

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 972 of 2014**

- Vicky @ Ashish Kumar son of Samaru Yadav, aged about 21 years, resident of Malidipa, Pahadpara, Police Station- Chakardharnagar, Civil and Revenue District- Raigarh (C.G.) (In jail)

---- Appellant**Versus**

- State of Chhattisgarh, through the Incharge Adim Jati Kalyan Thana, Chakradharnagar, District- Raigarh (C.G.).

---- Respondent

For Appellant : Shri Sameer Singh, Advocate.
For Respondent/State : Shri Sameer Sharma, Dy. G. A.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****26/08/2020**

01. Proceedings of the matter have been taken up through video conferencing.

02. This appeal arises out of the judgment of conviction and order of sentence dated 03.09.2014, passed by Second Additional Sessions Judge, Raigarh, (C.G.) in Sessions Trial No. 37/2012, convicting the accused/appellant for the offence punishable under Section 307 of the Indian Penal Code and sentencing him to

undergo rigorous imprisonment of five years with fine of Rs. 500/-, in default of payment of fine, to further undergo rigorous imprisonment for three months.

03. Case of the prosecution, in brief, is that on 28.10.2011, FIR (Ex. P/5) was lodged by complainant- Jitan Chauhan, who is father of injured- Dilip @ Ramkumar Kuldeep, alleging therein that on 27.10.2011 at about 12.30 am at night one Chandrabhan Satpati informed him that his son namely- Dilip @ Ramkumar Kuldeep was lying in injured & unconscious condition near Atal Chowk. After receiving this information, he reached at the place of occurrence and found his son lying near Atal Chauk platform (*Chabutra*) in a serious injured condition. It has also been informed that accused- Vicky @ Ashish Kumar, Bittu Yadav and another person assaulted his son (Dilip @ Ramkumar Kuldeep) by means of iron rod. During investigation, spot map Ex. P/2 was prepared by K.K. Vasnik, Investigating Officer. From the place of occurrence, plain soil, blood stained soil and one broken tooth were seized vide Ex. P/3. Memorandum statements of both the accused persons namely- Bittu @ Naresh Yadav and Vicky @ Ashish Kumar were recorded vide Ex. P/6 & P/7. In consequence of memorandum statement of Bittu @ Naresh Yadav, one *bamboo* stick was seized vide Ex.P/09 whereas on the memorandum statement of Vicky @ Ashish Kumar one iron rod and one motor-cycle were seized vide Ex. P/10. Clothes of injured- Dilip @

Ramkumar Kuldeep i.e. blood stained *black* Full-paint was seized vide Ex. P-13. MLC of the injured- Dilip @ Ramkumar Kuldeep was conducted by Dr. B. R. Patel vide Ex. P/14 in which he sustained following injuries:

- (i) Badly damaged facial oral injury, nasal injury, bony injury over face, oral cavity dental injury, lacerated wound over right angle of mouth.

The condition of the patient was very weak. The doctor advised for x-ray of nose as also for consulting ENT doctor. According to Dr. B. R. Patel (PW-8) the injuries sustained by the victim were dangerous to his life, which were probably caused by hard and blunt object.

Dr. R. N. Mandawi (PW-9) - ENT specialist examined the victim on 28.10.2011 and noticed that blood clot was present on both the nostril and he noticed one crushed wound over the right septum of nose in the size of 1/2 x 1/4".

04. After usual investigation, charge sheet was filed against both the accused under Section 307, 34 of IPC and Sections 3 (1) (x) & 3 (2) (v) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989. Thereafter, the trial Court framed charge under Section 307 read with Section 34 of IPC against both the accused persons, which were denied by them and they prayed for trial.

05. So as to hold the accused persons/appellants guilty, the

prosecution examined as many as 12 witnesses namely- Dilip @Ram Kumar (PW-1), Basant Pradhan (PW-02), Jeevat Chauhan (PW-03), Manglu Yadav (PW-04), Shyamlal Yadav (PW-05), Gautam Kuldeep (PW-06), Rajaram Kuldeep (PW-07), Dr. B. R. Patel (PW-08), Dr. R. N. Mandavi (PW-09), Kaushal Kishore Vasnik (PW-10), Neha Pandey (PW-11) and G. R. Mahapatre (PW-12). Statement of the accused persons/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness has been examined on behalf of accused persons/appellants.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record and as per evidence acquitted the accused- Bittu @ Naresh Yadav of the charge under Section 307 read with Section 34 of IPC whereas accused/appellant- Vicky @ Ashish Kumar convicted and sentenced as mentioned in paragraph two of the judgment.

07. Learned counsel for the accused/appellant submits that the present accused/appellant has been falsely implicated in this case as he has not committed any offence. He further submits, named FIR was lodged against the two persons namely Vicky @ Ashish Kumar and Bittu @ Naresh Yadav and from the same set of evidence, the learned trial Court had acquitted one of the accused

i.e. Bittu & Naresh Yadav of the charge framed against him. He also submits that learned trial Court had not properly appreciated the material available on record particularly the evidence of injured witness- Dilip @ Ramkumar Kuldeep. He further submits that the prosecution has failed to establish the fact that both the accused persons had any intention or motive to commit or attempt to commit murder of injured- Dilip @ Ramkumar Kuldeep. Therefore, the learned trial Court has wrongly convicted & sentenced the present appellant and, therefore, he may be acquitted of the charge levelled against him.

08. Per contra, learned counsel for the State would submit that as per the statement of injured witness- Dilip @ Ramkumar Kuldeep (PW01), the entire injuries sustained by him were caused by the present appellant and nature of injuries were serious in nature and was sufficient to cause death. He also submits that the statement of the said witness has also been corroborated with his medical report (Exs. P-14). Another witness Basant Pradhan (PW02) has also fully supported the version of the injured witness- Dilip @ Ramkumar Kuldeep (PW01) and the case of the prosecution. Therefore, the impugned judgment passed by the trial Court being based on proper appreciation of oral and documentary evidence on record needs no interference by this Court.

09. I have heard learned counsel appearing for the parties and

perused the record of the court below including judgment impugned.

10. Injured witness -Dilip @ Ramkumar Kuldeep (PW01) has stated in paragraphs 1 & 2 of his deposition that on the date of incident accused- Vicky @ Ramkumar Kuldeep pulled his motorcycle from backside and used filthy language, at that time, his friend was present there and pacify the dispute and told him to go back, when he was taking rest at Atal Chauk accused- Vicky @ Ashish Kumar assaulted him by means of iron rod, due to which he sustained grievous injuries and became unconscious. The statement of this injured witness has been fully supported by the medical evidence, i.e. statements of the doctors who medically examined the injured and the Medical report (Ex. P/14). There is no major contradiction & omission was found in the statement of this witness. Thus, there is no reason to disbelieve the statement of the injured witness- Dilip @ Ramkumar Kuldeep.

11. Basant Pradhan (PW-2) in his evidence, has supported the statement of injured witness - Dilip @ Ramkumar Kuldeep (PW01), stated that accused- Vicky @ Ashish Kumar assaulted victim Dilip @ Ramkumar Kuldeep by means of iron rod, and due to fear he was fleeing away from the place of occurrence. Jeeven Chouhan (PW-3) has lodged the FIR (Ex. P/5).

12. Manglu Yadav (PW-4) & Shyam Lal Yadav (PW05) are the

witnesses of memorandum Ex. P/6 & P/7 and seizure of the articles vide Exs. P/8, 9 & 10 and they have proved their signatures on the said documents but they have not supported the case of the prosecution.

13. Dr. B. R. Patel (PW-08) has medically examined injured- Dilip @ Ramkumar Kuldeep on 28.10.2011 and he found badly damaged facial oral injury, nasal injury, bony injury over face, oral cavity dental injury, lacerated wound over right angle of mouth. The general condition of the patient was very weak. He advised for x-ray of nose and as also for consulting ENT doctor. According to him the injuries were dangerous to life, caused by hard and blunt object.

Dr. R. N. Mandawi, (PW-9) ENT specialist also examined the victim on 28.10.2011 and noticed that blood clot was present on both the nostril and he also noticed one crushed wound over the right septum of nose of size $\frac{1}{2} \times \frac{1}{4}$ ". He proved his signature on MLC (Ex. P/14).

14. There is no reason at all to disbelieve the evidence of the witness to the incident, medical report and statements of the treating doctors.

15. At this stage, it would be appropriate to notice the provisions contained in Section 307 of IPC are, which states as under

- (i) that the death of a human being was attempted;
- (ii) that such act was done with the intention of causing death;
or that it was done with the intention of causing such bodily injury as;
 - (a) the accused knew to be likely to cause death; or
 - (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death or (b) such bodily injury as is likely to cause death the accused having no excuse for incurring the risk of causing such death or injury.

16. Keeping in view the above ingredients attracting the offence under Section 307 of IPC, considering the evidence of the injured witness- Dilip @ Ramkumar Kuldeep (PW01) which finds due corroboration of Basant Pradhan (PW02) as also the medical evidence in the form of MLC report and evidence of Dr. B. R. Patel (PW08), looking to the nature of injuries sustained by the injured victim and the fact that soon after the incident the FIR was lodged against the appellant, this Court is of the opinion that the trial Court has rightly convicted and sentenced the appellant by the impugned judgment.

17. In view of the foregoing, the appeal being devoid of merit is liable to be and is hereby dismissed. Vide letter dated 18.6.2020

received from Superintendent, Central Jail, Bilaspur, It is reported that the appellant has completed his sentence awarded to him and has been released from jail on 22.11.2019, therefore, there is no need to pass any order with regard to his arrest, surrender etc.

Sd/-

(Gautam Chourdiya)

Judge

Amita