
(2022) 05 CHH CK 0037

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 1072 Of 2008, Acquittal Appeal No. 129 Of 2010

Ishwar Singh

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 324
Code Of Criminal Procedure, 1973 — Section 313, 360
Probation Of Offenders Act, 1958 — Section 3

Citation : (2022) 05 CHH CK 0037

Hon'ble Judges : Sanjay K. Agrawal, J; Rajani Dubey, J

Bench : Division Bench

Advocate : Indira Tripathi, Sameer Uraon

Final Decision : Partly Allowed/Dismissed

Judgement

1. Since both of these appeals have arisen out of a common judgment dated 04/12/2008 passed by Additional Sessions Judge, Mungeli in Sessions Trial No. 31/07, therefore, they have been heard together and are being decided by this common judgment.

2. Criminal Appeal No. 1072/2008 has been preferred by the accused persons against their conviction for offence punishable under Section 324 read with Section 34 of IPC and the sentence awarded accordingly which comprises of R.I. for two years and fine of Rs. 500/- in default of payment of fine to undergo S.I. for 30 days and Acquittal Appeal No. 129/2010 has been preferred by the State against the acquittal of the respondents/accused persons from offence under Section 307 read with Section 34 of IPC.

3. The case of the prosecution, in brief, is that on 07/06/2007 at about 07:30 PM, the accused persons, with the common intention of causing death of the applicant Mani Singh (P.W.-1), assaulted him with basula and lathi by which he suffered grievous injuries which were sufficient to cause death and they thereby committed the aforesaid offence.

4. Further case of the prosecution, in brief, is that on 07/06/2007 at about 07:00 PM, applicant Mani Singh was returning to his house from Majgaon when accused Ishwar Singh, who was standing in front of his house with his family/other accused persons, attacked the applicant with basula and lathi on his head due to which blood started oozing from his head and he became unconscious. The accused persons, taking the applicant Mani Singh, to be dead left him and ran away. The said incident was witnessed by Ghasiram Sahu (P.W.-7), Pawan Kumar (P.W.-10) and Sukhnandan (P.W.-6). Thereafter, the applicant reported the incident at Mungeli Police Station and lodged the First Information Report (Ex. P/1) pursuant to which Police took the applicant for medical examination and after his primary medical examination, the applicant was taken to SIMS Hospital, Bilaspur for rest of the treatment. Thereafter, Police reached the spot and prepared Nazri Naksha (Ex. P/8) and seized the clothes of the applicant as well as basula and lathi from the accused persons vide Ex. P/2 to P/6. The statements of the witnesses were recorded and after due investigation, the accused persons were arrested and charge-sheeted for offence punishable under Sections 307/34 of IPC which was submitted to the Court of Chief Judicial Magistrate, Mungeli wherein the case was registered and it was committed to the Court of Session Judge, Mungeli for hearing and disposal in accordance with law. The accused persons abjured their guilt and entered into defence.

5. In order to bring home the offence, prosecution examined as many as 11 witnesses and brought into record 23 documents. Statements of the accused persons were recorded under Section 313 of CrPC wherein they denied guilt and examined two witnesses in their defence.

6. Learned trial Court, after appreciating the oral and documentary evidence on record, acquitted the accused persons for offence punishable under Section 307 read with Section 34 of CPC, however, convicted them for offence punishable under Section 324 read with Section 34 of IPC and sentenced them as aforesaid.

7. Mrs. Indira Tripathi, learned counsel for the accused persons, would submit that the trial Court is absolutely unjustified in convicting the accused persons for offence punishable under Sections 324 read with Section 34 of IPC as there are a number of cases pending against the applicant Mani Singh lodged by the accused persons and since the applicant did not agree with the accused persons to enter into compromise, First Information Report (Ex. P/1) has been lodged by the applicant falsely implicating the accused persons in the crime in question. In alternative, she would submit that offence under Section 324 of IPC is punishable with imprisonment for three years or fine or both and even looking to the nature of the dispute, they be released on probation under Section 3 of the Probation of Offenders Act, 1958 read with Section 360 of CrPC.

8. Mr. Sameer Uraon, learned State counsel, would submit that looking to the nature of the injuries suffered by the applicant Mani Singh, the conviction of the accused persons for offence punishable under Section 324 read with Section 34 of IPC deserves to be converted to Section 307 of IPC and the criminal appeal

preferred by the accused persons deserves to be dismissed.

9. At this stage, Mrs. Indira Tripathi, learned counsel for the accused persons, would again submit that the argument raised by the State that looking to the nature of the injuries suffered by the applicant Mani Singh, the conviction of the accused persons ought to be converted to Section 307 of IPC deserves to be rejected as there is a specific finding recorded by the trial Court that the injuries suffered by the applicant Mani Singh are simple in nature and they were not sufficient to cause death, as such, the acquittal appeal deserves to be dismissed.

10. We have heard learned counsel for the parties, considered their rival submissions made herein- above and went through the records with utmost circumspection. 11. Learned trial Court, after appreciating the oral and documentary evidence on record, has clearly recorded a finding that the applicant Mani Singh (P.W.-1) has suffered simple injuries on the basis of evidence of Dr. Smt. Vibha Sindur (P.W.-9) and the statement of applicant's wife Lachchhan Bai (P.W.-5) and also on the basis of medico legal report (Ex. P/12) which clearly states that the applicant suffered injuries in his head, shoulder and chest. As per the statement of Dr. Smt. Vibha Sindur (P.W.-9), the applicant was given primary medical treatment by her and thereafter, she referred him for further treatment to Surgical Specialist, SIMS Hospital, Bilaspur, but thereafter, bed-head ticket, x-ray report and other treatment report has not been filed and the Doctors who have treated the applicant have also not been examined and the injuries suffered by the applicant are though caused by sharp and hard objects, but the said injuries were not sufficient to cause death.

12. A careful perusal of the record would show that though the applicant Mani Singh (P.W.-1) has been subjected to C.T. Scan for the injury suffered by him in head and his x-rays have also been done, but that has not been proved by examining the expert who has conducted C.T. Scan and X-ray though it is available on original record. A careful perusal of the original record would show that in the C.T. Scan, it has been recorded by the radiologist that findings of the C.T. Scan are suggestive of simple injury and no bone injury was found. Similarly, the applicant Mani Singh (P.W.-1) was also subjected to X-ray of head and chest, but no boney injury was found. As such, the X-ray report as well as the C.T. Scan report would show that no boney injury was detected though the said reports were not brought on record by proving them, but since it is available on original record and issued by a Government Hospital, it can be looked into by this Court while hearing the appeals. We are of the considered opinion that the finding of learned trial Court that the injuries suffered by the applicant were simple in nature based upon the statement of Dr. Smt. Vibha Sindur (P.W.- 9) is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Likewise, the finding of the trial Court that the injuries suffered by the appellant were not sufficient to cause death as recorded in paragraph 12 of the judgment is also correct and on the basis of the said findings, learned trial Court has rightly convicted the accused persons for offence

punishable under Section 324 read with Section 34 of IPC.

13. Not only this, learned trial Court has further recorded the finding in paragraph 23 of the judgment that there was no intent and knowledge on the part of the accused persons to cause death of the applicant or that the injuries caused by them would likely cause his death. In the considered opinion of this Court, learned trial Court is absolutely justified in recording the finding that there was no knowledge or intention on the part of the accused persons to cause death of the applicant, as such, the accused persons have rightly been acquitted from the offence punishable under Section 307 read with Section 34 of IPC.

14. The challenge to the conviction of the accused persons for offence under Section 324 read with Section 34 of IPC has been made in the CRA/1072/2008 preferred by the accused persons, but it is quite apparent from the record that though the applicant Mani Singh (P.W.-1) suffered simple injuries but the accused persons were armed with deadly weapons i.e. basula and lathi and in that view of the matter, learned trial Court is absolutely justified in holding that offence under Section 324 read with Section 34 of IPC is made out against the accused persons, as such, the conviction of the accused persons under Section 324 read with Section 34 of IPC is hereby affirmed.

15. At this stage, learned counsel for the accused persons would submit that the accused persons have already been in jail from 26/07/2017 to 29/07/2017 and they have already paid fine of Rs. 500/- each, therefore, leniency should be observed and they be sentenced for the period already undergone.

16. Considering that the accused persons have already suffered jail sentence for a period of 4 days i.e. from 26/07/2017 to 29/07/2017, the jail sentence awarded to the accused persons for two years except for the 4 days already suffered is hereby set aside and they are sentenced to pay fine of Rs. 2,500/- each from which the fine amount of Rs.500/- shall be deducted if it has already been paid by them and in default of payment of fine amount, they will be sentenced to 30 days S.I. The fine amount shall be deposited by the accused persons within 3 months. This sentence of fine is in addition to four days of jail sentence already undergone.

17. Accordingly, CRA/1072/2008 is partly allowed to the extent indicated herein-above and ACQA/129/2010 is hereby dismissed being devoid of merits.