

(2018) 10 CHH CK 0004
In the Chhattisgarh High Court
Case No : Criminal Appeal No.52, 65 of 2010

Bugul, Medhendra

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 01-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 374(2), 437A
Indian Penal Code, 1860 — Section 34, 323, 324

Citation : (2018) 10 CHH CK 0004

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Malay Kumar Bhaduri, Rajkamal Singh, Suryakant Mishra Panel

Final Decision : Partly Allowed

Judgement

Ram Prasanna Sharma, J

1. Since both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

2. Both the appeals are preferred under Section 374 (2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence

dated 4-1-2010 passed by the 2nd Additional Sessions Judge, (FTC), Janjgir in Session Trial No. 175 of 2009 wherein the said Court convicted the

appellants for commission of offence under Sections 324 read with Section 34 of the IPC and sentenced them to undergo RI for one year and fine of

Rs.100/- and convicted under Section 323 read with Section 34 of the IPC and sentenced them to undergo RI for six months each with default

stipulations.

3. As per prosecution case, on 22-2-2008 Ravindra Singh had gone to village Jagmahant to attend the marriage of one Yashpal Singh along with

Kavindra Singh and Yogendra Singh. Ravindra Singh, Kavindra Singh and Yogendra Singh were standing near the road at about 11.00 pm in the night

and at the same time some persons of the marriage party started pushing them to which they objected and thereafter appellant Bugul started to utter

filthy abuses and at the same time appellants assaulted all the three persons with club, belt and fanta and Yogendra Singh sustained grievous hurt and

became unconscious and he was immediately shifted to District Hospital, Janjgir for medical treatment. The matter was reported and investigated and

after completion of trial, the trial Court convicted and sentenced the appellants as mentioned above.

4. Learned counsel appearing for the appellants submits as under:

I) The trial Court has misread the testimonies of prosecution witnesses and ignored contradictions and omissions in their statements.

ii) All the material witnesses are interested witnesses and their version is not liable to be accepted.

Iii) As the offence took place in the dark and it took place at Baraat procession, therefore, it was not established that actually who assaulted the victim.

iv) FIR lodged by the complainant is not proved in accordance with law, therefore, finding of the trial Court is liable to be reversed.

5. As against the aforesaid submissions, State counsel submits that the finding arrived at by the trial Court is based on proper marshalling of evidence

and the same is not liable to be interfered while invoking jurisdiction of the appeal.

6. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial court.

7. The first question for consideration of this court is as to who caused injury on the person of Yogendra Singh, Kavindra Singh and Ravindra Singh.

8. PW/2 Yogendra Singh deposed that appellant Bugul assaulted him on his head by wooden fanta and when he attacked for second time he stopped

him from his hand, but it struck on his back side and he fell down. Though this witness has been subjected to searching cross-examination, but the

witness has not deviated on material point. Though there is some exaggeration on the statement of this witness, but even if the exaggeration part is

excluded, it is clearly established that appellant Bugul assaulted him by wooden

fanta twice. Version of this witness is supported by the version of

PW/4 Dr. Ramayan Singh who examined Yogendra Singh on 23-2-2008 at District Hospital, Janjgir and noticed the following injuries.

i) Lacerated wound in the size of 4" x 2 cm over occipital region and bone deep upto parietal region of 2"x1cm and advised for x ray.

ii) Abrasion 2 x 1 cm over left wrist Version of this medical expert is subjected to cross examination, but version of this witness in examination-in-

chief is unrebutted and there is no other medical expert's opinion contrary to the opinion of this witness. From the direct evidence of Yogendra Singh

(PW/2) and Ravindra Singh (PW/1), it is established that Yogendra Singh sustained head injury on occipital region upto bone deep. Ravindra Singh

(PW/1) lodged FIR (Ex.P/1) and he proved FIR in which name of Bugul is clearly mentioned as culprit.

9. Looking to the evidence in its entirety, argument advanced against conviction of the appellant Bugul is not sustainable as from the date of incident

he has been identified as culprit and his name is mentioned in the FIR and again this witness has deposed his name as culprit. In absence of material

contradictions and omissions, evidence against appellant Bugul is not liable to be rejected. As per evidence he used wooden article fanta and looking to

the deep injury on occipital region of Yogendra Singh, it can be inferred that the said instrument which is used as weapon is likely to cause death.

Case of the appellant Bugul does not fall within any of the exception under IPC and his act with knowledge of causing pain or injury to Yogendra

Singh falls within the ambit of Section 324 of the IPC for which the trial court convicted the appellant Bugul. This court has no reason to record

contrary finding and therefore, conviction of the appellant Bugul under Section 324 of IPC for causing injury to Yogendra Singh is hereby affirmed.

10. Ravindra Singh (PW/1) though deposed that appellant Sikku @ Jeevendra Pratap Singh assaulted him by belt and he sustained injury on his eye

but Dr. Ramnarayan (PW/4) did not find any injury on the eye of Ravindra Singh. Therefore, version of this witness is contradicted by version of

medical expert and looking to the contradiction, it is not safe to record finding that any assault was made by the appellant Sikku for causing simple hurt

to Ravindra Singh.

11. Kavindra Singh deposed that 3 or 4 persons were running chased him and

thereafter they assaulted him as a result of which he sustained injury on eye and head, but from his evidence, it is not clear as to who actually assaulted him (para 1). As version of this witness is not specific against any of the appellant, it cannot be concluded that any of the appellant assaulted Kavindra Singh.

12. Looking to the entire evidence on record, charges levelled against appellant Sikku @ Jeevendra Pratap Singh and appellant Bhaiji @ Surajpratap

Singh is not established. Their conviction and sentence is not sustainable.

13. Accordingly, Criminal appeal No. 65 of 2010 preferred by appellant Sikku @ Jeevendra Pratap Singh and Criminal appeal No. 52 of 2010

preferred by appellant Bhaiji @ Surajpratap Singh are allowed and their conviction and sentence passed by the trial Court is set and they are acquitted

of the charge as levelled against them. They are reported to be on bail. Their bail bonds shall continue for further period of six months in view of.

14. So far as appellant Bugul @ Medhendra is concerned, the trial Court awarded the sentence RI for one year and fine of Rs.100/-for commission of

offence under Section 324 read with Section 34 of the IPC and looking to the injuries on vital part of victim Yogendra Singh, it cannot be said that

sentence awarded by the trial Court appears to be disproportionate, harsh or unreasonable. So far as conviction under Section 323 of IPC is

concerned, his participation in assaulting others is not established and therefore, his conviction under Section 323 read with Section 34 of IPC is not

sustainable and he is acquitted of the said charge.

15. Accordingly the appeal (CRA No. 52 of 2010) preferred by appellant Bugul @ Madhendra is partly allowed and his conviction and sentence of RI

for one year and fine of Rs.100/-under Section 324 of IPC is maintained and he has to suffer the same as he was never in custody during

investigation/trial. He is reported to be on bail and his bail bonds shall stand cancelled.

16. The trial Court will prepare super-session warrant and issue warrant of arrest against appellant Bugul and after his arrest he will be sent to

concerned jail to serve out the jail sentence of one year for commission of offence under Section 324 of IPC. The trial Court to submit compliance

report upto 4th January, 2019.