

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 178 of 2004**

1. Sahas Ram, S/o Lakhnuram Karsh, aged about 36 years.
2. Anand Ram S/o Lakhnuram Karsh, aged about 30 years.
3. Maniram, S/o Teekaram Karsh, aged about 53 years.
4. Sitaram Karsh, aged about 55 years.
5. Siyaram Karsh, aged about 52 years.
6. Devcharan Karsh aged about 36 years.
7. Ramkumar Karsh @ Lalla Karsh, aged about 17 years

All R/o Saragaon, Thana Saragaon, Distt. Janjgir-Champa (CG)

**---- Appellants**

**Versus**

- State Of Chhattisgarh, through PS Saragaon, Distt. Janjgir Champa (CG)

**---- Respondent**

**And**

**ACQA No. 440 of 2010**

- State of Chhattisgarh

**---- Appellant**

**Vs**

1. Sahas Ram, S/o Lakhnuram Karsh, aged about 36 years.
2. Anand Ram S/o Lakhnuram Karsh, aged about 30 years.
3. Maniram, S/o Teekaram Karsh, aged about 53 years.
4. Sitaram Karsh, aged about 55 years.
5. Siyaram Karsh, aged about 52 years.
6. Devcharan Karsh aged about 36 years.
7. Ramkumar Karsh @ Lalla Karsh, aged about 17 years.

All the respondents from 1 to 7 are R/o Saragaon, Thana Saragaon, Distt. Janjgir-Champa (CG)

**---- Respondents**

**And**

**CRR No. 76 Of 2004**

1. Devi Singh, S/o Harprasad, aged about 30 years, R/o village Saragaon, Police Station Saragaon, District Janjgir Champa (CG)
2. Durgesh @ Dara Singh, S/o Harprasad Singh, aged about 33 years, R/o village Saragaon, Police Station Saragaon, District Janjgir Champa (CG).
3. Surendra Singh, S/o Bhuwanlal Rathore, aged about 51 years, R/o village Saragaon, Police Station Saragaon, District Janjgir Champa (CG)
4. Ramshankar, S/o Ramprasad Rathore, aged about 25 years, R/o village Saragaon, Police Station Saragaon, District Janjgir Champa (CG)

**---- Applicants**

**Vs**

1. State Of Chhattisgarh, through Station House Officer, Police Station Saragaon, Distt. Janjgir Champa
2. Sahas Ram, S/o Lakhnuram Karsh, aged about 36 years.
3. Anand Ram S/o Lakhnuram Karsh, aged about 30 years.
4. Maniram, S/o Teekaram Karsh, aged about 53 years.
5. Sitaram Karsh, aged about 55 years.
6. Siyaram Karsh, aged about 52 years.
7. Devcharan Karsh aged about 36 years.
8. Ramkumar Karsh @ Lalla Karsh, aged about 17 years

All the non-applicants from 2 to 7 are R/o Saragaon, Thana Saragaon, Distt. Janjgir-Champa (CG)

**---- Non-applicants**

**And**

**CRR No. 89 Of 2004**

- Devi Singh, S/o Harprasad, aged about 30 years, R/o village Saragaon, Police Station Saragaon, District Janjgir Champa (CG)
- Durgesh @ Dara Singh, S/o Harprasad Singh, aged about 33 years, R/o village Saragaon, Police Station Saragaon, District Janjgir Champa (CG).
- Surendra Singh, S/o Bhuwanlal Rathore, aged about 51 years, R/o village Saragaon, Police Station Saragaon, District Janjgir Champa (CG)

- Ramshankar, S/o Ramprasad Rathore, aged about 25 years, R/o village Saragaon, Police Station Saragaon, District Janjgir Champa (CG)

---- Applicants

**Vs**

1. State Of Chhattisgarh, through Station House Officer, Police Station Saragaon, Distt. Janjgir Champa
2. Sahas Ram, S/o Lakhnuram Karsh, aged about 36 years.
3. Anand Ram S/o Lakhnuram Karsh, aged about 30 years.
4. Maniram, S/o Teekaram Karsh, aged about 53 years.
5. Sitaram Karsh, aged about 55 years.
6. Siyaram Karsh, aged about 52 years.
7. Devcharan Karsh aged about 36 years.
8. Ramkumar Karsh @ Lalla Karsh, aged about 17 years

All the non-applicants from 2 to 7 are R/o Saragaon, Thana Saragaon, Distt. Janjgir-Champa (CG)

---- Respondent

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**Cr.Appeal No.178/2004**

For Appellants : Shri Vimlesh Bajpai, Advocate  
For Respondent : Shri N.K. Mehta, Panel Lawyer.

**Acquittal Appeal No.440/2010**

For Appellant : Shri N.K. Mehta, Panel Lawyer.  
For Respondents : Shri Vimlesh Bajpai, Advocate

**Cr. Revision No.76/2004 & 89/2004**

For Appellants : Sushri Shiksha Verma, Advocate under the  
authority of Shri Rajeev Shrivastava, Advocate  
For Respondent : Shri N.K. Mehta, Panel Lawyer.

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**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Arvind Singh Chandel**

## **Judgement**

**Per P. Diwaker, J**

**31/10/2017**

1. Since the above criminal appeal, acquittal appeal & criminal revisions arise out of the same judgment, they are being disposed of by this common judgment.
  
2. By filing criminal appeal the accused/appellants have challenged the legality and propriety of the judgment of conviction and order of sentence dated 9.12.2003 passed by the Additional Sessions Judge, Janjgir, District Janjgir-Champa in S.T. No.226/2001 by which they have been convicted for the offence punishable under Sections 147, 325/149 & 323/149 of the Indian Penal Code (for short 'IPC') and sentenced for a period already undergone by them and total fine of Rs.1,500/-, with usual default clauses. Whereas, in the acquittal appeal filed by the State and Criminal Revision No.76/2004 filed by the complainant, the acquittal of accused/respondents of the charges under Section 307 of the IPC has been challenged. The complainants have also preferred Criminal Revision No.89/2007 seeking enhancement of sentence imposed upon the accused persons under Sections 147, 325/149 & 323/149 of the IPC.
  
3. Case of the prosecution is that on 15.11.2000 a dehati nalishi (Ex.P-1) was recorded at the instance of PW-1 wherein he alleged that he, Dara Singh @ Durga (PW-11), Surendra Singh (PW-9), Ramashankar (PW-10) were attacked and assaulted by accused persons with club causing grievous injuries to them. On the basis of aforesaid allegation, offence under Sections 147, 148, 149, 294, 323 & 506 Part II of IPC was registered. Based on this dehati nalishi, FIR (Ex.P-36) was registered on the same day under the aforesaid sections against as many as seven

accused persons. Devi Singh (PW-1) was medically examined by Dr. V.K. Agrawal (PW-17) vide Ex.P-20 and noticed following injuries;-

- Diffused swelling at the middle of left arm.
- diffused swelling at the middle of left forearm.
- Swelling with tenderness over left side of lower part of the back of chest.
- Swelling over right foot and ankle.
- Swelling over left foot and ankle.

The doctor has advised for x-ray examination of both the legs and ankles.

4. Dara Singh (PW-11) was also examined by PW-17 vide Ex.P-21 and he noticed following injuries;-

- Lacerated wound of the size 3x 0.5 cm x skin deep lateral to right eye.
- Lacerated wound of 5cm x 1cm in size, muscle deep with swelling, at the middle of forehead.
- Lacerated wound of 4cm x 1cm x muscle deep with swelling between left little finger and ring finger.
- Contusion with swelling of 5cm x 3cm in size over right forearm near elbow.
- Contusion of 10cm x 2 cm in size over lateral part of right thigh.
- Contusion of 7 x 2 cm in size over lateral part of right thigh near knee.
- Abrasion of 3x0.5cm over right knee laterally.
- diffused swelling below right knee.
- Abrasion with swelling below right knee.
- lacerated wound over left knee medially.
- Contusion over left knee.

5. PW-17 had also medically examined Surendra Singh (PW-9) vide Ex.P-24 and following injuries were noticed on his person;-

- Lacerated wound of 1.5 x 0.5cm, skin deep over right frontal area.
- lacerated wound over 1.5 x 0.5cm x muscle deep over left leg below knee.

- Contusion with swelling over left arm.
- Contusion of 3x2cm in size between both the shoulders.
- Contusion of 10cm x 2cm over lower part of back of chest.

The doctor has opined that all the injuries were simple in nature, except Injury No.1 & 2.

6. Ramashankar (PW-10) was also medically examined by Dr. K.D. Singh (PW-20) vide Ex.P-38 and he noticed following injuries on his person;-

- Lacerated wound of 2.5 x 0.5x0.5cm in size over frontal parietal region of forehead.
- Contusion of 4cm x 3cm in size over left forearm.
- Abrasion of 2 x 5cm in size over left wrist.
- Swelling with tenderness over left metatarsal
- Swelling with tenderness over left leg above knee joint.
- Swelling with tenderness over left leg above 3cm from knee.

As per opinion of the doctor, the injuries found on the person of injured were simple in nature.

7. On completion of investigation, charge sheet was filed against the accused/appellants. The trial court framed the charges under Sections 147, 307, in alternative 307/149 of IPC, on four counts against accused persons. The prosecution in order to bring home the charges levelled against the accused persons examined 21 witnesses in all. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
8. After hearing the parties, the Court below while acquitting co-accused persons of the charge under Section 307 of IPC, convicted & sentenced them by the impugned judgment in the manner as described above.
9. Counsel for accused/appellant submits that the complainant party was aggressor and the appellants have acted in exercise of their right of self-

defence and therefore the appellants cannot be convicted for any offence much less the offence under Sections 147, 325/149 & 323/149 of IPC.

10. On the other hand, counsel for the State and counsel for the applicants in Criminal Revisions submits that the appellants themselves were the aggressors having attacked the members of complainant party and therefore, no right of private defence was available to them. They submit that keeping in view the injuries sustained by the injured, which gets corroboration from the medical evidence, and also the evidence of other prosecution witnesses, the trial Court ought to have convicted the accused persons for the offence punishable under Section 307 read with Section 149 of the IPC.

Counsel appearing on behalf of the applicants in criminal revisions, further submits that though the trial Court has convicted the accused persons for the offence under Section 147, 325/149 & 323/149, but erred in awarding lesser punishment and the same needs to be enhanced suitably. In other words, she submits that the trial Court should have sentenced the appellants with the maximum sentence provided under the aforesaid sections instead of the period already undergone by them. Therefore, she submits that the impugned judgement may be modified. She further submits that there is no merit in the appeal filed by the accused/appellants.

11. Per contra, counsel for the appellants submits that the trial Court has rightly acquitted the appellants of the charge under Section 307/149 of IPC as there was no cogent and clinching material on record to establish that the appellants have done any act punishable under Section 307/149 of IPC. Hence, the judgment of acquittal does not call for any interference. He further submits that since the conviction of appellants under the above sections itself runs contrary to the material available on record, the

question of enhancing the sentences awarded by the trial Court does not arise.

12. We have heard counsel for the parties and perused the evidence available on record.
13. Devi Singh (PW-1), an injured eyewitness, has stated that on the date of incident he along with along with Ramashankar was going home on a motorcycle and when they reached near the hotel of Parmanand, the accused persons stopped them and saying that today Devi Singh today, all the accused persons assaulted him by club & wooden stool and caused injuries on his shoulder, leg & waist. When Ramashankar tried to intervene, he too was assaulted by the accused persons and therefore he ran away towards his house. He has further stated that seeing Surendra Singh, the accused persons started assaulting him also. He has further stated that in the meantime he managed to flee from there. This witness was subjected to extensive cross-examination but nothing much less any incriminating material could be elicited from his cross-examination so as to discredit his veracity.
14. Dhanesh Kumar (PW-2) is another eyewitness of the incident. According to this witness, when he was going towards market from his home, he saw the accused persons assaulting Dara (PW-11) by stick. He has further stated that the accused persons had also caused injuries to Devi Singh, Ramashankar & Surendra. Despite lengthy cross examination nothing material could be elicited by the defence to discredit his testimony.
15. Gayatri Devi (PW-3) is the witness to whom incident was disclosed by injured Devi Rathore. According to this witness, injured Devi Rathore came running to her house and informed that the accused persons are assaulting him and thereafter he became unconscious.
16. Shivprasad (PW-4) is the witness of seizure memos Ex.P-2 & Ex.P-3 and

he has duly supported the prosecution case.

17. Amrit Lal (PW-5) is another seizure witness in whose presence certain articles were seized vide seizure memos of Ex.P-4 & Ex.P-5.
18. Parmanand (PW-7) & Sitaram Rathore (PW-8) have not supported the prosecution case and as such declared hostile.
19. Surendra Singh (PW-9), Ramashankar (PW-10) & Durgesh alias Dara Singh (PW-11) are also injured eyewitness. They have deposed in a similar fashion and have corroborated their statements with each other. According to them, on the date of incident the accused/appellants stopped them near the hotel of Parmanand and caused injuries to them by assaulting them with club etc. These witnesses were also subjected to extensive cross-examination but nothing much less any incriminating material could be elicited from their cross-examination so as to discredit their veracity.
20. Darbar Singh (PW-12), an independent eyewitness, has stated that the incident occurred at about 2.30-3.00 p.m. and at that time he was sitting in the betel shop of one Sunharan Rathore. He has stated that as soon as Devi Singh & Ramshankar reached near the hotel of Parmanand on their motorcycle, the accused persons stopped them and assaulted them by stick. They have also caused injuries to Surendra & Dara. He has further stated that on account of assaults, Devi Singh became unconscious on the spot itself and Ramshankar managed to flee from there.
21. Santosh Kumar (PW-13) & Ramshankar (PW-14) are independent eyewitness of the incident and they have supported the prosecution case in unequivocal terms that they have seen the accused persons assaulting the injured persons.
22. Kanhaiya Lal (PW-15) is the Patwari who prepared the spot map Ex.P-10. Dr. V.K. Agrawal (PW-17) is the doctor who medically examined Devi

Singh, Durgesh alias Dara Singh & Surendra Singh vide Ex.P-20, Ex.P-22 & P-24 respectively and noticed the injuries as mentioned above. Ram Kumar Patel (PW-18) and V.K. Awasthy (PW-19) have assisted in the investigation. Dr. K.D. Singh (PW-20) is the person who medically examined injured Ramshankar vide Ex.P-38 and noticed the injuries as described above.

23. K.L. Yadav (PW-21) is the investigating officer and has duly supported the prosecution case.

24. Close scrutiny of the evidence on record makes it clear that the accused/appellants being the members of an unlawful assembly common object of which was to voluntarily cause hurts to the injured persons attacked on the victims and inflicted several injuries to them. All the four injured witnesses have categorically stated in one voice that accused/appellants armed with club came on the spot and caused various injuries to them. Evidence of injured witnesses gets corroboration from the independent eye-witnesses namely Darbar Singh (PW-12), Santosh Kumar (PW-13) & Ramshankar (PW-14), who have no axe to grind against the accused/ appellants. These independent witnesses have duly supported the prosecution case in unequivocal terms by saying that they have seen the accused/appellants assaulting the injured persons with club. The testimony of aforesaid eyewitnesses further gets support from the medical evidence, according to which, all the injuries were caused by hard and blunt object. Apart from that, their evidence also gets complete corroboration from the contents of FIR lodged by injured eyewitness Devi Singh immediately after the occurrence, clearly mentioning the names of the appellants as the assailants. It is settled position that testimony of an injured witness is accorded a special status in law and such witness would not like or want to let his actual assailant go unpunished merely to

implicate a third person falsely for the commission of the offence. Therefore, the evidence of the injured witness has to be relied upon unless there are convincing grounds for the rejection of his evidence. In the present case also, the eyewitnesses to the incident were subjected to extensive cross-examination but the defence failed to elicit anything worth the name which could possibly cause any dent in their testimony so far as the complicity of appellants is concerned. Thus, we are of the view that the complicity of accused/appellant in the crime in question is duly established by the prosecution beyond reasonable doubt.

25. The issue now arises is whether an offence under Section 307 of IPC is made out or not? The essential ingredient of Section 307 of IPC is the *mensrea* which can be inferred from the kind of weapon used, the place of injury, motive etc. To bring home a charge under Section 307 of IPC, the onus lies on the prosecution to prove that the accused caused an act with the intention or knowledge and under such circumstances if by that act death was caused he would be guilty of murder. In the present case, on a quarrel ensuing, the appellants caused club blows to the victims. The injuries were caused on non-vital parts of the body and the same were reported to be simple in nature by treating doctor. In view of the weapon of offence i.e. club, and injuries not being inflicted on the vital part of any of the injured, it cannot be said that the appellants had intention to cause murder of the injured persons. However, the appellants certainly had intention to cause injury which was opined to be simple in nature and not sufficient in the ordinary course of nature to cause death. Further, there is nothing on record to suggest that the appellants wanted to cause some other injuries, therefore, it would not be safe to hold that the appellants assaulted the victims in an attempt to commit their murder. Thus, in the given facts and circumstances of the case, the finding recorded by the trial

Court acquitting the accused/appellants of the charge under Section 307 of IPC is based on proper appreciation of evidence on record and the same needs no interference.

26. As regards the submission of learned counsel for the complainant/applicants that the trial Court had imposed inadequate sentence or that the trial court has failed to award proper sentence. Every court has duty to award sentence having regarding to the nature and manner of execution of offence. No formula of full-proof nature is possible for determining just and appropriate punishment, but the object should be to protect society and to deter criminal. Therefore, looking to the facts and circumstances of the present case and the manner in which the offence was committed by the appellants, it cannot be said that the sentences awarded by the trial Court for the offences under Sections 147, 353/149 & 325/149 of IPC are so grossly inadequate and so shockingly low that this Court should exercise appellate power and enhance the sentence. The sentences awarded by trial court is proper and adequate sentence.

27. In the result, all the above cases i.e. Criminal Appeal No.178/04, Acquittal Appeal No.440/10, Cr. Revision Nos.76/04 & 89/04 have no substance, the same are liable to be and are hereby dismissed.

Sd/-

(Pritinker Diwaker)  
Judge

Sd/-

(Arvind Singh Chandel)  
Judge

roshan/-