

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 31 of 2001

1. Uday Ram S/o. Bedram Yadav, aged about 37 years, resident of village Karpikala, Police Station, P.S. Pandariya.
2. Shanker S/o. Balaram Yadav, aged about 27 years, resident of village Bharewa para, P.S. Pandariya.
3. Anujram S/o. Bedram Yadav, aged about 25 years, resident of village Karpikala, Police Station, P.S. Pandariya.
4. Baboo Lal S/o. Telakoo Yadav, aged about 25 years, resident of Bharewa para, P.S. Pandariya.
5. Shreeram S/o. Laxman Yadav, aged about 25 years, resident of Pandariya.
6. Salikram S/o. Delau Ram aged about 30 years, resident of village Bharewa para, P.S. Pandariya.

---- Appellants

Versus

State of Chhattisgarh through Police Station Pandariya, Mungeli District Bilaspur (C.G.)

---- Respondents

For Appellants	:	Ms.Aakhanksha Bajpai, Advocate.
For Respondent	:	Mr. Lav Sharma, Penal Lawyer

S.B.:- Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

30.10.2017

- 1) This appeal is directed under Section 374(2) of Criminal Procedure Code against the judgment of conviction and order of sentence dated 14.12.2000 passed by the Additional Sessions Judge, Mungeli, District Bilaspur in Sessions Trial No. 297/1995, wherein the trial Court convicting all the six accused/appellants under Sections 148, 307, 325, 323 of the IPC and sentenced them to undergo rigorous imprisonment for 1 year and fine of Rs. 200/-, rigorous imprisonment for 3 years and fine of Rs. 1000/-, rigorous imprisonment for 2 years and fine of Rs. 500/-, rigorous imprisonment for six months and fine of Rs. 100/-, rigorous imprisonment for six months and fine of Rs. 100/- and rigorous imprisonment for six months and fine of Rs. 100/- respectively with default stipulations.
- 2) As per the prosecution case, the appellants formed an unlawful assembly on 24.07.1994, who were in possession of deadly weapons like axe and club and attempted murder of one Jaita (PW-6) and caused grievous injuries to Manesh (PW-16), Ganeshram (PW-5) and caused simple injury to Jhuniya Bai (PW-4) and Kunj Bai (PW-3). The incident occurred due to land dispute which was purchased by the members of complainant side namely Ramadhar. On the date of incident, the appellants reached to the disputed field and surrounded the complainant Jaita (PW-6), Manesh (PW-16), Ganeshram (PW-5), Jhuniya Bai (PW-4) and Kunj Bai (PW-3) assaulted them brutally. The matter was reported to

Police Station Pandariya and after registration of Dehatinalashi injured persons were sent for medical examination. Certain articles were seized from the place of incident and statement of witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation, charge sheet was filed against the accused/appellants before the Court of Judicial Magistrate First Class, Mungeli, who, in turn, committed the case to the Court of Sessions Judge, Mungeli, District Bilapsur the accused/appellants were charge sheeted under Sections 148,307,325,325,323,323 of the IPC to which the appellants did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellants under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellants as mentioned above.

- 3) Learned counsel appearing for the accused/appellants submit that the Uday Ram, Shanker and Anujram received injuries in the same incident and the injuries are not explained by the prosecution and they suppressed the genesis of the incident, so their version is not reliable. He further submits that all the injuries caused to Jaita (PW-6), Manesh (PW-16), Ganeshram (PW-5), Jhuniya Bai (PW-4) and Kunj Bai (PW-3) were simple in nature and the same is caused during the scuffle and the complainant parties are aggressor therefore, no offence is made out against the appellants. Learned counsel for the appellants further

submits that as per the version of Dr. Anil Kumar Gupta(PW-12) injuries found on the body of Jaita was not fatal therefore, offence under Section 307 of the IPC is not made out.

- 4) Per contra, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court by invoking the jurisdiction of the appeal.
- 5) I have heard counsel for the parties and perused the material on record.
- 6) To substantiate the charge prosecution has examined as many as 18 witnesses. The appellants did not examine any witness in their defence.
- 7) Jaitaram (PW-6) deposed that on the date of incident on 27.07.1994 at about 8.00 AM, he was working with Ganesh, Ramadhar, Mahesh, Jhunias Bai and Kunj Bai in his field and they reached there to sow seeds of paddy, at that time accused/appellants reached to the spot armed with club with iron and assaulted Jhunias Bai, Kunj Bai, Mahesh and Ganesh and when he tried to intervene, the appellants also assaulted him with lathi and caused head injury and fracture in head. Statement of this witness is supported by the statement of Ramadhar who deposed that Mahesh (PW-6), Ganesh(PW-5), Jaita (PW-6) and Kunj Bai (PW-3) sustained injuries on their body. Kunj Bai (PW-3) stated in the same voice and she deposed that she also received injuries during the incident. Manesh (PW-16) Ganeshram (PW-5) and Jhunias Bai (PW-4)

deposed that they also received injuries during the incident. Version of all the witnesses is unshaken during the cross-examination and nothing could be elicited in favour of the appellants. Version of these witnesses is also supported by Dehatinalishi Ex.P-1 and other relevant documents.

- 8) Dr. Anil Kumar Gupta(PW-12) examined complainant Jaita (PW-6) on 24.07.1994 at about 6.00 PM and noticed injuries on his head, left wrist, left parietal bone and occipital bone and again he found fracture on humerus bone. As per the opinion of doctor, all the injuries were caused by hard and blunt object. Dr. Anil Kumar Gupta (PW-12) examined complainant Mahesh (PW-16) on 24.07.1994 at 4.15PM and noticed injuries near parietal region, dorsal region and opined that the injuries caused to Mahesh (PW-16) was simple in nature. He further examined complainant Jhunia Bai (PW-4) and Kunjbai (PW-3) and opined that the injuries caused to Kunjbai (PW-3) was simple in nature and caused by hard and blunt object. The doctor again examined Ganesh (PW-5) and noticed the injuries caused on the parietal region, occipital region, left wrist, and also swelling and bruise in the body of Ganesh (PW-5) and opined that the injuries sustained by Ganesh were simple in nature. He further opined that the injuries caused to Jaita (PW-6) were dangerous in nature. Version of this witness is unshaken during cross examination and there is no other expert's opinion in this regard to rebut the same and there is no reason to disbelieve the same.

- 9) As per version of all the witnesses and medical evidence, it is established that all the appellants were reaching on the spot after forming unlawful assembly and caused injuries to the persons as mentioned above. Now, the point for consideration whether injuries of Jaita (PW-6) falls under Section 307 of the IPC-
- 10) To constitute an offence under Section 307 of the IPC, two ingredients of the offence must be present.
- (a) an intention of or knowledge relating to commission of murder; and
 - (b) The doing of an act towards it.
- The essential ingredients required to be proved in the case of an offence under S. 307, IPC are:
- (i) That the death of a human being was attempted;
 - (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;
 - (iii) That such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.
- 11) Doctor found grievous injuries on the body of injured Jaita (PW-6) but to establish charge under Section 307 of the IPC ingredients of Section 300 of the IPC has to be established only causing grievous injury is not

sufficient to establish charge under Section 307 of the IPC. Looking to the injuries sustained by injured Jaita (PW-6), case fall under Section 325 of the IPC. Again, Doctor has not opined that injuries caused to Ganeshram (PW-5) was grievous in nature. Doctor further opined that the injuries caused to Ganeshram (PW-5) was simple in nature. Injuries caused to Mahesh (PW-16), Kunjbai (PW3) and Jhunias Bai (PW-4) were simple in nature, therefore, the offence of all the accused/appellants falls under Section 325 of the IPC for Jaita (PW-6), and Section 323 of the IPC for Ganeshram (PW-5), Section 323 of the IPC for Mahesh (PW-16), Section 323 of the IPC for Jhunias Bai (PW-4) and Section 323 of the IPC for Kunj Bai (PW-4) and also are liable for commission of offence under Section 148 of the IPC.

- 12) Conviction of the appellants under Section 307 of the IPC is not sustainable and they are acquitted of the said charges and for rest of the offence judgment of conviction is well founded and the same is hereby affirmed.
- 13) Heard on sentence part, the incident took place in the year 1999 i.e. 23 years back. All the appellants were in jail from 25/07/1994 to 02/12/1994 i.e. more than 4 months, no useful purpose will be served in sending the appellants in jail again. The jail sentence awarded to the appellants is reduced to the period already undergone by them for the offence under Section 148, 325 and 323 of the IPC. However, as regards sentence of fine, the same is intact.

14) Accordingly, the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Santosh