

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 114 of 2007

Bangar Singh Rathiya S/o. Shri Dol Singh Rathiya, Aged about 46 years, by caste Kanwar, Occupation- Agriculturist, residence of village Bagdahi, Thana and Tahsil Dharamjaygarh, District Raigarh (CG)

---- Appellant

Versus

State of Chhattisgarh, through the District Magistrate, Raigarh District Raigarh (CG)

---- Respondent

For Appellant : Mr. Sunil Sahu, Advocate.

For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

17. 09.2020

As per prosecution story, on 09.09.2006, the victim (PW-1) was invited by the appellant in his house for drinking liquor. The victim (PW-1) went and consumed liquor there. Subsequently, the victim saw that in the house of the appellant a bulb of 100 watt was glowing instead of 11 watt. It is stated that under the scheme of Solar Energy only 11 watt bulbs were permitted to the villagers by the Government. It is also stated that earlier the appellant was advised by the victim that 100 watt bulb was not permitted as it consumed more energy than 11 watt.

It is further stated on again advise of victim, the appellant got infuriated and assaulted on the back of the complainant with a *lathi* and when the victim tried to escape from there, he was caught hold off by his son namely Shukhram then he too committed *marpit* with him. It is the case of the prosecution that the appellant asked an axe from his son and inflicted axe blow on the head of the complainant and as a assault of axe the victim became unconscious and thinking him to be dead thrown in a pit by the appellant. On the next day, the complainant regained and found himself in pit and upon hearing his cries, the relatives took him out from the pit thereafter he was admitted in hospital for treatment. Subsequently, the report (Ex.P-1) came to be lodged in police station against the appellant. Investigation culminated in filing of the charge sheet against the appellants under Section 307/34 IPC. Charge, however, was framed against them under Sections 307/34 and 325 IPC.

2. Learned Court below vide judgment impugned dated 29.01.2007 passed in Sessions trial No. 121/2006 acquitted the accused/appellant under Section 307/34 but has held him guilty under Section 325 IPC with imposition of sentence of two years RI and to pay fine of Rs. 200/-, plus default stipulation. Hence, this appeal.

3. Apart from advancing strenuous arguments on merit, learned counsel for the appellant eventually slackened his stand and confined his prayer for reduction of sentence to the period already undergone, which in this case comes to about one and half months.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. Though most of the witnesses in this case have been declared hostile and not supported the case of the prosecution, however, the evidence of injured (PW-1) and eye witness namely Parvati (PW-3), reveal that the victim (PW-1) had suffered hand and head injuries in his body and as a result of assault opened by the accused/appellant on a pity dispute. Seizure of *lathi* and axe under Ex.P-6 also corroborates the medical evidence (Ex.P-13) which says that the fracture of ulna bone of the victim (PW-1) was caused by hard and blunt object and further the injuries were found in the head of the victim under (Ex.P-12) are of simple in nature. Evidence of the other witnesses namely Dhankuwar (PW-11), Aghanmoti (PW-12), Hridayaram (PW-13) and Panchobai (PW-2) gets corroboration from the FIR (Ex.P-1). Thus, the involvement of the accused/appellant under Section 325 IPC is fully manifest from the evidence on record, and therefore, the conviction as recorded by the court below is hereby maintained.

7. However, looking to the incident being of the year 2006, and that since then the accused/appellant has already faced a long drawn

prosecution and even the appellant remained inside about one and 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, no further order to set him free etc. is necessary.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh