

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 33 of 2005

Jaisingh S/o. Kitam Singh, Aged about 18 years, R/o. Village Nagpura,
Chowki Belgahna, Thana Kota, District Bilaspur (Chhattisgarh)

---- **Appellant**

Versus

State of Chhattisgarh, through Station House Officer, Kota, Police
Station Kota District Bilaspur (C.G.)

---- **Respondent**

For Appellant : Ms. Soniya Kuldeep, Advocate.

For Respondent : Mr. Raghvendra Verma, Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

15.07.2020

On 07.01.2004, the hens eight in numbers belonging to the complainant had wandered into the field of accused/appellant and when the complainant went to his house for getting them freed, some altercation had taken place between the two. Thereafter when the complainant accompanied by his father were getting back, the accused/appellant came from behind and caused an injury on the head of the father of complainant (PW-1) with axe. Prior to this, the complainant was also dealt the club blows by the appellant. After medical examination of the complainant and his father, the

investigation ensued and the challan was filed for the same sections under which FIR (Ex.P-17) had been registered i.e. under Sections 302, 294,323,324 and 506 B IPC followed by framing of charge.

2. Learned Court below vide judgment impugned dated 28.12.2004 passed in Sessions Trial No. 115/2004 acquitted the accused/appellant under Sections 302, 294,506-B and 324 IPC but has held him guilty under Sections 323 and 326 IPC with imposition of sentence of three months RI under Section 323 IPC under Section 323 and RI for 3 years under Section 326 IPC. Hence, this appeal.

3. 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. He submits that the Court below has failed to appreciate that the evidence of Bhaiyalal (PW-1) and Babulal (PW-2) suffers from number of contradictions and omissions while holding the accused/appellant guilty under the said sections and therefore, it is prayed that the appellant may be acquitted of the charge leveled against him.

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. Bhaiyalal (PW-1) - the eyewitness to the incident has stated that on the date of incident when he went to the house of the appellant for getting freed his hens which are eight in number then the altercation took place between them where the appellant abused him and assaulted on his back with lathi. He stated that after half an hour, his father came there and when he was accompanied by his father were getting back to the house then the appellant came there behind and caused an axe blow on the head of his father and as a result of which his father fell down on the ground. In cross-examination also this witness remained firm to what he has stated in the examination-in-chief. Sohan Singh (PW-3) is the witness to memorandum of the accused/appellant (Ex.P-5) and seizure of axe under (Ex.P-4) and have admitted his signature thereon. ASI Ramgopal (PW-13) is the witness who recorded FIR whereas A.K. Jain (PW-14) is the investigating officer and they both have supported the case of the prosecution. Dr. Satyanarayan Pandey (PW-7) is the treating doctor who found increased wound in the size of 5x2cm into bone deep and seen fracture on the right occipital region and submitted his report (Ex.P-9). Dr. A.P. Rai (PW-6) is the doctor who conducted postmortem of the deceased and opined the cause of death is due to head injury and submitted his report under (Ex.P-8). The report (Ex.P-8) further states that the said injury was caused by sharp cutting object and was grievous in nature. Evidence of Babulal (PW-2) - the witness to the incident that of Bhaiyalal (PW-1) - the injured witness goes to show that on the date of incident accused caused injuries on the head of

Ganeshram – the deceased with axe as a result of which his head got fractured and he died due to said assault on the hospital during the treatment. Evidence of these two witnesses has been fully corroborated by the medical evidence where the doctors (PW-6 and PW-7) have given the reports (Ex.P-8 and Ex.P-9) stating that the injuries suffered by the deceased was grievous in nature. Court below has thus been fully justified in convicting accused Jaisingh under Sections 323 and 326 IPC and the finding so recorded being in conformity with the evidence collected by the prosecution does not call for any interference by this Court.

7. As regards sentence, the report received from the Superintendent, Central Jail, Bilaspur, dated 19.08.2009 shows that after getting the benefit of remission, the accused/appellant has already been released from the jail on 31.03.2006, therefore, no observation regarding the sentence part is required to be made by this Court.

8. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh