

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 361 of 2011

Khubiram Nishad, aged about 49 years, S/o Mangluram Nishad,
R/o Navapara, PS Suhela, District Raipur (CG).

---- Applicant.

Versus

State of Chhattisgarh, through PS Suhela, District Raipur (CG).

---- Respondent

For Applicant : Shri Bharat Lal Dembra, Advocate.

For State/Respondent : Shri Anand Verma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

28.01.2021

As per the FIR (Ex.P-2) which was registered at the instance of complainant Dhanesh Dewangan (PW-2) it is apparent that on 14.03.2009 when Dhanesh (PW-2) along with Ramesh Yadav (PW-3) and Kareem Khan (PW-6) were having discussion with the plumber in respect of some plumbing related problems, the accused/applicant came out of his house, started hurling abuses at PW-2 and in the meanwhile, after snatching the club carried by PW-6, he dealt a blow and hit on his head. On the basis of this report the offences under Sections 294, 506 and 323 IPC were registered against the accused/applicant. After completion of investigation charge-sheet was also led under the same sections followed by framing of charge.

2. Learned Magistrate vide judgment dated 29.07.2010 passed in Criminal Case No. 210/2009 convicted the accused/applicant under Section 323 IPC and sentenced him to undergo RI for 4 months with payment of fine of Rs. 200/-. Learned lower appellate Court however vide judgment impugned dated 30.06.2011 affirmed the conviction recorded by

the Magistrate under Section 323 but reduced the sentence to RI for one month from that of four months, with fine of Rs. 200/, plus default stipulation. Hence this revision.

3. Counsel for the accused/applicant in addition to arguing the case on merit, ultimately chose to confine his prayer to the sentence being reduced to the period already undergone in case the conviction of the accused/applicant is not going to be interfered with. State counsel however, supports the judgment impugned.

4. From the evidence of PW-2 – the victim in the instant case, it is crystal clear that on the date of incident when he in the presence of PW-6 and PW-3 were having discussion in respect of his plumbing related problems, the accused/applicant came out of the house, started hurling abuses him and in the meanwhile by snatching the club carried by PW-6, dealt a blow and hit on his head as a result of which he became unconscious. PW-3 and PW-6 also corroborated the testimony of PW-2 as a whole by stating about the blow being dealt by the accused/applicant on the forehead of PW-2. Dr. P.L. Chandan (PW-1) who medically examined the victim PW-2 categorically stated that he noticed a lacerated wound on his forehead coupled with tenderness which was caused by hard and blunt object. The report given by this witness is Ex.P-1. According to this witness, the X-ray plates Ex. P-2 taken on his advice does not show any fracture on the forehead of the victim. Though this witness has expressed the possibility of injuries of the victim being caused as a result of fall, in the light the evidence of PW-2, PW-3 and PW-6 such note appended by the doctor loses its significance. Investigating Officer has also supported the case of the prosecution.

5. In view of what has been discussed above, the conviction of the accused/applicant under Section 323 IPC as recorded by both the Courts below is hereby approved.

6. However, looking to the facts and circumstances of the case, the fact that the incident had taken place in the year 2009 and further that the accused/applicant has already remained in detention from 30.06.2011 to 07.07.2011 which comes to about a week, this Court thinks it proper to reduce the sentence imposed on the accused/applicant to the period already undergone. Order accordingly.

7. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan