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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CRIMINAL APPEAL NO.06...../2003

APPELLANT

(IN BAIL)

SIYARAM S/O MOHAN DHOBI

AGE ABOUT 22 YEARS OCCU.

LABOUR R/O SALGANWA

P.S. SONHAT DISTT. KOREA (C.G.)

Filed on.... 02/01/03
by Shri. ... Advocate

02/01/03 R. to D. R. **VERSUS**

RESPONDENT

STATE OF CHHATTISGARH

THROUGH P.S. SONHAT

DISTT. KOREA (C.G.)

CRIMINAL APPEAL UNDER SECTION 374 (2) CR.P.C.



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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.6 of 2003

APPELLANT

Siyaram

Versus

RESPONDENT

State of Chhattisgarh

(CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE Cr.P.C.)

Mr.Ravindra Sharma, counsel for the applicant.

Mr.Rajendra Tripathi, Panel lawyer for the State/respondent.

(SB: Hon'ble Mr. T.P.Sharma, J.)

JUDGMENT

(Passed on 30th April, 2014)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.11.2002 passed by the Additional Sessions Judge, Baikunthpur, in S.T.No.257/2002, whereby the trial Court while acquitting the appellant under Section 307 of the IPC has convicted him under Section 324 of the IPC and sentenced to undergo R.I. for one year and fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for two months.
2. Conviction is impugned on the ground that without there being any iota of evidence the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on the fateful day of 22.4.2002 at about 5 p.m. the appellant was digging ditch upon the land of father of complainant Chandar @ Ramprasad namely Jagsai by crowbar and spade, which was objected by Chandar @ Ramprasad (PW-1), then the appellant assaulted him by crowbar over leg, buttock, hand, and back and caused fatal injuries. Chandar @ Ramprasad (PW-1) went to Police Station Sonhat and lodged the F.I.R. vide Ex.P/1. Spot map was prepared vide Ex.P/2. He was sent for medical examination to Assistant Surgeon, Community Health Centre, Sonhat. Dr.N.P.Bhargawa (PW-11) examined him vide Ex.P/7 and found following injuries:-
 - (i) Lacerated wound over occipital part & head of 1" x 1/2" x 1/4".
 - (ii) Lacerated wound over the left lower arm of 1/2" x 1/2" x 1/2".
 - (iii) Contusion over back of body of 7" x 1".

- (iv) Contusion over left leg of 4" x 1"
- (v) Contusion over left buttock.

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He was also examined radiologically vide Exs.P/9 to P/11, but did not find any bony injury. During the course of investigation, the appellant was taken into custody, he made disclosure statement of crowbar vide Ex.P/3 and same was recovered at his instance vide Ex.P/4. Bloodstained & plain soil were recovered from the spot vide Ex.P/5.

4. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, charge-sheet was filed before the Judicial Magistrate First Class, Baikunthpur, who in turn, committed the case to the Court of Sessions, Ambikapur, from where the Additional Sessions Judge, Baikunthpur received the case on transfer for trial.
5. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as eleven witnesses. The accused was examined under Section 313 of the Cr.P.C., in which he denied the circumstances appearing against him and claimed innocence and false implication in crime in question.
6. After providing opportunity of hearing to the parties, the trial Court while acquitting the appellant under Section 307 of the IPC has convicted and sentenced the appellant as aforementioned.
7. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
8. At the outset, learned counsel for the appellant submits that in the light of evidence of injured witness Chandar Ram (PW-1) and evidence of Dr.N.P.Bhargawa (PW-11), he is not disputing the fact that the appellant has not caused simple injury by deadly weapon but submits that as per evidence of Chandar Ram (PW-1) and F.I.R. Ex.P/1 the appellant was digging ditch, which was objected by complainant Chandar Ram (PW-1), at that time the appellant annoyed and caused injuries to the complainant especially he has caused injuries upon vital parts of the body i.e. buttock, back, leg and hand, which shows that the appellant was cautious at the time of causing injury and has not caused serious injury. Learned counsel further submits that the appellant was in custody for one month and seven

days and has already paid the fine, therefore, his period already undergone may be considered as sufficient sentence.

9. On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that considering the act attributed to the appellant the trial Court has rightly convicted and sentenced the appellant as aforementioned.
10. As submitted and in the light of evidences of evidence of Chandar Ram (PW-1), Dr.N.P.Bhargawa (PW-11) and injury report Ex.P/7, I do not find any illegality in convicting the appellant under Section 324 of the IPC.
11. As regards the question of sentence, considering the period of detention of one month and seven days and pendency of trial since 2002, the sentence requires reconsideration.
12. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 324 of the IPC is hereby maintained, however, his sentence is modified and instead of R.I. for one year and fine of Rs.1000/-, he is hereby sentenced to undergo imprisonment for the period already undergone by him i.e. one month and seven days and fine of Rs.3000/-. He has already deposited fine amount of Rs.1000/-, he shall deposit remaining fine amount of Rs.2000/- within 60 days from today before the trial Court, failing which he shall undergo R.I. for two months.

Sd/-
T.P. Sharma
Judge

B/-