

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Justice Rajendra Chandra Singh Samant

Criminal Appeal No. 745 of 2000

Nidan and Others.

---- Appellants

Versus

State of Madhya Pradesh (now Chhattisgarh).

---- Respondent

CAV JUDGMENT

Post for 25/10/2016

Sd/-
Rajendra Chandra Singh Samant
Judge

JUDGE
24/10/2016



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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 745 of 2000****Judgment Reserved on 17.10.2016****Judgment Delivered on 25.10.2016**

1. Nidan S/o Manglu Rawat, aged about 50 years,
 2. Atwar Sai, s/o Nidan Rawat, aged 25 years,
 3. Shanker S/o Atwaru Rawat, aged about 27 years,
- All resident of village Bhueyai Pani, Sirki Nara Para, P.S. Lailunga
District Raigarh.

---- Appellants**Versus**

State of Madhya Pradesh through District Magistrate Raigarh,
Madhya Pradesh (now Chhattisgarh).

---- Respondent

For the Appellants	:	Ms. Pritha Goshal, Advocate.
For the Respondent/ State	:	Shri O.P. Sahu, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 25.02.2000 passed by the Second Additional Sessions Judge, Raigarh, District Raigarh, Chhattisgarh in Sessions Trial No. 195 of 1996, whereby and whereunder the learned Second Additional Sessions Judge has convicted the appellants under Section 307 read with Section 34 of the Indian Penal Code (for short 'IPC') and sentenced them to undergo rigorous imprisonment for a period of 10 years and to pay fine of



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Rs.2,000/- each, in default of payment of fine to further undergo RI for six months.

2. The case of the prosecution, in brief, is that on 4.7.1996 at about 5:00 pm in village Bhueyai Pani, complainant – Matawar who was working in his fields, asked appellants/ accused persons- Nidan, Atwar and Shanker, who were owners of neighbouring fields, that why they have constructed a new drain in the fields, upon which the appellants/ accused persons used abusive words and rushed towards the complainant to beat him. On seeing that, the complainant ran away from the spot to his residence. Later on, at about 5:30 pm, appellant No.1 – Nidan carrying an axe, appellants No.2 and 3 - Atwar and Shanker carrying stones came to the house of the complainant with an intention to cause his death. They threatened and assaulted the complainant with axe and stones and thereby caused injuries to him. First Information Report (Ex.P-13) was lodged on 6.7.1996 at about 18:20 hrs in Police Station Lailunga, District Raigarh. The offence was registered against the appellants. On completion of investigation, the appellants were charge-sheeted. The trial Court charged the appellants under Section 307 of the IPC and in alternative Section 307 read with Section 34 of the IPC. On denial of the charge, trial was conducted and after hearing learned counsel for the respective parties and considering the material available on record, the learned trial Court by the impugned judgment convicted and sentenced the appellants as mentioned above.

3. This appeal has been brought on the grounds that evidence of the complainant was not corroborated by any of the independent witnesses and there has been delay in lodging the FIR. It is clear from the evidence on



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record that sharp edge of the axe was not used to cause injury to the complainant. The FSL report also does not disclose the presence of blood on the axe, which was seized during the investigation. Hence, the finding of the trial Court is erroneous. There had been material contradictions and omissions in the statements of the witnesses and as such the appellants deserve to be acquitted by giving benefit of doubt. Hence, it is prayed that the appeal may be allowed and the judgment of conviction and order of sentence may be set aside.

4. Learned counsel for the appellants argued that none of the witnesses have stated that the sharp edge portion of the axe was used for causing injury to the complainant Matwar (PW-9). There is no report of the doctor, who examined the injured complainant that the injuries caused to him were sufficient to cause death in due course of nature. Apart from complainant himself, the other witnesses who have been examined by the prosecution were not eyewitnesses to the incident. For these reasons, the appellants are entitled for benefit of doubt and they may be acquitted.

5. On behalf of the State, it has been argued that the prosecution has proved its case against the appellants beyond reasonable doubt and there is no infirmity in the impugned judgment.

6. The only question which arises for consideration before this Court is whether the prosecution has proved its case beyond reasonable doubt showing that the appellants assaulted complainant Matwar (PW-9) causing him injuries and thereby committed the offence of attempt of murder.

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7. In the present case, complainant Matwar (PW-9) is the only eyewitness. He has stated that on the date and time of the incident, he was in his fields where he found appellant No.3 - Shanker, whom he said that appellant No.1 - Nidan has thrown soil in his fields. Thereafter, he came back to his house, whereafter the appellants came to the house of the complainant and assaulted him with stones causing injuries on his head, abdomen and leg, after which he felt unconscious. He has stated about lodging of the FIR (Ex. P/13) in his cross-examination. Nothing has come in his cross-examination which can be regarded as material contradiction or omission so as to effect the credibility of his statement in examination-in-chief. He has admitted that he was assaulted with an axe on his leg and has also reiterated about the previous dispute with the appellants.

8. Sumitra Bai (PW-13), wife of the complainant, stated that when her husband came from fields and was standing in the courtyard of the house, Appellant No.3 - Shankar came there and threw stones over her husband/the complainant and thereby injured him on his forehead. After that, appellant No.1 - Nidan came with an axe and hit her husband on his leg. Appellant No.2 - Atwar also hit the complainant with stones and thereafter all of them ran away from the spot. She informed the elders of the village about the incident, whereafter the complainant was taken to the hospital at Lailunga. In cross-examination, she has remained consistent with her examination-in-chief regarding the incident of assault to the complainant by the appellants.

9. Ramlal Bhagat (PW-1) is the Sarpanch of village Bhueyai Pani. He was informed about the incident by Sahdeo Panda (PW-3). He has stated



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that on being asked, the appellants admitted about happening of the incident. Balaram (PW-2) was informed about the incident by Sumitra Bai (PW-13). Sahadev Panda (PW-3) has stated that when he went to the residence of the complainant, he saw him in injured condition. He was told that all the appellants had assaulted complainant – Matwar with the stones and the same information was given by the wife of the complainant as well. In his presence, appellant – Nidan admitted that he alongwith other appellants had assaulted the complainant with stones which is an extra-judicial confession. This statement has remained un-rebutted in his cross-examination. Dhobai (PW-4) arrived at the place of incident and saw the complainant in injured condition. Jayant Verma (PW-10), Sub-inspector has recorded the FIR (Ex.P-13) on 6.7.1996. He has not given any statement about the delay in lodging the FIR nor any question has been put to him in his cross-examination to seek explanation regarding the delay of two days in lodging the FIR.

10. Dr. S. N. Upadhyay (PW-8) has deposed that on examining Matwar, son of Mangalu on 6.7.1996, he found one incised wound on his forehead about 5 cm x 5 cm which was deep and the bone was cut. It was opined that the said injury was caused by some heavy and sharp object and the injury was grievous in nature caused within 48 hours. Further, one injury with swelling of 5 cm x 5 cm was found on left tibia bone caused by some hard and blunt object within 48 hours and it was simple in nature. He advised for x-ray. Later on, this witness examined the x-ray plate of complainant – Matwar and reported as per Ex.P/12 that there was a depressed fracture in frontal bone of the complainant.



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11. Statement of Matwar (PW-9) is supported by Sumitra Bai (PW-13), who has stated in capacity of an eyewitness. Other witnesses, who have been examined, received information about the incident from the wife of the complainant and also on enquiring from the appellants they came to know that there had been a scuffle between the appellants and the complainant and in the result, the complainant was lying in injured condition. This kind of evidence is sufficient to corroborate the statement of main witness Matwar (PW-9) and there is no reason to doubt the veracity of the statement of the complainant.

12. ASI Udaylal Patel (PW-12) has stated that he seized the blood-stained soil from the spot as per Ex. P/3, stones as per Ex. P/4 and one axe (tangia) as per Ex.P/7 from appellant No.1 – Nidan, on the basis of memorandum Ex.P/6. Dhobai (PW-4) and Atwar Singh (PW-5) were the witnesses of this seizure and memorandum (Ex. P/3 and P/4), who have turned hostile and have not supported the Investigation Officer. Atwar Singh (PW-5) and Sudhan (PW-14), who were produced as witnesses of memorandum of Keshav Prasad Khande (PW-6) and seizure memorandum of Dr. M.D. Joshi (PW-7) have not supported the case of the prosecution.

13. After consideration on the evidence of the prosecution, it is clear that on the date and time of the incident, the appellants arrived at the house of complainant – Matwar (PW-9) together and assaulted him with stones and axe by using the blunt side of the axe. None of the witnesses has stated that the sharp edged portion of the axe was used to hit on the forehead of the complainant, where according to the doctor who examined the complainant, one incised wound was found at the time of examination. In

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this respect, no presumption can be drawn that the incised wound on the head of the complainant was caused by any of the appellant by using the sharp-edged portion of the axe and how this injury was caused to the complainant remains unexplained. Hence, the conclusion which can be arrived at in a safe manner is that the appellants/ accused persons assaulted complainant – Matwar with stones and by using the blunt portion of the axe and thereby caused injuries to him.

14. On the basis of the arguments advanced by the appellants' side, it has to be examined whether the offence committed by the appellants/accused persons falls under Section 307 read with Section 34 of the IPC. Dr. S.N. Upadhyay (PW-8) has stated that the injury on the forehead of complainant – Matwar (PW-9) was of grievous nature and no opinion has been given by him as to whether this injury was sufficient to cause death in due course of nature. Matwar (PW-9) and Sumitra Bai (PW-13) have not stated that the appellants had intention to cause death of the complainant. Under these circumstances, it was not possible to hold that the appellants had intention to cause death of the complainant. Hence, the finding on this point by the trial Court seems to be erroneous, which is needed to be interfered with.

15. Now, the point raised by the appellants is that the prosecution story should be disbelieved because the FIR was delayed by two days. But, there is a statement in FIR (Ex. P/13) that the complainant was unable to walk due to the injuries and therefore he was carried and brought to the police station by Kripal (PW-11) and Sudhan (PW-14). On this point, no question has been asked by the defence counsel to the complainant and witness as regarding the delay in FIR (Ex. P/13). Matwar (PW-9) in his cross-



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examination stated that after the incident, he called Panch and Sarpanch of the village and narrated the whole story which has been supported and corroborated by the panch witnesses examined by the prosecution in this case. Hence, the delay of two days in lodging the FIR in this case does not create any doubt in the credibility of the complainant and the prosecution. Delay itself is not a ground for suspicion, only inordinate and unexplained delay can be viewed with suspicion. Looking to the events that happened after the incident in this case, it cannot be said that there has been inordinate delay in lodging the FIR in this case. In the matter of delay in lodging the FIR, the Court has to appreciate the evidence with caution to rule out any concoction. On going through the evidence of all the prosecution witnesses, it is found that the evidence is reliable to the extent as held in this judgment.

16. Coming to the conclusion of the finding arrived at on the basis of the reliable witnesses of the prosecution that the appellants assaulted complainant – Matwar with stones and blunt portion of the axe and caused him one injury of grievous nature along with other injuries, intention to cause death has not been proved by the prosecution. Hence, the only case made out against the appellants is about voluntarily causing grievous injury to the complainant which itself falls under Section 325 of the IPC. As all the appellants participated in this incident with common intention, hence, the conviction against the appellants should have been under Section 325 read with Section 34 of the IPC.

17. In view of the above discussion, the impugned judgment is required to be interfered with. Hence, this appeal is allowed in part. The conviction and



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sentence of the appellants under Section 307 read with Section 34 of the IPC is hereby set aside. On the basis of the finding in this appellate judgment and exercising the power of the Court under Section 222(1) of the Cr.P.C., the appellants are convicted under Section 325 read with Section 34 of the IPC.

18. During the course of arguments, learned counsel for the appellants submitted that the appellants have already undergone a period of sentence which is more than one year, hence, they may be punished for the said period.

19. For considering the prayer made by the learned counsel for the appellants, the record of the trial court is perused. Appellants were arrested on 7.7.1996 and released on bail by orders of Sessions Court on 22.8.1996. This period of detention is one month and 15 days. On the date of judgment i.e. 25.2.2000, the appellants were again taken into custody and suspension of sentence was granted by order dated 24.1.2001 of this Court. Bail papers about compliance of order of this Court are not on record. Assuming that the appellants were released on bail on the same day, this period of custody comes out to be of 11 months. Including the previous period of custody, the whole period of custody is of one year and 15 days.

20. Considering the circumstances of the case and the fact that the conviction of the appellants has already been altered into the lesser offence, the period undergone by the appellants in custody seems to be sufficient punishment. Hence, on the basis of conviction of the appellants under Section 325 read with Section 34 of the IPC in this appeal, the appellants

are sentenced to the period already undergone by them alongwith fine of Rs.2,000/- in default of payment of fine, each of the appellants shall undergo RI for three months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

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