

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 66 of 2000**

1. Sanwal Ram Sonkar S/o Chinta Ram Sonkar aged about 35 years

2. Santosh Sonkar S/o Chinta Ram Sonkar aged about 26 years

Both above are residents of village Ghughva Police Station Patan Tahsil Patan District Durg Chhattisgarh.

---- Appellants**Versus**

State of Chhattisgarh through Police Station Patan District Durg Chhattisgarh

---- Respondent

For Appellants	: Smt. Indira Tripathi, Advocate.
For Respondent/State	: Smt. Shobha Kashyap, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****28/02/2017**

1. This appeal has been preferred against the judgment dated 4.12.2000 passed in Sessions Trial No.58 of 2000 by the Third Additional Sessions Judge, Durg convicting the Appellants under Section 307/34 IPC and sentenced them to undergo rigorous imprisonment for seven years and fine of Rs.500/- each with default stipulation.

2. The case of the prosecution in brief is that on 25.9.1999, at about 3.00 pm, Appellants came to the place of Gajanand (PW3) and asked for liquor. Gajanand denied having liquor but the Appellants started arguing with him. Complainant Rekhram (PW2) was present who

intervened in the argument at which both the Appellants with intention to cause death of complainant assaulted him with club and stones and caused various injuries. First Information Report (Exhibit P/4) was lodged at Police Station Patan, District Durg. Rekham (PW2) was medically examined vide Exhibit P/11 by Dr. Lal Mohammad (PW9) reporting about the incident. X-Ray examination was conducted by Dr. G.S. Thakur (PW10) vide X-Ray report Exhibit P/13, in which it was found that grievous injury was caused to the complainant Rekham (PW2). At the instance of Appellant No.2- Santosh Sonkar, vide memorandum (Exhibit P/1), one club was seized vide Exhibit P/2. Blood stained soil, plain soil and pieces of stones were seized from the spot vide Exhibit P/3. Seized articles were sent for FSL examination vide Exhibit P/10. Statements of the witnesses were recorded under Section 161 CrPC. First Information Report (Exhibit P/4) was recorded and offence under Section 307/34 IPC was registered against the Appellants. Investigation was conducted and on completion of the investigation, Appellants were charge sheeted.

3. The Appellants were charged under Section 307/34 IPC by the trial Court. The Appellants denied commission of offence. The prosecution examined as many as ten witnesses. On examination under Section 313 CrPC, the Appellants denied all the incriminating evidence against them, pleaded innocence and false implication. One witness namely Tukaram Sahu (DW1) was examined in defence. The impugned judgment was passed by the trial Court by which the Appellants have been convicted and sentenced as aforesaid.

4. The grounds in this appeal are that the Court below has passed an erroneous judgment of conviction against the Appellants without any basis. There had been no legal admissible evidence against the Appellants. There is no evidence of the prosecution to make out a case for attempt to murder against the Appellants. The trial Court has not appreciated the evidence of the prosecution in true perspective. It is stated that at the most, the case was covered under Section 325/34 IPC. Hence, the Appellants were entitled for acquittal.

5. Learned Counsel for the Appellants submits that the statements of prosecution witnesses disclose that complainant Rekham (PW2) had been the assailant, as a result of which, the incident took place in which the complainant got injured. Further, it was submitted that the injury caused to the complainant may have been caused by his fall on hard and rough objects. In these circumstances, Appellants are entitled for acquittal.

6. Learned Counsel for the State has opposed the grounds raised in appeal.

7. Considering the grounds in appeal and arguments advanced by both the sides, the question which arises for consideration in this appeal is whether there had been sufficient evidence for the prosecution to make out a case of attempt to murder against the Appellants and whether the Appellants were entitled for benefit of doubt and acquittal. The evidence before the trial Court is perused.

8. Complainant-Rekham (PW2) has stated that on the date of

incident, he went alongwith Appellant No.1- Sanwal Ram Sonkar to the place of Gajanand (PW3) for having liquor but Gajanand was not available at his residence. Thereafter, he went to the place of Alharam (PW4) where all of sudden and without any reason, Appellants started beating him with club and stones causing injuries on his head and other parts of the body. Nobody came for his help. Later on, he was taken to Police Station Patan, District Durg where he lodged a report vide Exhibit P/4. In cross-examination, his statement against the Appellants about their assaulting him has remained unrebutted though there is some change in the background and details of the incident but the important details against the Appellants have not been omitted. Suggestion of defence that he got injured due to fall on a piece of wood having nails has been specifically denied by him.

9. Alharam (PW4) was the witness of spot. In his examination in chief, he has supported Rekhram (PW2). In cross-examination, he has admitted that the day of incident was the election day. His statement has remained unrebutted though he has admitted that stones were present on the spot and complainant as well as Appellant No.1 both were in drunk condition.

10. Gajanand (PW3) came on the place of incident and saw the Appellants beating the complainant who was in injured condition. In cross-examination, statement regarding assault on complainant has remained unrebutted. No suggestion has been given to this witness regarding the defence that complainant got injured because of falling down.

11. Smt. Kanti Bai (PW5) has also witnessed the incident and her statement in cross-examination has remained unrebutted. She denied the knowledge that complainant got any injury by falling on the ground. Radheshyam (PW6) in his examination-in-chief supported the prosecution version. In cross-examination, he has stated that it was the complainant who first assaulted Appellant No.1 with a club. He admitted that wood used in roof having nails on them was spread in the courtyard of the house alongwith stones where the incident took place. Further, he admitted that when complainant was beating Appellant No.1, he pushed him, due to which complainant fell down on the piece of wood having nails on it. This piece of evidence has been especially emphasized in the argument on behalf of the Appellants that this was a reason that the complainant was injured. Smt. Anusuiya Bai (PW7) has also supported the case of the prosecution.

12. Dr. Lal Mohammad (PW9) examined the complainant Rekham (PW2) and found lacerated wound over the eyelid of right eye, eyelid of left eye, front part of his head, left temporal region, right temporal region, another injury on left temporal region, right temporal region, one contusion on right leg alongwith fracture of bones. Other contusion was found on left scapular region vide his report Exhibit P/11. He has opined that apart from the injury of fracture, other injuries are simple in nature. His statement was not challenged in cross-examination. Dr. G.S. Thakur (PW10) has conducted X-Ray examination of the complainant Rekham (PW2), who found fracture on both the bones of right leg. X-Ray report (Exhibit P/13) was given in this respect. This

statement also remained unchallenged. One suggestion was given to Dr. Lal Mohammad (PW9) by defence to which he has answered that the injuries of fracture on his right leg and left scapular region can be caused due to collision with any motor vehicle. This is very hypothetical defence and no effort has been made to prove it. On the contrary, the defence was emphasized on this ground, that the injuries were caused to complainant due to his fall on the wooden piece having nails and stones.

13. Tukaram Sahu (DW1) has stated that when he arrived at the spot, he saw complainant assaulting Appellant No.1 with club and then Rekhram (PW2) also assaulted Appellant No.2 and caused injuries to him. Thereafter, complainant Rekhram (PW2), who was in a drunken condition fell down on stones and wooden piece having nails on it and got injured. This story in defence appears to be improbable. Injuries were caused to complainant Rekhram (PW2) on his both eyelids, in front part of the head and also injuries on back and leg. All the injuries cannot be caused by a single fall. That was needed to be explained by the defence. On the contrary, the witnesses on the spot have categorically stated and their statements have remained unrebutted that the Appellants assaulted the complainant. Thereafter, on examination by Dr. Lal Mohammad (PW9) he found various injuries, described in Exhibit P/11 corroborates the statements of witnesses.

14. The evidence of prosecution witnesses are sufficiently corroborated which establishes that it were the Appellants who assaulted Rekhram (PW2) and caused injuries to him including

grievous injury. Now the question is whether the Appellants attempted to cause death of Rekham (PW2).

15. It is only the statement in the FIR Exhibit P/4 that the Appellants intended to cause death of complainant which has been made the basis of registration of offence under Section 307/34 IPC. In the deposition, Rekham (PW2) has nowhere stated that the Appellants had any intention to cause his death. No witnesses examined by the prosecution have stated in this manner. Dr. Lal Mohammad (PW9) has answered to the query of Investigating Officer by his report Exhibit P/12 that the injury sustained by the complainant may have caused his death. This opinion is not in comparison with the opinion that “the injuries caused to the complainant were sufficient to cause his death in ordinary course of nature unless his life was saved by medical intervention”. Clearly this had not been the case here. Hence, the opinion that the injuries may have caused the death of the complainant is not sufficient to draw any conclusion that the injuries could have caused death unless he was medically treated and saved.

16. Due to absence of any clear evidence or statement and especially in absence of medical opinion in this aspect, it was not proper for the trial Court to hold that the Appellants intended to cause death of the complainant. Hence, the finding of conviction under Section 307/34 IPC is erroneous and not based on the legal admissible evidence.

17. On the basis of evidence on record, the offence made out against

the Appellants is punishable only under Section 325/34 IPC, as both the Appellants were actively engaged in beating the Appellants. Hence it can be held that the Appellants had common intention to assault and cause grievous injury to the complainant. Thus, the finding of the trial Court needs to be interfered with.

18. Consequent to the reasons given hereinabove, the appeal is allowed in part. The conviction and sentence under Section 307/34 IPC is set aside. Instead of that, the Appellants are convicted under Section 325/34 IPC.

19. On the point of sentence, it is submitted by Learned Counsel for the Appellants that the case is almost 18 years old. Appellants have remained in jail for more than two months. They were in jail from the date of arrest i.e. 26.9.1999 till their release on bail i.e. 29.9.1999 and thereafter, from the date of judgment i.e. 4.12.2000 till their release on bail by this Court i.e. 15.2.2001. Therefore, the total period comes out to two months and fourteen days. It is prayed that looking to the facts and circumstances of the case, the Appellants be sentenced with the period of imprisonment already undergone by them.

20. Considering all the facts and circumstances of the case, especially considering this aspect that the day of incident was the election day and as per the evidence of Rekhram (PW2), he himself was in a drunken condition when this incident took place and he was assaulted by the Appellants. This is not a case where the Appellants should be severely punished, hence, the prayer in this behalf is

allowed.

21. It is ordered that the Appellants are sentenced for the period of imprisonment already undergone by them during trial and pendency of this appeal. The Appellants are on bail and they need not surrender. However, their bail bonds shall remain effective for a period of six months under the provisions of Section 437-A CrPC.

**Sd/-
(Rajendra Chandra Singh Samant)
Judge**