

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1848 of 2017

Sadhram Sahu, S/o Bharatram Sahu, aged about 34 years, R/o Near Bajrang Square, Ward No. 14 Bhatgaon, Chowki Bhatgaon, P.S. Bilaigarh, District- Balodabazar (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through P.S. Bilaigarh, District- Balodabazar- Bhatapara (C.G.)

---- Respondent

For Appellant : Mr. Utkal Pradhan, Advocate.

For State/respondent : Mrs. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

14/01/2020

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 08.09.2017 passed by Second Additional Sessions Judge, Balodabazar (C.G.) in Session Trial No. 22/2017, wherein the said court convicted the appellant for commission of offence under Sections 186, 506 (Part-II), 353 & 333 of IPC, 1860 and sentenced to undergo R.I. for 3 months, R.I. for 5 years, R.I. for 2 years & R.I. for 7 years and fine of Rs. 1000/- respectively with further default stipulations.
2. In the present case, complainant is Rakesh Chandra (PW-5) who is Constable in police department. As per version of the prosecution, said Rakesh Chandra went to Village- Rekotar on 23.12.2016 along with other police officer to arrest the present

appellant and they arrested him and brought to police out-post. The appellant asked to the complainant to leave him for answering call of nature and the complainant went with the appellant to outside the area where the appellant assaulted him by sharp floor stone. The matter was reported, 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 complainant and other police personnels are interested witnesses and their version is full of contradiction, therefore, case against the appellant is not established.

(ii) The trial court has not evaluated the evidence in its true perspective, 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. Complainant- Rakesh Chandra (PW-5) deposed before the trial court that the appellant was arrested on 23.12.2016 by him and he went to Village- Rikotar with other police personnels. Near police outpost- Bhatgaon, the appellant asked the complainant to release him to ease himself and

when the appellant took him inside of road, the appellant assaulted him on his head by sharp stone and flee away from the spot. Version of this witness is unrebutted during cross-examination and it is supported by version of Head-Constable- Ramesh Mishra (PW-2), Constable- Rupesh Kumar Chandravanshi (PW-3), Constable- Vishnu Khatkar (PW-6), Head-Constable- Vinod Singh (PW-7) & Constable- Dilip Kumar Sahu (PW-9). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

7. Sub-Inspector- Rajesh Sahu (PW-11) seized a white half T-Shirt of the complainant on 28.12.2016 in which blood mark was found. Version of this witness is supported by version of Dr. Pushpendra Vaishnav (PW-12) who examined the complainant- Rakesh Chandra on 23.12.2016 at Community Health Centre, Bilaigarh and found following injuries (Ex. P/11) :-
 - (i) Lacerated wound on left temporal region 3 cm. x 4 cm. & contusion on left maxillary region 6 cm. x 3 cm.
 - (ii) Lacerated wound on occipital region 4 cm. x 3 cm.
8. As per version of this witness, the seized stone was brought before him and he opined that the injuries caused to the complainant may be caused by the stone. This witness further deposed that the injuries caused to the complainant were grievous in nature. Causing grievous injuries voluntarily to deter public servant from his duty is an offence punishable

under Section 333 of IPC. Assault or criminal force to deter public servant from discharge of his duty is an offence punishable under Section 353 of IPC for which the trial court convicted the appellant for commission of offence under Sections 333 & 353 of IPC and the same is hereby affirmed.

9. From evidence of complainant- Rakesh Chandra (PW-5) & Head-Constable- Vinod Singh (PW-7), it is established that the appellant threatened the complainant to kill and thereafter, assaulted him by sharp stone which shows that the appellant was determined to execute his threat, therefore, the act of the appellant falls within mischief of Section 506 (Part-II) of IPC and the same is also hereby affirmed.
10. As the trial court convicted the appellant for commission of offence under Section 186 of IPC, but no written complaint was filed before the trial court by the complainant. As per Section 195 of the Code of Criminal Procedure (for short "the Cr.P.C."), 1973, no Court shall take cognizance of any offence punishable under sections 172 to 188 except on the complaint in writing of that officer or some other personnel to whom he is subordinate. After complaint, the procedure mentioned in Sections 200 to 203 of the Cr.P.C. shall be followed, but in the present case, no written complaint was filed and procedure under Sections 200 to 203 of Cr.P.C. is not followed, therefore, cognizance itself is not legal and the appellant is acquitted of the charge under Section 186 of IPC. The conviction and sentence for commission of offence under Section 186 of IPC

is set aside and the appellant is acquitted of the charge under Section 186 of IPC.

11. The appellant is reported to be in jail since 24.12.2016 and has completed jail sentence of more than 3 years. 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. He be set at liberty forthwith if not required in any other case. However, the fine amount imposed by the trial court shall remain intact.
12. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge