



28/01/17

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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 559/1999

1. Dinesh Kumar Jaishwal S/o Fekulal Jaishwal, aged about 18 years, R/o Narayan Pur, Police Station Narayan pur, District Bastar.
2. Ram Prasad Ueki S/o Maniram Ueke, aged about 34 years, R/o Narayan Pur, Police Station Narayan pur, District Bastar.

---- Appellants

Versus

1. The State of M.P.

---- Respondent

And

CRA No. 221/2001

1. Ravinaag @ Nadu S/o Abhimanu Naag, aged about 19 years, R/o Narayanpur P.S. Narayanpur Dist. Bastar (Chhattisgarh)

---- Appellant

Versus

1. The State of Chhattisgarh

---- Respondent

For Appellants – Smt. Kiran Jain, Advocate.

For Respondent – Smt. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Judgment on Board

16/01/2017

1. As both these above criminal appeals arise out of the common judgment dated 27-01-1999 passed in Sessions Trial No.185/98, both the above criminal appeals are being disposed of by this common judgment.
2. Challenge in these two criminal appeals, i.e., CRA No.559/1999 and CRA No.221/2001, is to the judgment of conviction and order of sentence dated 27-01-1999 passed by the IIIrd Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.185/98 whereby and whereunder the learned trial Judge after holding all the three appellants of both the criminal appeals guilty for the offence after sharing common intention along with another co-

accused Sanjay Nair to attempt to take life of Ratan Prasad (PW-5) and also to inflict injury by sharp edged weapon to Somnath (PW-1) by sharing common intention, convicted them under Section 307 read with Section 34 of the Indian Penal Code, 1860 (in short 'the IPC') and Section 324 of Section 34 of the IPC sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 5000/-, in default of payment of fine, to further undergo additional rigorous imprisonment for 1 year, also rigorous imprisonment for three years and to pay fine of Rs. 3000/-, in default of payment of fine, to further undergo rigorous imprisonment for 6 months to all the appellants and also to other convicted accused Sanjay Nair, with a direction that both the substantive jail sentences shall run concurrently and that all the convicted four accused be given set off under Section 428 of the Code of Criminal Procedure, 1973 (in short 'the Code').

3. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court convicted and sentenced the appellants as aforementioned and thereby committed illegality.

4. As per case of the prosecution, on 22-03-1998, the complainant Ratan Prasad (PW-5) was present in local market, Vishnu Yadav, another person was with him. The accused Sanjay Nair came and demanded money. He had not said anything. Thereafter, at about mid-noon, accused Sanjay Nair again returned along with present appellants and all the four accused gave him threat to take life and Sanjay Nair assaulted him. The complainant saved himself, failing which, the battle axe certainly inflicted over his neck. They have also assaulted Somnath (PW-1) who had received injuries over his finger. The complainant reported the matter before Narayanpur police who registered the same as crime no. 22/1998 under Section 307 read with Section 34 of the IPC against the four accused and sent the injured Somnath (PW-1) for medical examination. Doctor M.K.Suryavanshi (PW-4) examined

injured Somnath (PW-1) and noticed one incised wound of 4 x 3 x 2 cm. caused by sharp and edged weapon. He gave his report Ex.-P/4 and opined the injury as simple. Police during the investigation, also prepared spot map, seized the battle axe used during assault and also seized shirt of accused Sanjay Nair, arrested all the four accused on 23-03-1998. The statement of the witnesses were recorded under Section 161 of the Code.

5. After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Narayanpur, who registered the same as Criminal Case No.142/98 and committed the same to the Court of Sessions vide committal order dated 12-06-1998. The learned Additional Sessions Judge received the case on transfer and conducted the trial. All the four accused were charged for the offence under Section 307 read with Section 34 of the IPC and Section 324 read with Section 34 of the IPC.

6. In order to prove guilt of the accused, the prosecution examined 7 witnesses. Statements of the accused were recorded under Section 313 of the Code in which they denied the circumstances appearing against them, pleaded innocence and false implication in crime in question.

7. After affording opportunities of hearing to the parties, learned trial Judge convicted and sentenced all the four accused as aforementioned.

8. Convicted co-accused Sanjay Nair had preferred Criminal Appeal No.1547/1999. As accused Sanjay Nair has died on 01-08-2002, the appeal filed by him stands abated on account of his death vide order dated 19-02-2007.

9. I have heard learned counsel for the parties and perused the record of the trial Court.

10. Learned counsel representing all the three appellants in both the criminal appeals vehemently submits that as the prosecution failed to prove any offence against these three appellants and the appellants may not be

convicted merely on the basis of doubt, hence, the trial Court committed error in convicting the accused/appellants of both these criminal appeals. Hence, both these criminal appeals may be allowed and all the three appellants may be acquitted. Learned counsel for the appellants would further submit that Somnath (PW-1), injured eye-witness turned hostile, not supported the prosecution's story and as per this witness as in para 2 and also para 10, all the three accused Ram Prasad, Nadu and Dinesh have not taken part in the incident, even otherwise they intervened in the matter. Manglibai (PW-2) had not said anything against the present accused/appellants. Pintu Kumar Nag (PW-3) turned hostile, not said anything against the present appellants. Doctor M.K.Suryavanshi (PW-4) conducted the MLC of Somnath (PW-1) and gave his report Ex.-P/4, as per said report, the injuries were simple in nature caused by hard and sharp edged weapon over the finger of right hand. Ratan Prasad (PW-5), the complainant and the witness of the incident has not said anything against the present accused/appellants. In para 1 and para 4, this witness specifically deposed that all the three accused Ram Prasad, Ravi and Dinesh intervened in the dispute and he has lodged the report Ex.-P/7. This witness also turned hostile and ultimately not said anything against the present accused/appellants. Shivdas (PW-6) also turned hostile not supported the case of the prosecution and in para 1 stated that when Sanjay Nair was taken to the police station, remaining accused came and asked about the incident. With this, as no any witness has said anything regarding any role of the accused/appellants, their mere presence may not lead them for their conviction for the offence, hence, the appeal may be allowed and conviction and sentence passed by the Court below against all the three appellants may be set aside.

11. Per contra, learned counsel for the State/respondent opposed the argument advanced on behalf of the accused/appellants, supported the

impugned judgment of conviction and sentence and would submit that the judgment of conviction and sentence passed by the Court below is well founded.

12. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

13. Upon minute examination of the evidence, it reveals that none of the prosecution witness said anything against all the above three accused/appellants, on the other hand, they simply stated regarding presence of the accused/appellants to intervene with the incident not beyond this. If any person intervenes in a dispute, he cannot be held liable under the aid of Section 34 of the IPC.

14. On due consideration, as the prosecution failed to prove anything against the present accused/apellants, the trial Court committed error by convicting all the above three accused/appellants for the offence. All the three accused/appellants cannot be convicted for any of the act committed independently by other co-accused Sanjay Nair who died subsequently during hearing of his appeal and Section 34 cannot be used against the present accused/appellants so as to connect their participation in the crime.

15. On due consideration, the appellants succeed in both the present criminal appeals and Criminal Appeal No.559/1999 and Criminal Appeal No.221/2001 are hereby allowed. Judgment of conviction and sentence passed against all the above three appellants are hereby set aside. All the present accused/appellants are acquitted of the charges. Fine, if any, paid by the appellants shall be refunded.

16. Appeals are allowed.

Sd/-

(Chandra Bhushan Bajpai)
Judge