury on her head also. It is a settled position of law that to convict the accused-appellant number of injuries is not of that much significance and there are other factors also which are determinative for deciding the intention on the part of the accused-appellant. In this case, it is apparent that first both the accused-appellants scuffled with Shobharam (PW-1) and thereafter, accused Om Prakash brought an axe and dealt a blow on both arms of the victim Shobharam (PW-1). The record also shows that the matter did not end here itself, but, when the wife of Shobharam (PW-1) reached the spot and tried to save her husband, instead of averting the incident the deceased-accused Shobhnath caused a club injury on her head. In this view of the matter, the conviction of the accused-appellant under Section 307/34 IPC for assaulting Shobharam (PW-1) is just and proper. Likewise though the club injury to PW-4 was caused by the deceased-accused yet looking to the fact that at that time the present

accused-appellant was also sharing the common intention, his conviction under Section 323/34 IPC is also just and proper. Conviction of the accused-appellant under both the Sections is thus maintained.

8. As regards sentence, keeping in mind the fact that the incident had taken place in the year 2005 and one of the accused-appellant has already died during the pendency of this appeal and also considering the fact that the accused appellant has remained in jail for about 3 ½ months and that no minimum sentence has been provided under this Section, this Court thinks it proper to reduce the sentence imposed on the accused-appellant to the period already undergone. Ordered accordingly.

9. Appeal is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge