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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 2121/1999

1. Hetram son of Januram Satnami, aged about 35 years.
 2. Indram son of Januram Satnami aged about 36 years
 3. Jeevan son of Januram Satnami aged about 30 years
 4. Januram (dead), son of Sukrit Satnami, aged about 60 years
 5. Gokul son of Sadhram Satnami aged about 30 years
- All resident of village Devri Khurd, P.S. Kasdol, Distt. Raipur (CG)

versus

State of M.P. (Now CG)

through Police Station Kasdol, Distt. Raipur (CG)

For appellants : Mr. Anurag Verma, Adv.
For Respondent : Mrs. Shobha Kashyap, Dy. Gov. Adv.

JUDGMENT ON BOARD

4/1/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 2-6-1999 passed by the 2nd Additional Sessions Judge, Baloda Bazar in Sessions Trial No. 19/1997 whereby and whereunder learned trial Court after holding all the appellants guilty for forming unlawful assembly along with deadly weapon, committing riot, being members of such unlawful assembly attempting to take life of P.W. 7 Sukaluram, P.W. 6 Pururam, P.W. 8 Butia Bai, P.W. 10 Nankibai and P.W. 9 Chanda Bai and the accused/appellants present at the spot as being the members of unlawful assembly caused injuries with intention to attempt to take life of above victims, convicted and sentenced all the accused appellants for offence under Sections 147, 148, 307 read with Section 149 of the IPC and sentenced to undergo RI for 3 years for the offence under Section 148, IPC along with fine of Rs. 500/- each, in default of payment of fine, to further undergo SI for three months, not sentenced separately for offence under section 147, IPC as the same is merged with Section 148 of the IPC, also convicted all the accused persons to undergo RI for 7 years and to pay a fine of Rs. 500/- each, in default of payment of fine to undergo additional SI for 3 months



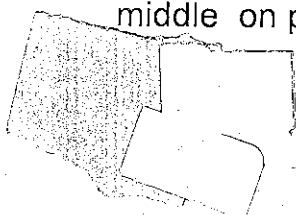
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for the offence under Section 307 read with Section 149, IPC, further directed that both the substantive jail sentences shall run concurrently and the period of detention during trial shall be set off under the provisions of Section 428 of the Cr.P.C.

2. On account of death of appellant no. 4 Januram, his appeal abated and vide order dated 29-4-2014 his appeal was dismissed as abated and the present appeal is continued for appellants No. 1, 2, 3 and 5 only.
3. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
4. As per case of the prosecution, on 14-10-1996 at about 8 am when P.W. 8 Batia @ Panch Bai went to fetch water from the well, her daughter Revati dropped one pot on the field. P.W. 8 Batia uttered obscene words to her. Appellant No. 2 Indram misunderstood that the said obscene words were uttered to him. With this he along with other co-accused reached to the spot holding rod and club in their hands. Thereafter they assaulted P.W. 8 Batia Bai alias Panch Bai, P.W. 7 Sukaloram, P.W. 6 Pururam, P.W. 9 Chanda, P.W. 10 Nankibai, caused injuries on various parts of their body. P.W. 7 Sukaloram fell down and became unconscious thereafter the matter was reported to Police Kasdol at 9.30 am by P.W. 6 Pururam. Police registered the FIR vide Ex. P-33 under Sections 307, 147, 148 of IPC and registered Crime No. 165/1996 against all the accused and investigated the matter. During investigation, all the injured were sent for medical examination and treatment. P.W. 1 Dr. Y.K. Sharma examined P.W. 7 Sukaloram, P.W. 6 Pururam, P.W. 8 Panchbai, P.W. 10 Nankibai and noticed following injuries and symptoms :-

P.W. 7 Sukaloram vide Ex. P-1

1. Lacerated wound 3 x 1" x 1 cm on parietal region of across midline about 2" in front of occipital protuberance, bleeding from right ear, bleeding from nose.
2. Lacerated wound size 1" x ½ cm on right ear (pinna) in middle on post aspect.



3. Contusion size 5" x 1" about 2" below of right scapula.
4. Contusion size 5" x 1" in scapular region about 3" above injury No. 3.
5. Three abrasions on anterior aspect of left leg, one in upper 1/3 and others in middle third.

The doctor noticed that Sukalu was unconscious, not in a position to say anything. The doctor advised for X-ray and opined that all the injuries were caused by hard and blunt object. Nature of the injuries may be ascertained after X-ray. Later, on being asked, P.W. 1 Dr. Y.K. Sharma opined that in case Sukalu was not treated in time, the head injury was dangerous to life.

P.W. 6 Pururam vide Ex. P-3

1. Lacerated wound size 1½ " x ½ cm just below left ear, bleeding from ear.
2. Partial loosening of lower lateral teeth.
3. Abrasion 1 cm x 1 cm on left zygomatic region.
4. Contusion size 2" x 1" over right temporal region about 2" in front of right ear.

P.W. 8 Panchbai vide Ex. P-4

1. One contusion size 3" x 1" on lateral aspect of right knee.
2. Contusion 2" x 1" on right waist region.

P.W. 10 Nankibai vide Ex. p-5

1. Lacerated wound over scalp in right parietal region horizontally placed size 1" x 1 cm x ½ cm.
2. Abrasion ½ " x ½ cm on lateral aspect of left knee.
3. Abrasion 1 cm x ½ cm post aspect of left elbow.

During investigation, he further opined that the weapon sent for examination may cause the injuries found over the body of injured persons. He gave his report Ex. P-7, P-7, P-9, P-10, P-11 and P-12. P.W. 1 Dr. Y.K. Sharma after X-ray of P.W. 7 Sukaloram noticed no fracture over head and also reported the same as Ex. P-13.

5. During investigation, statements of witnesses were recorded. All the accused were arrested. Club and rod were duly seized and sent for medical examination. Spot map was prepared. The properties so seized were sent for FSL where blood stains were

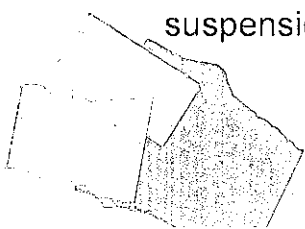
confirmed on the club seized from the appellants. After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Baloda Bajar who in turn registered the same as Criminal Case No. 761/1996 and committed the said criminal case on 6-1-1997. Learned Additional Sessions Judge received the case on transfer and conducted trial. All the accused were charged for the offence under Sections 147, 148, 307 read with Section 149 of the IPC.

6. So as to hold the accused persons guilty, prosecution has examined 16 witnesses in all. Statements of the accused were recorded under Section 313 of the Cr.P.C. wherein they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.
7. After hearing the parties, the trial court by the judgment impugned has convicted and sentenced the accused/appellants as abovementioned. Hence present appeal.
8. I have heard learned counsel for the parties and perused the record of the trial Court.
9. Learned counsel for the appellants vehemently argued that but for P.W. 7 Sukaloram, other injured persons received simple injuries caused by hard and blunt object. Also for P.W. 7 Sukaloram, P.W. 1 Dr. Y. K. Sharma opined in the MLC report of Sukaloram that nature of injury can only be given after x-ray examination and thereafter has not noticed any fracture as per Ex. P-13 X-ray report. There is no evidence that P.W. 7 Sukaloram was ever admitted in any hospital for treatment. There is no evidence regarding any further complication or treatment of P.W. 7 Sukaloram which goes to show that as there is no fracture reported in Ex. P-13, the injuries noticed over the body of P.W. 7 were not grievous in nature. There is no other connected circumstance as attracted in Section 320 of the IPC showing the injury as grievous. With this, the prosecution has only proved that injuries received by all the witnesses were simple in nature though in the query report Ex. P-2, P.W. 1 Dr. Y.K. Sharma opined that the head injury noticed over the body of P.W. 7 Sukaloram was dangerous to life if he was not immediately treated but in absence of any line of treatment, any



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detail as indoor patient and any other medical treatment given, it cannot be said that the injury noticed over the body of P.W. 7 Sukaluram was fatal to life. With this, the injuries may be at best held as simple in nature. Learned counsel further submits that the injured and the accused are neighbours. They are residents of same village, well known to each other. On account of some confusion the incident initially started as verbal duos which later on improved as the present incident. There is no premeditation or preparation for the incident. The incident happened spontaneously. The fact that though as alleged the appellants were armed with lathi and club but no grievous injury or injury fatal to life was found on the body of victims goes to show that there was no intention to attempt to take life of any of the injured. With this the prosecution has utterly failed to prove the essential ingredients of Section 307 of the IPC in the present case. At the best, the prosecution case false under the ambit of Section 324 read with Section 149 and Section 148 of the IPC though the appellants are not admitting this proposition. The incident is about 20 years old, the accused/ appellants were first offender, not having any criminal antecedent and during trial they were under the custody from the date of arrest i.e. 14-10-1996 before 26-2-1997 which goes to show that they remained in custody during trial for more than 4 months. Thereafter all the accused/appellants remained in custody serving the sentence from the date of judgment i.e. 2-6-1999 till 5-5-2000 when the Court suspended the sentence and released them on bail during pendency of the appeal which goes to show that all the accused/appellants remained in jail for more than 15 months. Looking to the nature of the injuries, period of detention, the incident is about 20 years old, the appellants were first offender, they are on bail during all these 20 years, they have not committed any offence during this period, it is prayed that they be given an opportunity to remain peacefully in the society as they are living for the last more than 20 years after the incident, the trial Court also directed to run both the substantive jail sentences concurrently. The period of detention till the suspension of sentence would serve the ends of justice. Hence



conviction under Section 307 may be converted / reduced for lessor offence and the accused/appellants may be sentenced to the period already undergone by them.

10. Per contra, learned counsel for the State opposes the arguments advanced on behalf of the appellants and submits that for very petty reason or no reason, all the accused/appellants formed unlawful assembly and inflicted many injuries to four injured persons. The injuries noticed on P.W. 7 Sukaloram was fatal for life, at the time of examination he was unconscious and not in a position to communicate. Looking to the act of the accused/appellants, the trial Court rightly convicted the accused appellants. Hence the appeal may be dismissed and the conviction and sentence may be affirmed.
11. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.
12. On minute examination of the evidence led by the parties, it appears that there is no evidence adduced by the prosecution regarding admission of any injured in the hospital as indoor patient, also in MLC report Ex. P-1, 3, 4, 5, it is nowhere mentioned that any of the injured was admitted as indoor patient. In the MLC report Ex. P-3, 4 and 5, injuries were mentioned as simple in nature caused by hard and blunt object. As per MLC report Ex. P-1 of P.W. 7 Sukaloram, he received many injuries. The doctor advised for X-ray and opined nature of injury can only be given after X-ray examination and in the X-ray report Ex. P-13, no fracture was noticed by the doctor P.W. 1. With all these above facts though there is a certification by P.W. 1 Dr. Y.K. Sharma in Ex. P-2 answered to a query that the injury noticed over the head of Sukalu was dangerous to life but in absence of any corroborative medical evidence, the statement cannot be accepted as it is. In the considered view of this Court, in absence of any material, the prosecution proved only that the injuries sustained by P.W. 7 Sukaloram, P.W. 6 Pururam, P.W. 8 Butia Bai and P.W. 10 Nankibai were simple in nature. It is also pertinent to note that P.W. 9 Chandabai was not examined and there is no MLC report for Chandabai. Perusal of the prosecution's story

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shows that all the injured and the accused persons are neighbours residing in the same locality and the village and on confusion that P.W. 8 Butia Bai had uttered some obscene words to one of the accused/appellants, present incident took place, which goes to show that there was no premeditation or preparation to assault, also when we combine this with the nature of injury and also with the fact that though the accused persons were holding club and rod and were in sufficient number but they did not inflict any grievous injury fatal to life of any of the injured goes to show that the prosecution has also not proved that the intention of the accused/appellants was to attempt to take the life of injured. With this in the considered opinion of this Court, conviction of the accused/appellants under Section 307, IPC is erroneous and the same is not proved as required.

13. Now the question arises as to what is the offence proved against the accused/appellants.
14. From perusal of the entire material, it appears that all the accused/appellants were holding club and rod in their hands. They formed unlawful assembly and committed riot. Also inflicted injuries over the body of 4 injured persons. With this, as the accused/ appellants formed the unlawful assembly armed with deadly weapon, with this, every member of unlawful assembly is guilty of the offence committed in prosecution of common object. There is no fact surfaced that the intention of all the accused persons was not the same and as the accused/appellants were armed with an instrument which used as weapon of offence is likely to cause death i.e. rod and the club is the dangerous weapon or means, by the said use of club and rod anyone is likely to cause death. With this in the considered opinion of this Court, the prosecution proved that the accused/appellants are guilty of offence under Sections 148, 324 read with Section 149 of the IPC. The accused/appellant cannot be convicted under Section 307 read with Section 149 of the IPC. Consequently judgment of conviction and sentence requires interference.
15. Accordingly, the appeal filed by the appellants are allowed in part. Conviction of accused/appellants under Section 148, IPC is hereby affirmed. However their conviction under Section 307



read with Section 149, IPC is hereby set aside. All the accused/appellants are convicted for lessor offence of Section 324 read with Section 149 of the IPC.

16. So far as quantum of sentence is concerned, all the accused/appellants are first offenders, resident of same locality, the incident is more than 20 years old and as prayed in all these years, they have not committed any offence, they are living peacefully, they are on bail, not misused the condition of bail and they remained in custody for more than 15 months, the substantive jail sentences are directed to run concurrently, in the considered view of this Court, the period already undergone for offence under Sections 148 and 324 read with Section 149, IPC would serve the ends of justice.
17. Consequently all the accused/appellants are convicted in both the counts for the period already undergone by them. The fine sentence imposed by the trial Court is also hereby affirmed. As submitted the fine is already paid. If not paid, the appellants shall serve the sentence due to default of payment of fine as directed by the trial Court. If fine is paid, they be set at liberty forthwith. Their bail bonds shall continue for a further period of six months as per requirement of Section 437-A of the Cr.P.C.
18. Appeal partly allowed.

Sd/-
Chandra Bhushan Bajpai
Judge

