

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1633 of 2018

Judgment reserved on : 07/04/2021

Judgment delivered on : 10/05/2021

1. Sonaru Nurety S/o Banday Nurety, Aged About 50 Years, R/o Kohkameta, P.S. Narayanpur, District Narayanpur (C.G.).

---- Appellant

Versus

1. State Of Chhattisgarh, Through The Police Station Narayanpur, District Narayanpur (C.G.).

---- Respondent

For Appellant : Ms. Bulbul Agrawal, Advocate.
For Respondent/State : Mr. Dinesh R.K. Tiwari, Dy. Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya

CAV Judgment

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 13/08/2018 passed by Sessions Judge, Kodagaon, District Kondagaon (C.G.) in S.T. No. 20/2015; whereby the appellant Sonaru Nurety stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 326 of Indian Penal Code (in short "IPC")	R.I. for 5 years and fine of Rs. 500/- in default of fine additional R.I. for 6 months.

- 3) Case of the prosecution, in brief, is that on the date of incident on 20/12/2014 at about 5 PM at village Kohkameta Ghotulpara victim Dinesh Kawachi was sitting in the house of Ayaturam Nurety, brother of appellant, at that time appellant came there

with an Axe in his hand and suddenly assaulted upon victim Dinesh Kawachi on his head, as a result of which Dinesh Kawachi sustained injuries on his head, nose and became unconscious. Thereafter, the accused fled from the place of occurrence. The incident was seen by Ayaturam and his wife Rajai Bai. On next day i.e. 21/12/2014 FIR was lodged by Ayaturam vide Ex. P-9 at Police Station Narayanpur, District Narayanpur (C.G.). Victim Dinesh Kawachi was medically examined by PW-01 Dr. Prabhakar Ghote vide Ex. P-1 and he found two lacerated wounds of size 4x0.5x0.5cm over right upper part of occipital region and of size 1x0.5x0.5cm over upper right part of nose. The doctor opined that these injuries were grievous in nature and advised for X-Ray. As per X-Ray report depressed fractures of occipital bone was found vide Ex. P-2. One Axe was seized from accused/appellant vide Ex. P-4. Accused was arrested vide Ex. P-5 on 15.1.2015. Spot map was prepared vide Ex. P-8. Statements of the witnesses were recorded and after completion of the investigation charge sheet was filed against the appellant/accused for offence under Section 307 of IPC.

- 4) The Trial Court framed charge against the accused/appellant under Section 307 of I.P.C. The accused/appellant denied the charge and prayed for trial.
- 5) The prosecution in support of its case examined as many as 05 witnesses namely PW-01 Dr. Prabhakar Ghote (Medical Officer), PW-02 Vijay Mishra (Assistant Sub Inspector), PW-03 Raman Usendi (Inspector), PW-04 Dinesh Kumar Kawachi (Victim) and PW-05 Rajai Bai. The statement of the accused was also recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. He stated that victim sustained injuries due to fall over stone, he has not assaulted the victim Dinesh Kawachi, he has been falsely implicated in this case. No witness was examined by the accused in his defence.

- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned in para 2 of this judgment.
- 7) Learned counsel for the appellant submits that the Trial Court has not properly appreciated the overall evidence available on record. She submits that the appellant has been falsely implicated in this case and no any independent witness supported the prosecution case. She submits that FIR is lodged on next day of incident and no any explanation given for the delay. There are certain contradictions and omissions in the statements of the prosecution witnesses. Therefore, the appellant deserves to be acquitted of the charge leveled against him.
- 8) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 9) Heard counsel for the parties and perused the material available on record.
- 10) PW-04 Dinesh Kumar Kawachi, victim states in his deposition that on the date of incident when he was sitting in courtyard of Ayaturam and Rajai Bai (wife of Ayaturam and sister of victim), the accused appellant came there with an axe and assaulted upon him by means of Axe on his head, as a result of which he fell down and sustained injuries on his nose and one tooth was broken and broken tooth was also shown during examination before the Trial Court. He also proved this fact that when he sustained injuries on his head, nose and mouth, blood was oozing from head as a result of which he became unconscious. Thereafter Ayaturam took him (Dinesh Kumar Kawachi) to Hospital and after one week he regained consciousness. He states that during investigation, one Axe was seized from the

accused/appellant vide Ex. P-4, appellant was arrested vide Ex. P-5 and Spot Map was prepared vide Ex. P-8.

- 11) The evidence of PW-04 Dinesh Kumar Kawachi was also supported by PW-05 Rajai Bai (wife of Ayaturam and sister of victim). PW-04 & PW-05 both remained firm in their cross-examination. There is no reason to disbelieve the evidence of PW-04 Dinesh Kumar Kawachi & PW-05 Rajai Bai and no any major contradiction or omission shown in the statements of the witnesses.
- 12) Evidence of the Victim PW-04 Dinesh Kumar Kawachi is also corroborated by PW-01 Dr. Prabhakar Ghote who examined PW-04 Dinesh Kumar Kawachi medically vide Ex. P-1 and he found two lacerated wounds of size 4x0.5x0.5cm over right upper part of occipital region and of size 1x0.5x0.5cm over upper right part of nose. The doctor opined that these injuries were grievous in nature and caused by hard & blunt/pointed object and advised for X-Ray. As per X-Ray report depressed fractures of occipital bone was found vide Ex. P-2. He also examined the weapon of offence i.e. axe and opined that these injuries are possible by this weapon vide Ex. P-3.
- 13) PW-02 Vijay Mishra (Assistant Sub Inspector) also proved this fact that one Axe was seized from the appellant vide Ex. P-4 and he was arrested vide Ex. P-5 and that Spot Map was prepared vide Ex. P-8. There is no any major contradiction or omission shown in the statements of the PW-01 & PW-02.
- 14) PW-03 Raman Usendi (Inspector) also proved this fact that he registered FIR vide Ex. P-9 and Victim PW-04 Dinesh Kumar Kawachi was sent for medical treatment/examination vide Ex. P-10.
- 15) So far as delay in lodging the FIR is concerned, the incident took place on 20/12/2014 at about 5 PM and the FIR was lodged on the next day at 15:05 hours. The reason assigned for delay in the FIR was that the injured Dinesh Kawachi was taken for

treatment to hospital. In the facts and circumstances of the case, the aforesaid delay cannot be said to be fatal for the prosecution case. The explanation given for delay in lodging the FIR appears to be just and proper. Even otherwise, in a case based on direct evidence or injured evidence, which remains uncontroverted and finds due corroboration from other witnesses or the medical evidence, as is there in the present case, the aforesaid delay of about 10 hours in lodging the FIR is of no consequence.

- 16) Looking to the entire evidence of victim PW-04 Dinesh Kumar Kawachi, which is duly supported by the evidence of eye witness PW-05 Rajai Bai and further corroborated by the medical evidence in the form of MLC (Ex. P-1), X-Ray Report (Ex. P-2), evidence of treating doctor PW-01 Dr. Prabhakar Ghote, that there is no reason to disbelieve the evidence of these witnesses as there is no major contradiction and omission in their evidence, Spot Map (Ex.P/8) is also proved, this Court is of the opinion that the prosecution has successfully proved the guilt of the appellant of voluntarily causing grievous hurt by dangerous weapon axe which was likely to cause death, one tooth of the victim got broken and he also suffered depressed fracture of occipital bone. Therefore, in the given facts and circumstances of the case and the nature and quality of evidence adduced by the prosecution, the finding of guilt recorded by the trial Court being just and proper needs no interference by this Court.
- 17) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly **dismissed**. As per report dated 19/08/2020 submitted by Jail Superintendent, Central Jail, Jagdalpur, District Bastar (C.G.), the appellant having completed the entire jail sentence has been released from jail on 20/09/2019. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

-Sd/-
(Gautam Chourdiya)
Judge