

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1025 of 2003

Anadiram Yadav, S/o Lakhan Yadav, aged about 58 years,
Occupation Agriculture, R/o Village Ludeg, PS Patthalgaon,
Jashpur (CG).

-- Appellant

Versus

State of CG, through P.S. Patthalgaon, District Jashpur (CG).

--- Respondent

For Appellant : Mr. A.K. Prasad, Advocate.

Respondent/State : Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

25.08.2020

It is alleged that on 25.05.2002 at about 9 PM the accused/appellant demanded money from the victim Mayaram for consuming liquor but as Mayaram refused to fulfill the said demand, the accused/appellant started beating him with Lathi and slippers and thereby caused injuries on his right calf and left thumb. The report of the said incident was given by victim Mayaram on 26.05.2002 which was reduced to writing by Matwar Singh, Head Constable (PW-7) on the basis of which offence under Section 325 IPC was registered against the accused/appellant. On the next day, victim was taken to Community Health Center, Patthalgaon where he was medically examined by Dr. P. Sudhar (PW-9) who noticed swelling on right leg, deformity with bleeding wound and swelling on right hand. According to this witness the injuries were grievous in nature and the condition of the victim was precarious. Looking to the injuries of the victim he was referred to District Hospital where x-ray

was advised. On x-ray being done, both the bones of right leg were found to be fractured. Fourth metacarpal bone of the hand of the victim was also found to be fractured, which is evident from x-ray report (Ex.P-10) and the x-ray plates (Ex.P-11 and Ex.P-12). The victim remained admitted in the hospital for 4-5 days and had been got discharged by his son Fateram (PW-2) and returned home where he died on 06.06.2002. After completion of investigation, charge-sheet was filed against the accused/appellant under Section 302 IPC followed by framing of charge accordingly.

2. Learned Court below by the judgment impugned dated 02.09.2003 passed in Sessions Trial No.182/2002 acquitted the accused of the charge under Section 302 IPC but found him guilty under Section 325 IPC and sentenced him to undergo RI for 3 years with fine of Rs.1000/-, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that there is no evidence to show that the death of the accused/appellant was the direct outcome of the injuries having been caused by the accused/appellant. He submits that if the son of the deceased had not got his father discharged from the hospital and brought home, probably he would not have met an unfortunate death. He further submits that the evidence of PW-1 and PW-2 has not been taken care of properly and therefore, his conviction under Section 325 IPC is not sustainable in the eye of law and deserves to be set aside. In the alternative, counsel for the accused/appellant submits that if conviction of the accused/appellant under Section 325 IPC is not going to be interfered with, at least the sentence imposed on him

may be reduced to the period already undergone which in this case comes to be about 3 months.

4. On the other hand, State counsel supports the judgment impugned.

5. From the evidence of the witnesses it is quite apparent that on account of refusal to give money to accused for consumption of liquor, he caused injuries to him with the help of slippers and Lathi on account of which he suffered fractures also. The statement made by the victim in the FIR which was got recorded at his instance also reveals as to the manner in which the accused/appellant opened an assault on him. Belmati (PW-1) the daughter-in-law of the deceased has also supported the case of the prosecution and stated that on being informed by the villagers about the assault being made by the accused on his father-in-law, she immediately rushed to the spot and found her father-in-law lying on the street. She has also stated that her father-in-law clearly informed her that it is the accused who caused injuries with slippers and Lathi after he refused to make payment for consumption of liquor. Thereafter, the victim is stated to have been taken to hospital where he remained admitted for 5 days and after being brought back home he lost his life. In the cross-examination also this witness has not budged even in the slightest manner to what she has narrated in the examination-in-chief. Fateram (PW-2) who happens to be the son of deceased has stated that on being informed about the tragic incident by someone of the village, he got back home from the marriage ceremony and saw his father in an injured condition. He also noticed the injury on the right foot of his father with protrusion of bone. Thereafter, he has stated

the same thing like PW-1. This witness has further stated that if his father had not been discharged by the hospital, probably he could have been alive. Parmanand (PW-3) is the eye witness to the incident has categorically stated that on the date of incident when he was busy in loading the jack-fruits in the truck, he saw the accused/appellant assaulting the victim with Lathi and slippers. When he asked as to why he was doing so, he did not listen to him, and thereafter he left the place. Upto here this witness has been consistent but on the point as to what has happened thereafter, he has expressed his ignorance and been declared hostile. Dr. Basant Singh (PW-4) is the witness who conducted postmortem examination on the body of the deceased vide his report Ex.P-2 has stated that he found a lacerated wound on the right calf coupled with septicemia which was on account of fracture of tibia and fibula bone. The mode of death as opined by this witness is respiratory arrest but he has not given any definite opinion as to what led to such respiratory arrest causing death of the deceased. Sumritram (PW-5) is the hearsay witness has stated that he rushed to the spot after being informed by someone about assault on the deceased, he found him lying there and it was told by the victim that it was none else but the accused/appellant alone who caused injuries to him. However, this witness also had been consistent upto here but later on, after interrogation by the police he turned hostile. Patwari (PW-6) is the witness who prepared spot map has also supported the case of the prosecution. PW-7 is the Head Constable who lodged the FIR consistently supported the case of the prosecution. PW-8 is the Kotwar and witness of packet containing the undergarments has also supported the case of the prosecution though he has expressed

his ignorance as to whom this clothes belonged to. Dr. P. Sudhar (PW-9) is the witness who took x-ray of the victim and gave his report Ex.P-9 has stated that he noticed the tibia and fibula bone of the victim to be fractured. He has also stated that fourth metacarpal bone of the victim was also fractured and injuries suffered by the victim was grievous in nature. He has stated that after remaining hospitalized for 4-5 days the victim was got discharged by PW-2, son of the victim and thereafter he lost his life on 06.06.2002.

6. Having made the aforesaid factual discussion in the light of the evidence of the witnesses, this Court reaches an irresistible conclusion that it is the accused/appellant who caused number of injuries, some grievous in nature, merely on account of refusal of money to the accused by the victim. The medical evidence also holds the injuries sustained by the victim to be grievous in nature as tibia and fibula and fourth metacarpal bone were found to be fractured. Other witnesses too have categorically supported the case of the prosecution stating that it is the accused/appellant who caused injuries to the victim. The grievous hurt caused by the accused/appellant with the slippers and club is very much clear from the testimony of the witnesses as above. The Court below has not erred in convicting the accused/appellant under Section 325 IPC and being so the same is hereby maintained.

7. As regards sentence, being not a forgetful of the fact that the incident had taken place in the year 2002 i.e. about 18 years back and by now the accused/appellant has suffered a lot, this Court thinks it proper to reduce the jail sentence to the period already

undergone. Order accordingly. As the accused/appellant is already enjoying bail, no other order for releasing him etc. is necessary.

8. With the observations made above the appeal is allowed in part.

Sd/-
(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay