

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 2528 of 2000**

1. Lingraj S/o Heeradhar Kolta Aged about 36 years, occupation Agriculture, r/o village Sardih, Police Station Saraipali, Tehsil Saraipali, District Mahasamund (M.P.)
2. Kartik Ram S/o Bihari, aged about 48 years, occupation-agriculture R/o village Sardih, P.S.-Saraipali, Tehsil Saraipali, District Mahasamund (M.P.)

---- Appellants**Versus**

1. State of M.P. Through District Magistrate Mahasamund (M.P.)

---- Respondent

For the Appellants : Shri Arun Kochar, Advocate.

For the State : Shri Vijay Bahadur, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on board****07/11/2016**

1. This appeal has been preferred against the judgment of conviction and sentence passed by the First Additional Sessions Judge, Mahasamund in Sessions Trial No.77/1998 on 03.10.2000 whereby both the appellants were convicted under Sections 326/34 and 450 of IPC and sentenced to undergo R.I. for 4 years and R.I. for 2 years with a fine of Rs.1,000/- each.
2. The facts of the case are these, that on the date of incident i.e. 22.11.1997 at about 9:30 a.m. appellants came to the residence of complainant Swet Kumar (PW/1) proposing a compromise with appellant Lingraj who was having some dispute with the complainant. The



complainant expressed that he has no objection on which the appellants left. Later on, at 11:30 a.m. when complainant, who is a school teacher was on his duty in the school, appellants came there armed with axes. Appellant Kartik Ram assaulted the complainant a number of times, causing him injury on his left leg, complainant tried to run off, he was followed and assaulted with axe by both the appellants and causing him injury on his head, back and both the legs. Complainant was taken to community health Centre, Saraipali for treatment, where S.I. B.S.Thakur (PW/14) recorded Dehati Nalishi (Ex.P/1) on the information given by complainant Swet Kumar(PW/1). On the basis of which, numbered F.I.R. was later on recorded in P.S-Saraipali, and investigation was conducted. Blood stained and clothes were seized vide Ex.P/2. At the instance of appellant Lingraj vide Ex.P/3. Memorandum, seizure of one *tangi* was made vide Ex.P/5. At the instance of appellant Kartikram vide memorandum Ex.P/4, seizure of one *tangi* was made vide Ex.P/6. Blood stained and plain soil were seized vide Ex.P/7 and spot map was prepared vide Ex.P/8. Injured complainant was medically examined. Statements of witnesses were recorded. Seized articles were sent for F.S.L. Examination. On completion of investigation, appellants were charge-sheeted for prosecution under Section 452, 307/34 and 326 of IPC. Appellants were charged under Section 307 IPC in the alternative, under Section 307/34 and 450 of IPC. Appellants denied the charges and pleaded innocence, thereafter, trial was conducted and impugned judgment was passed whereby the appellants have been convicted and sentenced as mentioned in the foregoing paragraph.

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3. Grounds in this appeal are these, that the conviction and sentence in the impugned judgment is contrary to law. Prosecution has utterly failed to prove the case against the appellants beyond reasonable doubt, hence, the trial court has erred in coming to the finding of conviction against the appellants and prayer has been made to set aside the impugned judgment and acquit the appellants of the charges against them.
4. It has been submitted on behalf of the appellants that vide statements and injury reports of the complainants, no case against appellants is made out to be under Section 326 of IPC. Promod Kumar Pradhan (PW/2), Bhagwano (PW/5) and Mohan Lal (PW/6) have not supported the case of the prosecution which has opposed the version of the complainant, hence, for these reasons, the appellants are entitled for benefit of doubt.
5. It has submitted in alternative that the case is almost 18 to 19 years old and appellants have already undergone the period of three months in custody. Looking to the facts and circumstances of the case, it is prayed that the sentence awarded be modified to the sentence of imprisonment of period already undergone by the appellant/accused persons.
6. On the other hand, learned counsel for the State has argued that the prosecution has successfully proved the case against the appellant beyond reasonable doubt. The gravity of offence is obvious from the fact that the complainant Swet Kumar (PW/1) sustained 8 injuries and almost all of them having been caused by the use of an axe and instrument which can be used to cause death of a person.

7. Main witness of the case Swet Kumar (PW/1) stated that on the date of incident when he was at school at about 11:30 a.m. appellants entered the premises of the school armed with axes, appellant Kartik Ram assaulted this witness and gave injury of his right knee, this witness ran out from the room found appellant Lingraj standing with an axe. Appellants caused injuries on his head and back, thereafter both the appellants continued their assault with axes, he fell down on getting injured. He stated about lodging the F.I.R. Dehati Nalishi Ex.P/1. In cross-examination, he has remained consistent regarding the statement of assault by the appellants. Uchhap Bhoi (PW/4) came to the spot after the incident and saw complainant in injured condition, complainant informed that he was assaulted by appellants with axe. He remained consistent on this statement in his cross-examination. Bhagwano (PW/5) has stated similarly, he has been declared hostile by the prosecution for different reason. The Statement above is not under challenge in the whole deposition. Indira(PW/10) wife of the complainant, who has stated about the incident in which appellants came to her house and talked about the compromise later on, she saw her husband complainant Swet Kumar (PW/1) in injured condition and was informed that appellants were assailants.

8. Prosecution has examined Mohanlal (PW/6) as eyewitness, who has turned hostile and not supported the case of prosecution, Chitrasen (PW/9) is another witness examined for support of prosecution, he has also been declared hostile. Vijay(PW/11) is eyewitness and child witness, who has stated that he saw the incident when appellants came to the

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school and assaulted the complainant Swet Kumar(PW/1) by axe. In cross-examination, he was asked to give each and every detail about the incident, but this does not affect the statement given in his examination-in-chief and this witness has supported the version of Swet Kumar (PW/1).

9. Considering the statements of witnesses, present on the spot and who came to know about the incident later on, it appears that the statement of Swet Kumar(PW/1) stands corroborated by the statement other witnesses, who have stated in support of prosecution. Further this statement is corroborated by the medical evidence given by Dr. R.S. Patel(PW/13), who has stated that on 22.11.1997, he examined Swet Kumar (PW/1) at 4:10 p.m. and found 6 incised wound on his below left knee near the ankle of left leg on right side of his chest, one in rib area and one on the outer side of the right leg. He also found one lacerated wound on right frontal region on his head with swelling. In his opinion, all the injuries were simple in nature caused by hard and sharp object, he advised x-ray of left leg vide Ex.P/12. On further examination, he has stated on the basis of X-ray plate Ex.P/11 and opined that the complainant was having a minor fracture on the lining of outer side of left femur bone.

10. Dr. M.L. Jain (PW/16) treated the complainant Swet Kumar(PW/1) during the period of his admission from 22.11.1997 to 27.12.1997. Stating in detail about injuries, he has stated that on the basis of observation of the X-ray film it was found that complainant had a fracture on his ninth rib bone. MLC report vide Ex.P/21 was prepared and signed by him. Ex.P/11

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is X-ray plate. In the statement Dr. R.S. Patel(PW/13) has though mentioned that he gave report vide Ex.C/1 but no such document is found on record. Vide Ex.P/21, fracture on the ninth rib on his right side was found. This report can be taken into consideration, comparing it with the injuries found on the body of complainant caused by hard and sharp objects. There is only one injury on the chest region caused, which was incised wound. Hence, causing of this injury, can be attributed to the use of hard and sharp object by one of the appellants. Defence raised by the appellants was this, that complainant met with an accident while riding a motor cycle. On the basis of the evidence on record, after due analysis, trial Court has come to this conclusion in the impugned judgment that the defence has not been established. In this appeal the above mentioned defence has not been raised as a ground, on the contrary it has been argued that the evidence of prosecution is not sufficient to establish the offence under Section 326 of IPC. After analyzing the relevant evidence of the prosecution witnesses on this point, it is found that prosecution has successfully proved that complainant Swet Kumar(PW/1) was assaulted the appellants using axe which is hard and sharp cutting object and thereby number of injuries were caused to the complainant. One of the injury caused to the appellant on his chest, resulted in fracture of one of the ribs and which completes the definition of offence under Section 326 of IPC.

11. As prayed by learned counsel for the appellants that almost 18 years have passed since the date of incident, hence, looking to the hardship caused to the appellants in the intervening period they may be punished

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with the sentence of imprisonment of custody already undergone by them. Looking to the facts and circumstances of the case, the period undergone by the appellants in custody does not appear to be sufficient punishment but looking to the nature of injury caused to the complainant, the sentence of imprisonment awarded to the appellants appear too harsh which is required to be modified in this appeal.

12. In view of above discussion, this appeal is partly allowed. The finding of conviction in the impugned judgment is confirmed, sentence awarded to the appellant is set aside. For the sake of modification. Now for conviction under Section 326/34 and 450 of IPC, appellants shall undergo R.I. for one year along with a fine of Rs.5,000/- each, on default of payment of fine, they will be required to further undergo R.I. for 3 months.

13. Appellants are on bail, they are directed to surrender before the trial Court, for undergoing the sentence of imprisonment and for payment of fine as ordered by this Court. On their failure to surrender before the trial Court by 15th of December 2016, the trial Court shall have the liberty to proceed for taking the appellants in custody.

Sd/-
R.C.S. SAMANT
Judge