

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 568 of 2009

Reserved on : 03.01.2020

Delivered on : 27.02.2020

Balmiki Panika, S/o Ramsai Panika, aged about 30 years,
Occupation- Agriculture, R/o Village- Narayanpur, P.S.
Ramanujnagar, District- Surguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through P.S.- Ramanujnagar, District- Surguja
(C.G.)

Respondent

For Appellant : Mr. Vipin Singh, Advocate.

For State/respondent : Mr. Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 29.07.2009 passed by Second Additional Session Judge (F.T.C.), Surajpur, District- Surguja (C.G.) in Session Trial No. 03/2009, wherein the said court convicted the appellant for commission of offence under Section 324/34 of IPC, 1860 and sentenced to undergo R.I. for 6 months and fine of Rs. 1000/- with further default stipulations.

2. In the present case, name of the victim is Basant Kumar. As per version of the prosecution, on 23.04.2008 at about 10:30 a.m., complainant Basant Kumar was returning from Madhavpur to Surajpur after dropping the passenger and when he reached at Makarbandha Chowk, the appellant with other co-accused namely Vinod & Shivnarayan stopped him and assaulted him by rod and stick as a result of which, he sustained injuries on his head and left leg. The matter was reported and investigated, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
3. Learned counsel for the appellant submits as under:-
 - (i) The medical report of the complainant does not support story of the prosecution.
 - (ii) The trial court ignored that the eye-witnesses namely Devesh (PW-6), Tuleshwar Prasad (PW-9) & Bhanu Pratap (PW-10) have also not supported story of the prosecution.
 - (iii) Seizure of rod and stick has not been proved by the prosecution through any of the independent witnesses.
 - (iv) The whole case of the prosecution is based on weak nature of testimony, therefore, the finding of the trial court is not sustainable.

- (v) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
 5. I have heard learned counsel for the parties and perused the record.
 6. Basant Kumar (PW-5) who is victim in the present case deposed before the trial court that he is driver in one Sharma Bus and on the date of incident, he stopped bus at Village-Madhavpur because there was some stone and wood article were kept in the road. At the same time, the appellant with other co-accused persons assaulted him by rod and wooden article. He sustained injuries on his head, rib and leg. Version of this witness is supported by version of Vivek (PW-7). Version of both the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of defence. Version of these witnesses is further supported by version Dr. H.P. Singh (PW-8) who examined the victim on 23.04.2008 at 12:45 p.m. at Community Health Centre, Ramanujnagar and noticed following injuries (Ex. P/4):-

- (i) Lacerated incised wound size 2.5" x 0.5" over the left side of temporal region.
 - (ii) Fracture crack present over the left leg upper region just below the left knee.
- 7. As per version of this witness, the injuries were caused by hard object like rod. He opined that the injuries caused on head was grievous in nature. He further opined that the injury caused on head is fatal. Again, he examined the rod produced before him which is seized in the present case. After examination, he opined that the injuries could be caused by this weapon.
- 8. The trial court opined that no X-ray is done in the present case, therefore, it cannot be said that the injuries were fatal in nature and in absence of proper evidence, the injuries shall be treated as simple injuries. This finding of the trial court is not under challenge, therefore, act of the appellant as found by the trial court comes within purview of Section 324 of IPC. The argument advanced on behalf of the appellant is not sustainable.
- 9. The trial court elaborately discussed the entire evidence and after reassessing the entire evidence, this Court has no reason to record contrary finding. The act of the appellant falls within mischief of Section 324/34 of IPC, 1860 and his conviction is hereby affirmed.

10. The appellant has suffered jail sentence from 12.01.2009 to 31.03.2009 i.e. for 79 days. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him. Accordingly, his sentence is reduced to the period already undergone by him. However, the fine amount imposed by the trial court shall remain intact.
11. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun