

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 836 of 2001

1. Sukhlal S/o. Samaru Moghiya, Aged about 40 years, occupation Labour, R/o. Patrapali, P.S. Chakradhar Nagar, Raigarh, District Raigarh(C.G.)
2. Vidya Sagar S/o. Badrinath Nai, Aged about 30 years, Occupation Nai, R/o. Patrapali, P.S. Chakradhar Nagar, Raigarh, District Raigarh(C.G.)

---- Appellants

Versus

State of Chhattisgarh, through the District Magistrate Raigarh,
District Raigarh (C.G.)

---- Respondent

For Appellants	: Mr. Rajendra Tripathi, Advocate
For Respondent	: Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

04.02.2020

Case of the prosecution in brief is that on 21.01.2000 at about 12.00 noon when injured Shaukilal (PW-4) had gone to the village pond for bath, the accused/ appellant along with Vidyasagar (acquitted by the judgment impugned but by mistake he has been arrayed as one of the appellants in this appeal) met him on the way, abused and threatened to kill him. After exchange of hot

words between them, the appellant herein and assaulted him with club on the head and back of the complainant. Acquitted accused Vidyasagar is also stated to have caused club injury on the back of the complainant. As a result of the head injuries the complainant became unconscious and fell down on the ground. Thereafter, wife, brother and other villagers took him to the house and reported the matter to the Police on the basis of which FIR (Ex.P-4) came to be registered against the accused persons for the offences under Sections 294, 506 B, 323 read with section 34 IPC. After completion of investigation charge sheet was filed for the said offence followed by framing of charge accordingly.

2. It is relevant to mention here that the appellant No. 2 Vidyasagar has already been acquitted by the trial Court but by mistake he has also been impleaded as an accused in this appeal. Therefore, this appeal as far as it relates to accused Vidyasagar becomes redundant.

3. Learned Court below vide judgment impugned dated 25.08.2001 passed in Sessions Trial No. 71 of 2000 acquitted the present appellant also of the charges under Sections 294, 506 B, 323 but convicted him under Section 325 IPC with imposition of sentence of two years RI with fine of Rs. 200/- pulse default stipulations.

4. Counsel for the appellant submits that the judgment of conviction and order of sentence passed by trial court is arbitrary, illegal and contrary to the evidence collected by the prosecution.

His alternative prayer is as to the reduction of sentence to the period already undergone by the accused if the conviction part of the judgment impugned is not going to be interfered with

4. On the other hand, learned State counsel supported the judgment impugned.

5. Having heard counsel for the parties and perused the material available on record including the evidence of injured PW-4 himself and other eye-witnesses namely PW-5 and PW-11 who saw the accused/appellant assaulting the victim with club, the act of the accused/appellant in causing injuries on various part of the body of the victim including head is clearly established. Moreover, the evidence of PW-4, PW-5 and PW-11 finds corroboration from the medical evidence where the doctor (PW-2) has found lacerated wound on the right side of the head in the size of 5x½ cm into bone deep and the injured was found unconscious at the time of admission. He advised for x-ray and admitted him in the surgical ward. From the evidence of PW-1, it is evident that as a result of assault multiple injuries were received by him including fracture on frontal bone. The fracture of head opined by the doctor is evident from medical report Ex.P-1. Even the seizure of club has been proved by PW-6 and PW-7. Thus, the conviction of the accused /appellant under Section 325 IPC does not appear to be at fault and the Court below has considered all aspect of the matter while doing so. It is hereby maintained.

6. 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 four 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.

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

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh