

APPEAL OF PRISONER

No. 1997

Name लोदसे राऊ @ कुलसि

2

Father's name बसिं राऊ कौटवा

Residence बैराजी चक्रे पहाड़ काठ काठ

Sentenced to चार वर्ष सख्त

Under section 307-98C सख्त 54/99



CF0000062928

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier, If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement- 1-10-99

2. Date on which copy received- 1/10-99

3. Date on which Appeal sent- 2-11-2000

4. Whether the prisoner wishes to be represented or not- नहीं

No. 1997

Name लोदसे राऊ @ कुलसि राऊ सिंगराऊ

Confined in जिला

Jail रायगढ़

No. 1870

Dated 3-1-2000

Forwarded to the मुख्य न्यायिक दफापरकारी रायगढ़ to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

[Signature]
जिला जेल रायगढ़

Date of receipt in- - - - -Office- - - - - 4-1-2000

date of receipt of record to accompany the- - - - - 5-1-2000

Memo of Appeal to the Appel: court- - - - -

No. 9/c.s.m. Raigadh Dated 05-1-2000

Forwarded to the- - Sessions Judge Raigadh

Date of receipt in Appellate court- - - - -

11/1/2000
31/1/2000

(7)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL No.751/2000

Lodhari Ram @ Tulsi

-V-

State of M.P.

For the petitioner: Shri Ambika Prasad Jaiswal, Adv.
For the respondent: Dr.N.K.Shukla, Dy.A.G.

PRESENT:- HON'BLE SHRI JUSTICE R.S.GARG

ORAL ORDER

(12-12-2000)

Impugning the correctness, validity and propriety of the judgment dated 01-10-1999 passed in Sessions Trial No.54/1999 by the learned First Addl. Sessions Judge, Raigarh, convicting the appellant under section 307 IPC and sentencing him to undergo rigorous imprisonment for 4 years, the appellant has preferred this appeal.

(2) The facts in a nut-shell are that on 22-12-1998 at about 10.p.m. when the present appellant and his father Singharam were sitting in their house, the appellant made a complaint to his own father that because of the complaint of his father, he is likely to go to jail, the father did not say anything. Taking an exception to it, the appellant had hit his father on head with a ^{baton} ~~baton~~ which caused an injury on the head. The said injury was 1 x .5 cm

Another contusion was 6 x .5 cm. The victim was immediately referred to the Hospital where his injuries were repaired and he was referred to the Radiologist. According to the report Ex.P-12, the Radiologist found a fracture on the head and ultimately observed that the injury was dangerous to life. Spot map was prepared. Plain and stained ^{earth} ~~cloth~~ ^{PS} was recovered from the ^{spot} ~~appellant~~. The weapon of offence was recovered. The statement of witnesses were also recorded and on conclusion of the investigation, the challan was filed against the accused. As the accused denied commission of offence, he was put to trial.

(3) After assessing the evidence and hearing the parties, the learned trial Court found in favour of the prosecution, convicted and sentenced the accused, as referred to above. Being aggrieved by the said judgment, the appellant has filed this appeal.

(4) Shri Jaiswal, learned counsel for the appellant submits that the judgment of the trial Court is influenced by conjectures and surmises while in fact, there is no legal evidence available on the record to connect the appellant with the alleged crime or to record a finding of guilt against the accused. After taking me through the evidence, he has submitted that the learned court below has relied upon the statements of witnesses which otherwise are inadmissible in evidence. On the other hand, learned counsel

(9)

for the State submits that from the statement of the witnesses and the medical report coupled with the statement of the Doctors, it is proved on record that the appellant was author of the injury.

(5) I have heard the parties at length and have perused the records.

(6) Singharam, the victim has not been examined as a witness probably as he had expired. Roopan (PW.2) and Bhinsarin (PW.4) wife of ~~the~~ Singharam; who are said to ^{be} the eye-witnesses did not support the prosecution case. According to Roopan, he did not witness the incident nor he knew as to how his father suffered injuries. Even he denied the fact that the report was lodged by him. Bhinsarin (PW.4) wife of the victim and mother of the present appellant must have been in the horns of dilemma and finding in favour of the ^{appellant,} ~~person,~~ she did not support the prosecution and stated before the Court that at the time of alleged incident, she had gone to do some labour work. The prosecution in support of its case, has examined P.W.1 Parameshwar who has simply prepared a plan map. P.W.3 Udaydas who says that he was informed by PW.2 and PW.4 that the accused had hit the victim Singharam. P.W.5 Mularobai has also not supported the prosecution case. P.W.6 Kashi Ram is a witness to certain seizures. P.W.7 B.S.Thakur, is the Investigating Officer who had made certain seizures & recoveries and had prepared certain memos. PW.8 Dr.Banodha, has certified the injuries of the victim.

(7) It is not the prosecution case that barring P.W.2, P.W.4 and P.W.5, there were any other eye-witnesses. All the eye-witnesses examined by the prosecution have not supported the prosecution case. The statement of P.W.3 Udaydas so far as it relates to the information received by him would not assume any importance unless the person who gave him the information, appears in the Court and says that such information was imparted by him to Udaydas. The statement of Udaydas can be used as corroborative evidence to show the immediate conduct of the person who fed him the information. Unless the person who gave the information to Udaydas comes and says before the Court that he himself was an eye-witness and had supplied the information to Udaydas, statement of Udaydas would not assume any importance. Virtually it would be hear-say and is inadmissible in evidence.

(8) The recovery of certain articles such as blood stained baton, plain and stained earth would only show that somebody had beaten someone, but it would not lead to the only irresistible conclusion that it was the accused who caused injuries to the victim. Singharam. In absence of any positive evidence to connect the applicant with the crime or to show that the applicant is the only person who can be held responsible for committing the alleged crime, no finding of guilt, could be recorded against the appellant.

(11)

(8) The trial Court was absolutely unjustified in convicting and sentencing the appellant. The findings recorded by the learned court below deserve to and are accordingly quashed. The appeal is allowed. The accused is acquitted of all the charges. He be released forthwith, if not required in connection with any other offences.

Sd/-
R.S. Garg
Judge
JUDGE
12-12-2000

/Rao/