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Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 178 / 1999

(UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE)

Appellants
(Accused)

- : 1. Abdul Salim, Son of
Abdul Sattar Musalman,
aged 39 years, At-
Tethwar Bara, Dongargarh,
Distt. Rajnandgaon, M.P.
2. Bintu, @ Indrajeet Singh,
Son of Rajendra Singh,
Bhatiya, aged 31 years,
At Budhwari Bara, Dongargarh,
Distt. Rajnandgaon, M.P.

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Filed on 18-1-99
by Shri. S. Sanyal
Advocate

Rtn. A. R.

V E R S U S

Respondent

- : State of Madhya Pradesh,
Through P.S. Dongargarh,
Distt. Rajnandgaon, M.P.

29-12-98 in ST 84/98 passed by
AGAINST JUDGMENT DATED 19.6.98 IN
CRIMINAL CASE NO. 113/98 PASSED BY
SESSIONS JUDGE, RAJNANDGAON.

Convicting the appellants

Copy of Petition With Affidavit

CLERK

Mr. A. R. Sanyal



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HIGH COURT OF CHHATTISGARH AT BILASPUR

SB: HON'BLE SHRI JUSTICE PRITINKER DIWAKER

Criminal Appeal No. 178 of 1999

APPELLANTS

Abdul Salim and another

VERSUS

RESPONDENT

State of M.P. (now CG)

Smt. Renu Kochar and Shri Ravi Bhagat counsel for the appellants.

Ms. Sunita Jain PL for the respondent/State.

J U D G M E N T

(29.08.2014)

This appeal arises out of judgment and order dated 29.12.1998 passed by Sessions Judge Rajnandgaon in Sessions Trial No. 84/1998 convicting the accused/appellants under Section 323/34 IPC and sentencing each of them to undergo rigorous imprisonment for six months and pay fine of Rs 500/-, in default of payment of fine to undergo RI for two months.

2. As per the case of the prosecution, hotel of accused/appellant Pintu alias Indrajeet Singh and that of complainant namely Ravinder Pal Singh (PW-2) were adjacent to each other and that on the date of incident i.e. 7.3.1998 at about 11.45 PM the accused/appellants assaulted the complainant by causing two injuries on his head with the help of iron rod over some water related dispute. On the basis of FIR

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Ex. P-2A lodged by the complainant (PW-2) offence under Sections 307/34 and 506-B IPC was registered against the accused/appellants. After completion of investigation, charge-sheet was filed by the police under the same sections followed by framing of charge accordingly.

3. In order to establish the guilt of the accused/appellants the prosecution has examined 10 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court acquitted the accused/appellants of the charge under sections 307/34 and 506-B IPC but has convicted and sentenced them as mentioned in paragraph No.1 of this judgment. Hence the present appeal.

5. Heard counsel for the parties and perused the material available on record.

6. Counsel for the accused/appellants submits that the accused/appellants have been falsely implicated in the case and that the statement of the complainant on the basis of which the accused/appellants have been convicted is not reliable. Lastly, he submits that as the accused/appellants have remained in jail for 12 days and the incident had taken place about 16 years back, no useful purpose would be served in again sending them to jail and therefore the sentence imposed on them may be reduced to the period already undergone by them. He however fairly submits that the accused/appellants are ready to adequately compensate the victim for the agony faced by him.

7 On the other hand counsel for the respondent/State supports the judgment impugned and submits that the conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

8. Hindaram (PW-1) is the Patwari who prepared spot map Ex. P-1. Victim namely Ravinder Pal Singh (PW-2) has stated that his hotel and that of accused/appellant No.2 were adjacent to each other. According to him, in his hotel there was proper facility of water but in the hotel of accused/appellant No.2 such facility was not there. He has stated that on the date of incident at about 11 PM when he was about to close his hotel, accused/appellant No.2 along with his companions came there having iron rods and opened an assault saying that he (complainant) had discontinued supply of water and would see how would he carry on the hotel business. He has stated that in the incident he suffered injuries on the head for which he remained hospitalized for three days and stitches were applied. In cross-examination, this witness remained firm to what he has stated in the examination-in-chief and nothing helpful could be elicited by the defence. Narender Singh (PW-3) – the elder brother of the complainant has stated that on the date of incident he was informed by his brother as to the manner in which the accused/appellants had assaulted the victim. He is also the witness to seizure of blood smeared clothes of the complainant. Abhijit Singh (PW-4) – the nephew of the complainant has stated that on the date of incident he saw the accused/appellants assaulting his uncle and then he was taken to the hospital. Cross-examination of this witness carries the same thing as the examination-in-chief. Ramesh Lilhare (PW-5),

Rekha Lal (PW-6) and Gurvir Singh (PW-9) have not supported the case of the prosecution and have been declared hostile. Rasdev Ram (PW-7) is the witness who did part of the investigation. Dr. R. Sadani (PW-8) is the witness who medically examined the victim and gave his report Ex. P-9. According to this witness, he noticed injury on the head of the complainant; no bony injury was there and the injuries noticed by him were simple in nature. V.S. Dwivedi (PW-10) is the investigating officer who has duly supported the case of the prosecution.

9. After going through the material available on record including the evidence of the witnesses, it becomes apparent that on 7.3.1998 the accused/appellants inflicted two injuries on the head of complainant (PW-2) with the help of iron rod over some water related dispute. Version of the victim has been duly supported by Abhijit Singh (PW-4) and the doctor (PW-8). In these circumstances, this Court is of the opinion that conviction of the accused/appellants under Section 323/34 being based on the evidence of the witnesses is fully justified and it is maintained as such.

10. As regards sentence, looking to the fact that the incident had taken place about 16 years back, that the accused/appellants have already remained in jail for 12 days and the relations between the parties have become normal and that the accused/appellants are ready to adequately compensate the victim, this Court thinks it proper to reduce the jail sentence to the period already undergone by them. Order accordingly.

11. Appellants shall however deposit Rs. 5,000/- each in the Court below within a period of six months from today to be paid to the victim

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as compensation in view of the provision of Section 357 Cr.P.C. To ensure proper enforcement of this order it is held that failure in such deposit being made within the stipulated time would not entail the benefit of this order to the accused/appellants.

12. Appeal allowed in part as indicated above.

Sd/-
Pritinker Diwaker
Judge

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