

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 909 of 2002

Order reserved on 03.11.2020

Order pronounced on 15.01.2021

1. Jodhu Sahu, son of Pudgu Sahu, aged about 42 years, at present 44 (dead)
2. Mahesh Sahu, Son of Noha Sahu, aged about 25 years, At present 27 years,
3. Parmesh Sahu, son of Santram Sahu, aged about 32 years, at present 34 years,
All R/o village Kodwabani, PS Lalpur, District Bilaspur (CG)

---Appellants

Versus

State of Chhattisgarh, through Police of Police Station Laalpur,
District Bilaspur (CG).

---Respondent

For Appellant/s : Mr. R.N. Jha, Advocate.

For State/Respondent : Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

It is alleged that on 07.07.2000 when complainant Ramnath (PW-1) was taking his father-in-law Bodhiram (PW-6) to Mungeli hospital for the treatment of his injury which he had suffered earlier at the hands of accused Jodhu and while they were on the way, near a canal all the accused/appellants met them, picked-up verbal feud and in furtherance thereof accused Jodhu started assaulting Bodhiram with the help of Lathi carried with him. Other accused persons also caused injuries to Bodhiram (PW-6). While opening an assault the accused/appellants had also expressed their intention of eliminating Ramnath (PW-1) saying that one day he would stand as a witness against them. On account of an assault Bodhiram suffered injuries on his hands and legs for which he took treatment in the

hospital being admitted for 22 days. The complainant (PW-1) is also said to have been assaulted by the accused Jodhu with the help of Lathi as a result of which he suffered injuries on his left eye. Thereafter, the report (Ex.P-1) was lodged on the basis of which offence under Section 307/34 IPC was registered against all the accused persons. After completion of investigation and medical examination of Bodhiram (PW-6), the charge-sheet was filed against the accused/appellants under Section 307/34 IPC followed by framing of charge accordingly.

2. Learned Court below by the judgment impugned dated 20.08.2002 passed in Sessions Trial No.350/2000 did not find any of the accused guilty under Section 307 IPC and thus acquitted them of the said charge. They however, have been convicted under Section 325/34 IPC for voluntarily causing grievous injuries to PW-6 and under Section 323/34 for causing simple multiple injuries to Ramnath (PW-1) by imposing sentence of 6 years RI with fine of Rs.500/- under Section 323/34 and one year RI with fine of Rs.1000/- under Section 325/34 IPC, plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellants submits that earlier the complainant party had also opened an assault on the accused party for which a case is separately going on in the Court of learned Magistrate, and thus this is a case of false implication in a bid to take personal vengeance. He submits that there are material contradictions and omissions in the testimony of the witnesses examined by the prosecution and therefore, they are not trustworthy

and cannot be made a basis for conviction of the accused/appellants as has been done by the Court below. He submits that the judgment impugned is not based on correct analysis of the evidence of the witnesses in particular PW-1 and PW-6 and therefore also the same cannot be sustainable in the eye of law.

4. State counsel however supports the judgment impugned and submits that the testimony of PW-1 and PW-6 as also the medical evidence speaks a lot about the brutal act of the accused/appellants in pouncing upon PW-6 and causing grievous injuries voluntarily. According to the State counsel, the Court below has not committed any illegality and the findings recorded by it being pin pointed call for no interference by this Court. He submits that the contradictions and omissions, if any, in the testimony of the witnesses cannot be given much weightage because the witnesses being the rural and rustic villagers cannot be expected to be that much precise while making the statement before the Court and therefore, they are required to be ignored.

5. It is pertinent to mention here that the order dated 07.12.2005 passed by this Court indicates that the accused/appellant Jodhu Sahu died on 05.05.2004. Therefore, this appeal stands abated in his respect.

6. Evidence of PW-6 – prime witness to the incident makes it clear that when on the date of incident he was going to hospital along with Ramnath (PW-6), the accused/appellants waylaid them near a canal and opened an assault with the Lathis carried by them, as a result of which he suffered injuries on hand and leg. He also

states that the treatment for the injuries kept him hospitalized for 22 days. His testimony further makes it clear that the accused persons had indulged in similar incident earlier also. He has also supported the memorandum and the seizure of the Lathis based thereon. While supporting the case of the prosecution he has stated that the accused/appellants continued the assault even after he fell after receiving the first blow on his head. This witness has also stated that the accused/appellants also caused injuries with Lathi on the periphery of the eyes of Ramnath (PW-1) but as he hid himself for safety in the house of one Vishnu he could not suffer serious injuries on his person. Ramnath (PW-1) – the lodger of the report has fully supported the case of the prosecution stated that all the accused persons had assaulted Bodhiram (PW-6) with the help of Lathis carried by them and thus caused injuries on head and limbs. Apart from PW-1 and PW-6, the seizure of Lathis from all the accused persons has also been proved by Jhadudas (PW-5). He has clearly stated that on the memorandum of accused Mahesh (Ex.P-17) seizure of Lathi was made under Ex.P-18 and on the memorandum of Parmesh (Ex.P-19) the seizure of Lathi was made under Ex.P-20. Though another witness namely Dayaram (PW-2) has been declared hostile, he has categorically stated that seizure of Lathi from accused Jodhu Sahu was made in his presence and the seizure memo bears his signature too. Dr. Vibha Sindoor (PW-3) who medically examined the victim (PW-6) has found one lacerated wound in the size of 5x1x0.5 cm on his scalp and another lacerated wound in the size of 2x0.5x0.5 on his ankle. She has also opined the said injuries to be grievous in nature and could have been fatal to

life. Orthopedic surgeon (PW-4) has also stated that there was fracture on the fibula bone of the victim PW-6. However there was a first x-ray of head which was not clear therefore he could not opine about the fracture on the bone of skull. This Court does not find any reason to accept the argument of the counsel for the accused/appellants that the evidence of PW-1 and PW-6 carries number of contradictions and omissions and therefore is rendered unreliable, for the reason that being the rustic villagers the adherence to utmost clarity in their deposition cannot be expected from them and further that the contradictions and omissions, if any, in their testimony do not have any serious impact on the case of the prosecution to the benefit of the accused/appellants. Dr. Usha Suryavanshi who medically examined Ramnath (PW-1) has also stated that she noticed the injuries on his thigh though simple in nature vide Ex.P-27. The evidence of PW-1, PW-5 and PW-6 if seen in the light of medical evidence is sufficient to prove the involvement of the accused/appellants in the crime in question.

7. In view of aforesaid discussion, this Court is of the opinion that the conviction of the accused/appellants under Section 323/34 IPC for voluntarily causing injuries to Ramnath (PW-1) and under Section 325/34 IPC for voluntarily causing injuries to Bodhiram (PW-6) with the help of Lathis is fully justified and there is no scope for their dislodgement by this Court in this appeal. The conviction of the accused/appellants is hereby maintained.

8. As regards sentence, both the accused/appellants had been in custody from 25.07.2000 to 17.08.2000 which comes to about 3

weeks and the maximum sentence imposed on them is RI for one year, this Court is of the opinion that interest of justice would be served if the sentence imposed on them is reduced to the period already undergone. Order accordingly.

9. Appeal is thus allowed in part to the extent indicated above.

Sd/-

(Vimla Singh Kapoor)

Judge