

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1122 of 2001

Birkeshwar Singh Aged about 60 years, S/o. Late Gahbar Singh,
Occupation Headmater, R/o. Village Amdala, PS Lakhnpur, District
Surguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Lakhanpur, District
Surguja District (C.G.)

---- Respondent

For Appellant : Mr. Jai Prakash Shukla, Advocate
For Respondent : Ms. Ishwari Ghritlahare, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

05.02.2020

The accused/appellant at the relevant time was working as a teacher in the school where injured Vijay Bahadur (PW-1) was prosecuting his studies in class-V. It is alleged that on 4.12.2000 the accused/appellant turned angry on account of PW-1 being involved in some pranks with his classmates, and struck his head against the wall three-four times, as a result of which continuous headache started. When he complained the headache to his parents he was taken to a local doctor and when the situation did not improve, on the recommendation of the local doctor, the

injured was taken to MMI Raipur. On the basis of intimation (Ex.P-4) sent from the Raipur hospital, FIR (Ex.P-5) was registered against the accused/appellant under Section 308 IPC and after investigation challan was filed for the same offence followed by framing of charge.

2. Learned Court below found the accused/appellant guilty under Section 308 IPC and sentenced him to undergo RI for 3 years by judgment impugned dated 07.11.2001 passed in Sessions Trial No. 143/2001. Hence, this appeal.

3. Counsel for the accused/appellant submits that the conviction of the accused/appellant is not based on the proper appreciation of the evidence on record and therefore, liable to be set aside. While advancing his argument, he also referred to the evidence of DW-2 and DW-3 who have denied any such occurrence where the accused/ appellant is alleged to have struck the head of the injured against the wall. He further submits that it is a case of false implication arising out of some Panchayat Election related dispute.

4. On the other hand, learned State counsel supported the judgment impugned and holds the same to be strictly in accordance with law.

5. Sangita (PW-2) and Bhanupratap (PW-6)- the students of the same class have categorically stated that the accused/ appellant got infuriated by some small prank of the injured, called him and

struck his head against the wall four-five times. Rajaram (PW-3)- the father of the injured has stated that on coming to know about the continuous headache complained by the injured, he took him to the local doctor and when the situation continued to worsen where the victim started even vomiting, he took him to MMI Hospital, Raipur where a surgical operation was required to be performed. He has clarified that the injured later on informed him about his head being hit by the accused/ appellant against the wall repeatedly in the class room and it is since then the pain started. Bhagmaniya (PW-5)- the mother of the victim has also made almost similar statement like (PW-3). Dr. Kishore Jha (PW-7) who medically treated the victim has categorically stated that after CT scan being done, blood clot was found in his right fronto parietal region which was surgically removed, and to recuperate the victim remained hospitalized for about a week i.e. from 10.09.2000 to 18.09.2000. He has further stated that the injury suffered by the victim was caused by a hard and blunt object which was dangerous to life. The report given by this witness is (Ex.P-3). Investigating Officer has also supported the case of the prosecution in its entirety.

6. Thus, the evidence collected by the prosecution clearly establishes that while striking the head of the victim against the wall repeatedly, the accused/appellant very much knew that his act may become fatal to the life of the victim. The eye-witnesses have also been categorical while supporting the case of the

prosecution. Even the doctor has opined the injuries noticed by him on the head of the victim as dangerous to life. Therefore, his act establishes the culpable homicide not amounting to murder and being so his conviction under Section 308 IPC is just and proper and it is maintained as such.

7. However, looking to the incident being of the year 2000, and that since then the accused has already faced a long drawn prosecution and even remained inside for about two and a half months, interest of justice, in the opinion of this Court, would be served if his sentence is reduced to the period already undergone. Order accordingly.

8 Appeal is thus allowed in part to the extent indicated above. As the appellant is already on bail, his bail bonds stand discharged.

Sd/-

(Vimla Singh Kapoor)
JUDGE