

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 222 of 2021**

- Raju @ Bhole Rajwade (Wrongly Mentioned as Rajawar), S/o Ghasiram Rajwade, aged about 22 Years, R/o Khatwat, Cherwapara, P.S. Charcha, District Korea, Chhattisgarh.

----Appellant**Versus**

- State of Chhattisgarh, Through Station House Officer, Police Station Baikunthpur, District Korea, Chhattisgarh.

---- Respondent

For Appellant	Shri Ravi Maheshwari, Advocate.
For State	Shri Shreshta Gupta, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

15/11/2021

1. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 15.04.2013, passed by the Sessions Judge, Korea (Baikunthpur), C.G. in S.T. No.133/2007, whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 224 of Indian Penal Code	Rigorous Imprisonment for two years and fine of Rs.200/-, in default of payment of fine amount to undergo additional rigorous imprisonment for two months
Under Section 307 read with 34 of Indian Penal Code	Rigorous Imprisonment for ten years and fine of Rs.500/-, in default of payment of fine amount to undergo additional rigorous

	imprisonment for six months
Under Section 333 of Indian Penal Code	Rigorous Imprisonment for ten years and fine of Rs.500/-, in default of payment of fine amount to undergo additional rigorous imprisonment for six months
Under Section 353 of Indian Penal Code	Rigorous Imprisonment for two years and fine of Rs.200/-, in default of payment of fine amount to undergo additional rigorous imprisonment for two months

(All sentences were directed to run concurrently)

2. Case of the prosecution, in brief, is that on the date of incident i.e. 05.08.2007, the appellant along with other co-accused persons assaulted upon PW-15-Ravendra Narayan Dwivedi, Jail Prahari, who was performing his duty on the said date. Accused persons also snatched the keys of prison from PW-15 Ravendra Narayan Dwivedi and fled away from jail. Due to assault, PW-15 Ravendra Narayan Dwivedi sustained various injuries on his body. Thereafter, FIR Ex.P-25 was lodged by PW-7 M.P. Goswami on the same day of the incident i.e. 05.08.2007 against the accused/appellant along with other co-accused persons under Crime No.157/2007 in police station Baikunthpur, Korea, C.G. Injured person was sent for medical examination who was examined by PW-3 Dr. R.S. Sengar vide Ex.P-18. The injuries sustained by the injured person are as under:-

1. Lacerated wound of 6 cm long, 2 cm width & 1.5 cm deep including muscle right side of inner cheek. Active bleeding present.
2. Lacerated wound of 8 cm x 1 cm x 1 cm into right side jaw region of mucosa.

3. Multiple abrasion over right region with continue on right jaw.

4. Swelling and tender on left fourth and fifth fingers.

According to the Doctor's opinion, injuries were caused by hard and blunt object. Duration within 4 to 5 hours. Nature of injury will be given after X-ray report (for injury Nos. 2, 3 & 4).

No.1 Active bleeding was present. It could be grievous if not treated in time.

3. After completing usual investigation, charge sheet was filed against the accused/appellant along with other co-accused persons under Sections 224, 353, 184, 333, 307, 34, 325, 186 of IPC.

4. The trial Court framed charges under Sections 224, 307 read with 34, 333 & 353 against the accused person which were denied by them and they prayed for trial. The prosecution examined 16 witnesses in support of its case i.e. PW-1 Mohan Singh Rathiya, PW-2 Dinesh Chandra Dhruv, PW-3 Dr. R.S. Sengar, PW-4 Shevak Ram, PW-5 Mangal Lakda, PW-6 Bodhan, PW-7 M.G. Goswami, PW-8 Ishwar Ram Kujur, PW-9 Surendra Kumar Upadhyay, PW-10 S.K.Singh, PW-11 Ravi, PW-12 Ram Milan Mishra, PW-13 Arjun Ram, PW-14 A.K. Arya, PW-15 Ravendra Kumar Dwivedi & PW-16 Azad Singh. Statements of accused were recorded under Section 313 Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by them.

5. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.

6. Learned counsel for the appellant submits that the trial Court has not properly appreciated the overall evidence available on record for holding the appellant guilty. He further submits that there are major contradictions and omissions in the statements of the prosecution witnesses. No cogent evidence is available on record against the appellant. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the aforesaid charges.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that the Co-ordinate Bench of this Court has already dismissed the Criminal Appeals No. 741 of 2013 & 932 of 2013 preferred by the co-accused vide judgment dated 08.02.2021.
8. Heard learned counsel for the parties and perused the material available on record.
9. It is not in dispute that on the date of incident all the accused persons were detained in jail in connection with various criminal cases.
10. PW-15 Ravendra Narayan Dwivedi, Jail Prahari, stated in his deposition that on the date of incident i.e. 05.08.2007 at about 2:00 pm when he was on his duty, at that time appellant along with other co-accused persons went to attend nature's call and when he (this witness) told them to get back to their barrack, they attacked on him, assaulted him badly and forcibly snatched the keys from him and fled away from jail.

11. PW-9 Surendra Prasad Upadhyay, PW-2 Dinesh Chandra Dhruv & PW-7 M.G. Goswami have duly supported the statement of PW-15 Ravendra Narayan. From their statements, it is well established that appellant along with other co-accused persons absconded from jail.
12. PW-3 Dr. R.S. Sengar medically examined the injured vide Ex.P-18 and noticed certain injuries as mentioned in the preceding paragraph. He has duly proved the said injury report.
13. Looking to the statement of the Injured-PW-15 Ravendra Narayan Dwivedi which is duly supported by the evidence of PW-9 Surendra Prasad Upadhyay, PW-2 Dinesh Chandra Dhruv & PW-7 M.G. Goswami, the medical evidence in the form of MLC (Ex.P-18) and X-ray report (Ex.P-21) and the prompt FIR and considering the fact that there is no major contradiction or omission in his statement and the statements of other supporting witnesses affecting the creditability of his version, no any evidence was adduced by the defence for false implication of the appellant, this Court finds no reason to disbelieve the statement of the injured or to arrive at a conclusion that he has falsely implicated the appellant. Further, the Co-ordinate Bench of this Court has already dismissed the Criminal Appeals of the co-accused against whom there are similar allegations and material available on record. Being so, the trial Court was fully justified in convicting and sentencing the appellant by the impugned judgment and as such no interference is called for by this Court.
14. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 27.03.2021 submitted by Jail Superintendent, Central Jail Ambikapur

Sarguja, C.G., the appellant is in jail in connection with another case i.e. S.T. No.145 of 2004 in which he has been convicted under Sections 302, 394, 120B, 201 of Indian Penal Code and sentenced to undergo life imprisonment, R.I. for ten years and R.I. for five years with fine sentence. As the appellant is in jail, there is no need to pass any order regarding his surrender, arrest etc.

Sd/-
Gautam Chourdiya
Judge

Akhilesh