

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 1070 OF 2002Judgment Reserved on 14/01/2020Judgment delivered on 19/05/2020

Lajpatrai Shandey S/o Bahoran Ram Shandey, aged about 40 years R/o Khaparganj, Bilaspur (C.G.) present Residence- Datima, P.S.H.- Jainagar, Surguja (C.G.)

....Appellant

Versus

State of Chhattisgarh Through P.S.H. Officer, P.S.H., Jainagar, Surguja (C.G.)

...Respondent

For Appellant: Ms. Nirupama Bajpai, Advocate

For Respondent: Mr. Shubham Verma, PL

Hon'ble Shri Justice Arvind Singh Chandel

CAV JUDGMENT

1. This appeal has been preferred against the judgment dated 01/10/2002 passed in Sessions Trial No. 314/1994 by the Fifth Additional Sessions Judge, Surajpur (C.G.), whereby the Appellant has been convicted under Sections 307 of the Indian Penal Code and sentenced to undergo RI for 4 years.
2. Facts of the case are that prior to the incident, the Appellant was medical practitioner. He had taken Rs. 1000/- from Budhram (henceforth 'the Complainant') for treatment of his brother, however, his brother died. On 11/01/1994 at about 2:00 pm, the Complainant met with the Appellant on the way and asked to refund Rs. 1000/- from the Appellant as his brother had died. On this, the Appellant assaulted the Complainant by a Lathi due

to which he sustained injuries. The matter was reported vide Ex.P-1 by Sundari Bai (PW2), wife of the Complainant. The Complainant was medically examined by Dr. K.K. Gupta (PW11). His report is Ex.P-22. Statements of the Complainant and other witnesses were recorded under Sections 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 11 witnesses. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter. Two defence witnesses have been examined.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Appellant has been wrongly convicted without there being any clinching evidence available on record. It has been submitted that from the statements of Sankur (PW7), Smt. Mankuwar (PW9), Neelkanth Prashad (DW1) and Premlal (DW2), it is apparent that the Complainant was in drinking condition and on a dispute with the Appellant, he jumped from a wall, due to which he sustained injuries. It has been further submitted that the trial Court has convicted the Appellant only on the basis of the statements of the Complainant and his wife, but their statements are not reliable. There are material contradictions and omissions occurred in their statements. It has been further submitted that if the entire evidence is taken as it is, yet it is established that there was no enmity of the Appellant with the Complainant and on the matter of refund of money a dispute

arose, therefore, there was no intention of the Appellant to commit murder of the Complainant and the act of the Appellant falls under the ambit of Section 308 of the IPC.

5. Learned counsel appearing on behalf of the State opposes the argument advanced by the counsel for the Appellant and submits that there is sufficient evidence available on record to convict the Appellant, therefore, the conviction does not require any interference.
6. I have heard counsel for the parties and perused the record minutely.
7. Complainant Budhram (PW1) has deposed that before the incident, the Appellant had treated his brother and had taken Rs. 1000/- from him, yet his brother died. According to this witness on the date of incident, this witness had asked the Appellant to refund his money, but the Appellant assaulted him by a Lathi, and thereafter he fled away from the spot. According to this witness, he became unconscious due to assault.
8. Sundari Bai (PW2), wife of the Complainant has also supported the above statement of the Complainant and has deposed that at the time of incident when the Appellant was assaulting the Complainant, many people including her gathered there. She also deposed that in the assault, the Complainant sustained injuries on his head and face. Alimudeen (PW4) has also deposed that when he reached to the spot, the Complainant was lying on surface in injured condition and the Appellant was holding a Lathi in his hand. Thereafter, the Appellant fled away from the spot.
9. Akbar (PW5) has deposed that after hearing the noise, he reached to the spot and saw the Complainant in injured condition. Though, other

witnesses Rahman (PW6) and Sankur (PW7) have not supported the case of the prosecution and have turned hostile, from the statement of the Budhram (PW1), it is well established that at the time of incident a dispute for refunding the money arose, and on that the Appellant assaulted him by a lathi. From the statement of Sundari Bai (PW2), Alimudeen (PW4) and Akbar (PW5), it is also established that when they reached to the spot, at that time the Complainant was lying on surface in injured condition. According to Alimudeen (PW4), the Appellant was holding a Lathi and he fled away from there.

10. Dr. K.K. Gupta (PW11) had medically examined the Complainant on 11/01/1994. During examination, he found that there was bleeding from his mouth, neck and ears. There were many lacerated wounds below the lips. One lacerated wound was found behind left ear and in that wound bone can be seen. The Complainant was in semiconscious. He opined that the condition of the Complainant was serious. According to this witness, if treatment would not have been provided at the right time, the Complainant may have died. Thus from the statement of the doctor and medical report of the Complainant, it is established that the Complainant sustained various injuries on his body and injury no. 1 was on his vital part.
11. On minute examination of above evidence, it is well established that in a sudden dispute, a quarrel took place and the Appellant assaulted the Complainant by a Lathi, due to which he sustained injuries. Injury No. 1 was on vital part of the Complainant's body. From the statement of witnesses, it is also established that after the incident, the Appellant fled away from the spot. He had not tried to make any further assault to the

Complainant. There is no evidence available on record on the basis of which, it can be said that they were having previous enmity. In these circumstances, it is not established that the Appellant had assaulted the Complainant with an intention to commit his murder. Thus, in my considered view, the act of the Appellant false within the amidst of Section 308 of the Indian Penal Code.

12. Considering the above facts and evidence, the conviction of the Appellant under Section 307 of the IPC is altered to Section 308 of the IPC. Since the Appellant has already undergone about 1 and 1/2 years, he is facing the lis since 1994 and he has no criminal antecedent, no fruitful purpose would be served to again send him in jail after 25 years, therefore, i am of the view that while upholding the conviction of the Appellant under Section 308 of the IPC, he is sentenced to the period already undergone by him.
13. In the result, the appeal is partly allowed. The conviction of the Appellant is upheld under Section 308 of the IPC and he is sentenced to the period already undergone by him.
14. It is reported that the Appellant is on bail. His bail bonds is not discharged at this stage and the same shall remain operative for a further period of six months in light of Section 437-A of the Cr.P.C.
15. Records of the Court below be sent back along with copy of this Judgment for necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge