In The Court Of Sumitra Kadian, Judicial Magistrate Ist Class, Fatehabad.

Criminal Case No.RBT-99-I of 2013. Date of Institution:23.9.2013/18.4.2014.

CIS No.:CHI-1374/2013.
Date of Decision:20.03.2015.

State Vs. Kanha Ram son of Ram Singh, aged 29 years,

resident of Dharnia, District Fatehabad.

FIR No.467 Dated 17.09.2013.

Offence U/s: 323 and 325 of Indian Penal Code.

Police Station: Sadar, Fatehabad.

Present: Mrs. Reetika Singh, Assistant Public Prosecutor, for the State

assisted by Sh.K.K.Jangra, Advocate for the complainant. Accused Kanha Ram on bail represented by Sh.Subhash

Karwasra, Advocate.

JUDGMENT:

The above named accused has been sent to this Court by the Station House Officer, Police Station: Sadar, Fatehabad, to face trial for the commission of offence punishable under Sections 323 and 325 of Indian Penal Code, 1860 (hereinafter to be referred as IPC for short).

2. Brief facts of the present case are that on 14.09.2013, H.C. Bhag Mal and H.C. Ajit Singh, who were present in General Hospital, Fatehabad, obtained ruqa and MLR from the doctor. Thereafter, they sought opinion of doctor regarding fitness of injured Dasrath to make statement. The doctor declared the injured unfit to make statement. On 16.9.2013 H.C. Bhag Mal and Constable Pritam Singh again visited General Hospital, Fatehabad and obtained opinion of doctor regarding fitness of injured to make statement. The doctor declared the injured fit to make statement. After that, Darshrath son of Rai Singh (hereinafter to be called as complainant) got his statement recorded. It was alleged by the complainant that on 14.09.2013 at about 5.45 P.M., he

was returning to his house after taking his mobile from the house of his father.

His brother Kanha Ram came from behind and gave a stick (लाठी) blow above his left ankle. Due to attack of Kanha Ram, he fell down. Kanha Ram gave 2/3 more lathi blows on the same body part of the complainant. When he raised hue and cry, Rohtash son of Balwant came on the spot and rescued him. Rohtash got him admitted in hospital. The reason of enmity was that there was a dispute regarding land between the complainant and his brother. With these allegations, he prayed that legal action be taken against Kanha Ram. On the basis of the statement of complainant, rapat No. 36 was entered in D.D.R. On 17.09.2013, injury no.1 was declared grievous in nature by the Doctor. Thereafter, formal FIR under Section 323, 325 of IPC was registered. The accused was arrested on 18.09.2013. The site plan of the place of occurrence was prepared. Statements of witnesses under Section 161 Code of Criminal Procedure, 1973 were recorded. After completion of the investigation, the final report under Section 173 of Code of Criminal Procedure, 1973 was presented in the Court for commencement of trial on 23.09.2013.

- 3. Copy of the final report submitted under section 173 of Code of Criminal Procedure, 1973 and other accompanied documents were supplied to the accused free of costs as envisaged under Section 207 of Code of Criminal Procedure, 1973.
- 4. After hearing Learned Assistant Public Prosecutor for the State, learned defence counsel and perusing the record carefully, a prima-facie case for committing the offence punishable under Sections 323, 325 of IPC was found to be made out against the accused. The accused was charge-sheeted

accordingly on 04.12.2013 by the court of Sh. Vivek Nasir, learned Chief Judicial Magistrate, Fatehabad, to which he pleaded not guilty and claimed trial.

5. In order to prove its case against the accused following witnesses have been examined by the prosecution:

Sr.no.	Name of Witness.	Documents proved /exhibited.
PW1	Dashrath	Statement on the basis of which formal FIR was registered Ex.PW1/A.
PW2	ASI Bhagmal	Applications to Medical Officer Ex.PW2/A, Tehrir Ex.PW2/B, Rapat Ex.PW2/C, Application to M.O. Ex.PW2/D, Endrosement Ex.PW2/E, Formal FIR Ex.PW2/F, Site plan Ex.PW2/G, Arrest memo Ex.PW2/H, Property Seizure memo Ex.PW2/J, Case property Ex.P1.
PW3	Dr. Hanuman Singh	X-ray report Ex.PW3/A, X-ray films Ex.PW3/B to Ex.PW3/D.
PW4	Dr. Naresh Nagpal	Affidavit Ex.PW4/A, MLR Ex.PW4/B, Ruqa Ex.PW4/C, Opinion at point A and B of Ex.PW2/A, Opinion at point A of Ex.PW2/D, Signature at point B on Ex.PW3/A.

Thereafter, the evidence of prosecution was closed by learned Assistant Public Prosecutor as per her separate statement dated 27.11.2014.

- 6. The statement of the accused under Section 313 Code of Criminal Procedure, 1973 was recorded. The entire incriminating evidence appearing against him on record was put to him. He denied the evidence of the prosecution and pleaded false implication. The accused as per his statement has closed his defence evidence on 20.03.2015.
- 7. In order to secure conviction against the accused, total four witnesses have been got examined by the prosecution. PW1 Dasrath has

reiterated the contents of his statement Ex.PW1/A. PW2 ASI Bhag Mal, being Investigating Officer, has deposed about every step of investigation conducted by him in this case. PW3 Dr. Hanuman Singh has deposed that on 16.09.2013 x-ray examination of injured Dashrath was conducted. He has proved x- ray report and x-ray films Ex.PW3/A and Ex.PW3/B to Ex.PW3/D respectively. PW4 Dr. Naresh Nagpal has proved MLR of Dasrath as Ex.PW4/B, ruka as Ex.PW4/C, opinion at point 'A' and 'B' of application Ex.PW2/A. He has also proved the opinion at point 'A' of application Ex.PW2/D. This is all the prosecution evidence that has been brought before the court.

- 8. In the present case, the accused is facing trial for the commission of offence punishable under sections 323, 325 IPC. Hence, following are the points for determination in the present case:
 - (1) Whether the PW Dasrath received injuries on his person on 14.09.2013.
 - Whether the injuries suffered by PW Dasrath were caused by the accused Kanha Ram voluntarily.
- 9. For proving the first point for determination, prosecution has relied upon the testimony of PW5 Doctor Naresh Nagpal. He has deposed that on 15.9.2013 he examined Dasrath son of Rai Singh and found following injures:-
 - (i) Complaint of pain in left lower leg. An abrasion of size 3-4 cm x 0-5 -1.0 cm.
 - (ii) Complaint of pain and abrasion of 2 cm x 1 cm over back.

He has also deposed that both the injuries were caused with blunt weapon and duration of the injuries was within 24 hours.

10. In order to prove second point for determination, prosecution has got examined PW1 Darsath. He deposed that on 14.9.2013 at about 5.45 P.M

he was passing from the street of his village Dharnia. When he reached near the house of Balwant, his brother Kanha Ram gave a lathi blow above his left ankle. Due to which he fell down. Kanha Ram gave two more lathi blows, one at the same place whereas other on the back of complainant. When he raised hue and cry, Balwant son of Rohtash came on the spot and rescued him. Rohtash took him to his house. On 15.09.2013 he was admitted in hospital. They have dispute regarding land. Police recorded his statement on 16.9.2013.

11. I have heard learned Assistant Public Prosecutor and learned defence counsel and have gone through the case file thoroughly and very carefully. After hearing the rival contentions of learned APP and learned defence counsel, this court comes to conclusion that prosecution has proved its case against the accused beyond reasonable doubt. The prosecution has been able to prove the injuries on the person of PW1 Dasrath by examining Dr. Naresh Nagpal as PW4. PW4 Dr. Naresh Nagpal has given a detailed description of the injuries on the person of the injured which fully corroborates and matches with the evidence given by the complainant. The evidence of PW4 Dr. Naresh Nagpal also makes clear the nature of injury and type of weapon used by the accused. The MLR related to the injured has been placed on record as Ex.PW4/B and the same stands proved by the testimony of the PW4 Dr. Naresh Nagpal. The grievous nature of the injury No.1 has also been proved by PW4 Doctor Naresh Nagpal. In the x-ray report Ex.PW3/A, it is mentioned that fracture in left fibula lower 1/3 rd was seen. Thus, it is clear that the oral evidence stands fully corroborated by the testimonies of PW4 Dr. Naresh Nagpal, who medico-legally examined the injured and PW4 Doctor Hanumaan Singh, who conducted x-rays examination of the injured Dasrath.

The statement of these witnesses are sufficient to prove that the complainant suffered injuries and injury No.1 was greivous in nature. Both the ocular as well as medical evidence support the prosecution case.

- The learned defence counsel has argued that there is delay of 15 hours in reporting the matter to police and this fact makes the case of prosecution doubtful. However, this argument of learned defence counsel does not impress much because PW1 Dasrath has stated that he was admitted in hospital on 15.09.2013 because his wife was not present at his house. He has also stated that on 14.09.2013 he treated his injuries at home. As per MLR Ex.PW4/B PW Dasrath arrived in hospital on 15.09.2013 at about 10:30 a.m. Thereafter, ruqa was sent to the police station on the same day. On 15.09.2013, the injured was declared unfit to make statement by the doctor and therefore, his statement could not be recorded. On 16.09.2013, statement of injured Dasrath was recorded and rapat No.36 was entered in DDR. Hence, it cannot be said that delay of 15 hours in reporting the matter to police has not been explained by the prosecution.
- The learned defence counsel has submitted that story of the prosecution cannot be relied upon because PW1 Dasrath has made material improvements in his statement recorded in the court. No doubt, PW1 Dasrath has made some improvements in his version, but, this is not a ground to discard his whole testimony which otherwise inspires confidence. It is general tendency of witnesses to add embellishments in their version in order to make testimony more impressive. In this regard reference can also be made to the authority of Hon'ble Supreme Court of India titled as <u>Sukhdev Yadav & Ors.</u>

 Vs. State of Bihar, 2001(4) R.C.R.(Criminal) 257 SC: AIR 2001 SC 3678.

wherein observed as under:-

"It is indeed necessary however to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment, sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness-box details out an exaggerated account."

Moreover, after appreciating the evidence of this witness, this court finds that improvements referred by learned defence counsel are of minor nature and do not affect the merit of the case of the prosecution.

- 14. The learned defence counsel has also argued that non examination of eye witness by the prosecution create doubt on the story of prosecution. A perusal of the case file makes it amply clear the eye witness namely Rohtash has been given up by learned APP as he was won over by the accused. Hence, it cannot be said that eye witness has been given up by prosecution without any explanation. Moreover, there is no discrepancies between FIR and the version of occurrence given by prosecution in court. The testimony of PW1 Dasrath inspires confidence. Hence, this argument also of learned defence counsel is rejected.
- The learned defence counsel has further argued that the ocular and medical evidence are not consistent as PW1 Dasrath has stated that accused gave 'lathi' blow on his left ankle whereas in MLR no injury is shown on the ankle of the complainant Dasrath and this fact goes against the case of prosecution. After perusing evidence of PW1 Dasrath, this court has no hesitation in saying that this argument of learned defence counsel is misconceived. Reason being, PW1 Dasrath has deposed that accused gave blow on his left leg above the ankle. He has nowhere stated that accused

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inflicted injury on his left ankle. In the MLR Ex.PW4/B, the first injury is

shown on left lower leg of Dasrath. Therefore, it cannot be said that medical

and ocular evidence are inconsistent.

16. In view of the above discussion, the accused is held guilty for

committing the offence punishable under Sections 323, 325 of Indian Penal

Code, 1860 and is convicted thereunder accordingly. Let he be heard on

question of sentence on 23.03.2014.

(Sumitra Kadian)

Pronounced in open Court.

Judicial Magistrate Ist Class,

Dated:20.03.2015

Fatehabad.

Note:

This Judgment comprises in eight pages and each page has been

checked and signed by me.

(Sumitra Kadian) Judicial Magistrate Ist Class, Fatehabad:20.03.2015

ORDER ON QUESTION OF SENTENCE:

Present: Ms.Reetika Singh, Assistant Public Prosecutor, for the State

Convict Kanha Ram on bail represented by Sh.Subhash Karwasra,

Advocate.

ORDER.

Arguments on the point of question of sentence heard. Statement

of the convict on question of sentence has also been recorded separately. The

convict in his separate statement has stated that he is poor agriculturist and

he has two children of tender age and old aged parents. He has stated that

there is no one in his family to look after his children and old aged parents

and is sole bread earner of his family. He has also submitted that he is not

the previous convict and therefore, a lenient view may be taken while

awarding sentence to him. The learned counsel for the convict has argued on

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the same lines. On the other hand, learned Assistant Public Prosecutor has

submitted that since the convict gave merciless beatings to his own brother

Dashrath, therefore, he be awarded severe punishment.

2. After hearing the submission of learned Assistant Public

Prosecutor for the State and learned counsel for the convict, this court is of

the considered view that the convict does not deserve leniency. Hence,

convict Kanha Ram is sentenced in the manner as follows:-

Offence U/s 323 of IPC. Rigorous imprisonment for a period of Six

months.

Offence U/s 325 of IPC. Rigorous imprisonment for a period of **One**

year and to pay a fine of Rs.500/-. In case of non-payment of fine, the convict shall further

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undergo simple imprisonment for a period of

one month.

Both the substantives sentences shall run concurrently. The period already

spent by convict during trial be deducted from the period of sentence. Fine

paid. Case property be disposed of as per rules. File be consigned to the

record room, after due compliance.

(Sumitra Kadian)

Pronounced in open Court.

Judicial Magistrate Ist Class,

Dated:23.03.2015.

Fatehabad.

Note:

Both the page of this order have been checked and signed by me.

(Sumitra Kadian)

Judicial Magistrate Ist Class,

Fatehabad:23.03.2015