

HIGH COURT OF CHHATTISGARH, BILASPURCRR No. 415 of 2010Order reserved on 04.12.2020Order pronounced on 22.01.2021

1. Chhotelal, S/o Kadvaru Ram, aged about 23 years, Caste Rajwar, Occupation – Agriculturist,
2. Vinesh Kumar, S/o Shivprasad Rajwade, aged about 37 years, Caste Rajwar, Occupation – Agriculturist,

Both are resident of Village Kharwat, (Mahuapara), PS Charcha, Tahsil Baikunthpur, District Korea (CG) ----- **Applicants**

Versus

State of Chhattisgarh, through the District Magistrate, District Korea (CG) --- **Respondent**

For Applicants : Mr. Prakash Tiwari, Ms. Nisha Tolwani, Advocates.

For State/Respondent : Mr. Sameer Sharma, Panel Lawyer.

Hon'ble Smt. Justice Vimla Singh KapoorC.A.V. Order

The incident is said to have taken place on 27.04.2008 at about 10-11 PM where victim (PW-1) namely Anil was beaten by the accused/applicants. It is said that when the victim on the date of incident went to the betel shop of accused Chhotelal, the co-accused Vinesh and 3-4 other persons were already present there. When the victim asked for the betel, accused Chhotelal first insisted for payment of the old outstanding amount and only then he would give him the betel. On this, victim (PW-1) complained to accused Chhotelal saying that he should not have insulted him before the people present there. On hearing this, accused Vinesh starting beating with fists and kicks. The other accused Chhotelal also did so with the like weapon. On account of injuries the victim is said to have fallen down and suffered number of injuries on eye, jaw, neck, hand etc. and regained consciousness 8-10 days thereafter. FIR (Ex.P-1) was lodged by father of the victim namely Jaikaran (PW-2) on

01.05.2008. The delay for the same is attributed to refusal of admission of the victim in the hospital. On the basis of this report, offences under Sections 341, 294, 506, 323 and 34 IPC were registered against both the accused/applicants. The charge-sheet was also filed under the same sections by adding the one under Section 325 IPC, followed by framing of charge.

2. Learned trial Court by its judgment dated 17.09.2009 passed in Criminal Case No.210/2008 found the accused/applicants guilty under Section 325/34 IPC and sentenced each of them to undergo RI for one year with fine of Rs.1000/-, plus default stipulations. The findings recorded by the learned Magistrate have been affirmed by judgment impugned dated 12.08.2010 passed in Criminal Appeal No.57/2009. Hence this revision.

3. Counsel for the accused/applicants submits that there are material contradictions and omissions in the evidence of Anil (PW-1), Jaikaran (PW-2) and Rambai (PW-3) and therefore, the accused/applicants cannot be convicted based thereon. They submit that if the evidence of PW-1 and PW-3 is seen, number of exaggerations on material particulars find place therein and therefore, the judgment impugned is liable to be set aside.

4. State counsel however supports the judgment impugned and submits that both the Court below have been fully justified in appreciating the evidence and passing its judgment thereupon.

5. The evidence of victim Anil (PW-1) goes to show that on account of beating by the accused/applicants with the kicks and fists his jaw got fractured, there was swelling on the neck, his eyesight had weakened and his left hand does not move properly. His

evidence further makes it clear that he regained consciousness 8-10 days after the incident. The incident according to him had occurred when he asked accused Chhotelal not to demand the old outstanding amount in presence of the people present thereat which impelled them to indulge in his thrashing and causing injuries. He has also clarified that the said injuries were not as a result of his fall under intoxication. Jaikaran (PW-2) – the lodger of the report has stated that he did not see the actual occurrence of beating but had seen the victim being dragged by the accused/applicants. He has also stated that the victim remained unconscious for 7-8 days. Rambai (PW-3) has also supported the case of the prosecution. Umesh (PW-4) and Baburam (PW-6) have been declared hostile. Jailal (PW-5) though did not see the incident yet he had accompanied PW-2 and PW-3 to the hospital while taking the victim thereto. The evidence of Dr. D.K. Chikanjuri (PW-7) goes to show that apart from swelling and pain in left cheek, swelling and movement problem in neck, abrasions on shoulder there was fracture on left cervical vertebra of victim. Doctor has stated that injury No.2 on neck was grievous and the others were simple in nature. The injuries and fracture are evident from Ex.P-3 and Ex.P-4. PW-4 is the Investigating Officer who has duly supported the case of the prosecution.

6. The aforesaid factual analysis clearly establishes the involvement of the accused/applicants in causing number of injuries including the grievous one on neck, all the witnesses examined by the prosecution appear to be fully trustworthy and cannot be disbelieved by this Court. The judgment impugned as regards conviction is hereby affirmed. However, the sentence imposed on

them is reduced to the period already undergone which in this case comes to about a week, keeping in mind the long drawn prosecution coupled with the hardships related thereto.

7. Revision is thus allowed in part.

**Sd/-
(Vimla Singh Kapoor)**

Judge