

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 887 of 2005

Maniram S/o. Kartikram Devangan, Aged about 39 years, R/o. Tikripara Gandai, District Rajnandgaon (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Gandai, District Rajnandgaon (C.G.)

---- Respondent

For Appellant : Mr. Pawan Shrivastava, Advocate.

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

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

03.07.2020

As per prosecution case, on 02.04.2005 at about 9.45 PM, when the complainant was sitting for call of nature on the canal situated near the house of Johan Nia, at that time appellant called him thief then he objected and on this the appellant abused the assaulted on the head of complainant Vijay with lathi and thereafter Deepak @ Sonu also assaulted on the left arm of the complainant with lathi. When Rakesh tried to intervene the scuffle then co-accused caused injury with hands and fists on the complainant. Thereafter, the matter was reported to Police Station Gandai and on the basis of which FIR

(Ex.P-7) was lodged by complainant (PW-3) against the appellants. After completion of investigation charge sheet was filed for the said offence followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 28.11.2005 passed in Sessions Trial No. 27 of 2005 acquitted the accused/appellant under Sections 294 IPC and 3 (i)(x) of the Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act but has held him guilty under Sections 323 IPC with imposition of sentence of one month RI with fine of Rs. 500/- under Section 323 IPC plus default stipulations. Hence, this appeal.
3. Counsel for the appellants submits that the judgment impugned convicting the accused/appellant under Sections 323 IPC is not based on the proper appreciation of the evidence of the witnesses and therefore, liable to be set aside. The evidence adduced by the prosecution is not sufficient to establish the guilt because the basic ingredients of the offence is lacking in the present case. He submits that there are number of contradictions and omissions in the statements of witnesses which makes the case of the prosecution doubtful.
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. From evidence of injured Vijay (PW-3), it is established that the appellant caused injuries on the body of injured with lathi, hands and fists. The seizure made under Ex.P-9 is of lathi. Moreover, the evidence of eye-witnesses namely Deepak Tandon (PW-4), Rakesh (PW-6) and Shyamlal Ahuja (PW-7) finds corroboration from the medical evidence where the Dr. Ashish Sharma (PW-1) has found four lacerated wounds on the temporal region and parietal region of the injured and one abrasion on the shoulder region of the injured and he opined that the injuries were caused by hard and blunt object and he advised for x-ray. The injured was found unconscious at the time of admission. Statement of direct and medical evidence is corroborated during cross-examination. There is nothing on record to say that the appellant has been roped in false charge for causing injuries to the victim. The case of the appellant does not fall on any of the exception and the appellant had knowledge about his act causing pain in body of Vijay, therefore, his act is voluntary in nature. Almost all the witnesses have been consistent in deposing the things in the Court as also while making the statement before the Police, and all that, if read in a composite way, the involvement of the accused/appellant in the crime in question is fully established.

7. As regards sentence, looking to the fact that the incident had taken place about 15 years back and that by now the accused/appellant has already suffered a lot by fighting a long drawn legal battle since then, this Court does not see any reason to again disturb his life by again sending him to jail and therefore, his sentence is reduced to the period already undergone by him, which comes to about 5 days in this case. Order accordingly.
8. Appeal is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh