

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on: 15/12/2016**

**Judgment delivered on: 08/02/2017**

**CRA No. 540 of 2007**

1. Shankar Ram S/o Belal Ram Mahakul, aged about 32 years, Caste-Mahkul, Occupation-Agriculture, R/o Village-Sarbakombo, P.S.-Bagicha, Distt- Jashpur, C.G.

**---- Appellant**

**Versus**

1. State Of Chhattisgarh Through-The Station House Officer, Bagicha, Distt. Jashpur-(C.G.)

**---- Respondent**

**and**

**CRR No. 463 of 2007**

1. Khirodhar Yadav, aged about 30 years, S/o Shri Ratu Ram, R/o Village-Jhagarpur, Kharidand, P.S.-Bagicha, Distt.Jashpur, Chhattisgarh

**---- Applicant**

**Versus**

1. Jugeshwar Yadav, S/o-Tankadhar Yadav, aged about 22 years, occupation-Agriculture, Caste-Mahkul.
2. Shankar Ram, S/o Belal Ram Mahkul, aged about 32 years, Occupation-Agriculture, Caste-Mahkul.
3. Trilochan Yadav, S/o Mohan Ram Yadav, aged about 27 years, Occupation-Agriculture, Caste-Mahkul.
4. Labho Ram, S/o Thunu Ram Mahkul, aged about 32 years, Occupation-Agriculture, Caste-Mahkul.
5. Chandrashekhar, S/o Teju Ram Mahkul, aged about 48 years, Occupation-Agriculture, Caste-Mahkul.
6. Tankadhari, S/o Lambodari Mahkul, aged about 60 years, Occupation-Agriculture, Caste-Mahkul.

7. Thunu Ram, S/o Lambodari Mahkul, aged about 70 years, Occupation-Agriculture, Caste-Mahkul.
8. Mohan Ram, S/o Lambodari Mahkul, aged about 55 years, Occupation-Agriculture, Caste-Mahkul.
9. Trinatho, S/o Thunu Ram Mahkul, aged about 25 years, Occupation-Agriculture, Caste-Mahkul.

All are resident of Village-Kharidand, P.S.-Bagicha, Distt. Jashpur (C.G.)

10. Purendar Ram, S/o Khageshwar Ram Mahkul, aged about 23 years, Occupation-Agriculture, Caste-Mahkul, R/o Village-Sarbacombo, P.S. Bagicha, Distt.-Jashpur, Chhattisgarh

11. State of C.G. Through-P.S. Bagicha, Distt.-Jashpur, Chhattisgarh

---- Respondents

For the Appellant : Shri Jitendra Shrivastava, Advocate.

For the State : Shri Vaibhav Goverdhan, Panel Lawyer.

**Hon'ble Shri Justice Pritinker Diwaker**

**Hon'ble Shri Justice R.C.S. Samant**

### **C A V JUDGMENT**

**Per R.C.S. Samant, J**

**08/02/2017**

1. Both the cases have arisen from the judgment of conviction and order of sentence passed by the Additional Sessions Judge, Jashpur in Sessions Trial No.14/2006 on 27.04.2007, whereby the appellant was convicted under Section 326, 147 and 341 of IPC and sentenced to R.I. for a period of 4 years with a fine of Rs. 5,000/-, S.I. of 3 months and fine of Rs.1000/- and S.I. of 1 month with fine Rs.500/- respectively, with default stipulations. By appeal this judgment of

conviction and sentence is assailed by the appellant, whereas revision has been brought with prayer to set aside the acquittal of respondents and convict them and also enhance the punishment of respondent No.2.

2. The prosecution case is this, complainant Khirodhar Yadav is resident of Village-Jhagarpur, Kharidand and by profession, he is an advocate. On the date of incident i.e. 02.09.2005, Khirodhar Yadav PW/10 gone to Tahsil-Bagicha and was returning to his village in motorcycle. Accused Shankar Ram with Trilochan on one motorcycle and Jugeshwar with Purender on another motorcycle followed complainant. At about 1.30 p.m. near Bhadiya Titli Pahri forest, complainant Khirodhar saw them following got scared, parked his motorcycle and ran towards the forest. Shankar Yadav and other accused persons chased and caught him, thereafter appellant Shankar Yadav use filthy abusive words, caught hold of complainant and forced him to ground. He with the help of a scissor stabbed in his right eye, then accused Jugeshwar using the same scissor stabbed him on his left eye and continued threatening him about taking out his eyes. Rest of the accused persons also participated in beating the complainant. In this incident, complainant lost sight in both of his eyes. Machhinder and Umesh are witness of this incident. Ratu PW/2, Khagpati PW/1, Leeladhar PW/13, Roopsai PW/16 and Loknath came on the spot after listening the noise of altercation. Complainant narrated the incident to them. Complainant was taken to P.S.-Bagicha where he lodged the report.

3. Complainant was examined by Dr. R.N. Dubey PW/5 vide Ex.P/4, who found incised wounds on both the eyes of complainant. He referred him for further treatment to Ambikapur. Dr. Sanjay Goyal PW/19 treated and examined Khirodhar PW/10. He has reported vide EX.P/30, that there was loss of sight in right eye, due to the injuries caused to him. He referred him for further treatment by Eye Surgeon at Raipur. Dr. A.A. Usman PW/11 conducted Sonography examination of Khirodhar PW/10 in his right eye and gave finding vide his report Ex.P/24, that there was corneal detachment and vitreous hemorrhage in right eye, his left eye was normal.
4. In rest of the investigation, statement of witnesses were recorded, memorandum statement of accused Jugeshwar was recorded vide Ex.P/2, one scissor made of steel was seized vide Ex.P/3, which was examined by Dr. R.N. Dudey PW/5 and reported vide Ex.P/6, that the injuries caused in the eyes of Khirodhar PW/10 are likely to be caused by this scissor. Spot map was prepared vide Ex.P/7. One handle of scissor was seized from the spot vide Ex. P/8. Motorcycle, wrist watch and spectacles of complainant was seized from the spot vide Ex.P/9. One another motorcycle was seized from the possession of accused Jugeshwar vide Ex.P/10. One motorcycle bearing registration No.C.G.- 14/4109 was seized from the possession of appellant Shankar Ram Yadav vide Ex.P/11. On completion of investigation, appellant and 9 other accused persons were charge-sheeted.

5. Appellant and other accused persons were charged under Section 147, 341, 326, 294, 506-B, 114, 307 read with 149 of IPC. Appellant and co-accused persons denied the charges and demanded for trial. Prosecution has examined 19 witnesses. On examination under Section 313 of Cr.P.C., appellant and other co-accused persons pleaded innocence and false implication. Defence has examined three witnesses. Impugned judgment was passed by the trial Court, in which appellant and co-accused were acquitted of charges under Section 294, 506-B, 114 and 307/149 of IPC, but appellant was convicted and sentenced under remaining sections, as mentioned in the first paragraph. Remaining accused persons were convicted under Section 147 and 341 of IPC and sentenced with S.I. of 3 months with fine Rs.1000/- and with S.I. of 1 month and fine Rs.500/- respectively.
6. The only appeal has been filed by the appellant Shanker Ram, challenging the impugned judgment. The grounds taken in this appeal are these, that trial Court has erred in appreciating the evidence in its right perspective and has acquitted nine co-accused persons from offence under Section 326 of IPC on the same set of evidence. It had to be noticed that the scissor used for committing the offence was recovered at the instance of co-accused Jugeshwar Yadav. Hence, for these reasons alone, the conviction for the appellant, is bad in law. There had been major contradictions and omissions in the Court statement of Khirodhar PW/10, which made him unreliable witness. The injuries caused by the appellants to complainant, was not proved to be grievous in nature defined under Section 320 of IPC. Trial Court

failed to appreciate, that there had been a dispute between appellant and complainant, on this ground it is clear that the appellant has been falsely implicated. There are no independent witnesses in this case, conviction of appellant is based on conjecture and surmises. On these grounds, it is prayed that the conviction against the appellant be set aside.

7. Complainant Khirodhar PW/10 has filed revision challenging the acquittal of appellant and other accused persons under section 114, 294, 307, 326 and 506-B of IPC, and also for enhancement of sentence under the conviction of offences against appellant. The grounds taken are these, that the judgment passed by the trial Court is erroneous, arbitrary and contrary to the material available on record. Deposition of Ratu PW/2, Sumitra PW/3, Dr. R.N. Dubey PW/5, Khirodhar PW/10 and Dr. Sanjay Goyal PW/19 and the Ex.P/4, Ex.P/5 and Ex.P/13, have not been appreciated. It was clear from the opinion given by doctor, that the injury caused to appellant was grievous in nature and sufficient to cause of death, which was sufficient ground to hold conviction under Section 307 of IPC. Complainant was brutally assaulted, due to which he lost sight in his right eye permanently, even then lenient approach was taken by learned trial Court in awarding sentence, there had been ample evidence to convict the appellant and all the accused persons under Section 326 and 307 of IPC, which has been ignored by the trial court. On these grounds, it is prayed that the impugned judgment be set aside and suitable order be passed.

8. By order sheet dated 29.10.2009 in CRR 463/2007, this revision was admitted only against respondent No.2 Shanker Ram, who is appellant in CRA No.540/2007. The revision against rest of the accused persons was dismissed.
9. Learned counsel for the appellant has submitted, that there is no legally admissible evidence against the appellant for holding conviction against him. The statement in Court by Khirodhar PW/10, is discrepant and contradictory, which ought to have been held unreliable but has been made the basis of conviction against the appellant. There is no other witness to this incident, hence, the conviction of appellant on the sole and contradictory statement of Khirodhar PW/10, is bad in law. Statement of other witnesses are also full of contradictions and omissions. For these reasons, appellant was entitled for benefit of doubt.
10. Learned counsel for the applicant has submitted that the evidence of prosecution had been very clear and categorical to hold conviction under Section 307 of IPC against the appellant Trial Court has failed to appreciate the evidence of medical experts and the medical reports exhibited by the prosecution.
11. Learned counsel for State has duly assisted the Court.
12. Considering all the material on record, ground taken in appeal and revision and the argument submitted by the appellant, applicant and State, the questions for determination are whether the conviction

recorded by the trial Court against the appellant Shanker Ram, is sustainable ? and whether there had been sufficient evidence on record to give a finding of conviction against appellant under Section 307 of IPC ?

13. The main witness in this case is Khirodhar PW/10, who has stated that on the date of incident, he proceeded for his village and arrived in between the forest of Bhadiya Titali Pahri. At the same time, appellant Shanker Ram along with accused Trilochan on one motorcycle and accused Jogeshwar along with Purander on another motorcycle came following him on the spot, appellant and other accused persons obstructed the way of complainant. Complainant got scared, he left his motorcycle and started running. Appellant and co-accused persons chased him, in the forest. Appellant and other co-accused persons cornered and surrounded him in the forest. All co-accused persons caught hold of complainant then appellant Shanker Ram assaulted with a scissor on his right eye 3 to 4 times, later on, co-accused Jogeshwar assaulted with the same scissor on his left eye 4 to 5 times. He went unconscious on the spot, he was brought to the hospital at Bagicha. FIR Ex.P/23 was lodged by him. In cross-examination, this statement has remained unrebutted. He has denied that he got injured due to fall on thorny shrubs. He has admitted that he had land dispute with appellant Shanker Ram for which, a report was lodged against him, but no document has been produced in defence, neither confronted to this witness. He has stated that this report was lodged by the appellant to pressurize him for giving

statement in favour of the appellant.

14. Khagpati PW/1 has denied witnessing the incident, but has stated that he saw complainant Khirodhar PW/10 on the spot having injuries on both of his eyes. This witness was declared hostile by the prosecution. Ratu PW/2 has stated, that he was informed by Roopsai PW/16 that appellant and the co-accused persons were beating complainant and taking him towards the forest when he arrived at the spot, his son Khirodhar PW/10 had injuries in both of his eyes, he was taken to the hospital at Bagicha. Khirodhar PW/10 narrated to him the whole incident, his statement has remained unchallenged though he is hearsay witness. Sumitra Yadav PW/3 is wife of complainant, has stated about the previous incident, in which she was physically manhandled by appellant Shanker and co-accused Jogender. Later on, she came to know that her husband was assaulted and injured by the appellant and accused persons. Her husband Khirodhar PW/10 narrated her about the incident, her statement in cross-examination has remained unrebutted.

15. Guruwari PW/4 has stated that on the date of incident, at about 2:00 p.m. appellant and co-accused persons came to her house asking for Ratu PW/2 and told her to see her son Khirodhar PW/10. She saw blood on the hands of accused Jogeshwar and Shanker Ram, later on, she found her son Khirodhar PW/10 in injured condition, her statement has remained unchallenged in cross-examination. Leeladhar Yadav PW/13 has stated that he arrived on the spot of incident, later on and saw Khirodhar PW/10 in injured condition. He

was declared hostile by the prosecution as he has not supported the prosecution in other particulars.

16. Ishwar yadav PW/14 has narrated about another incident, in which Guruwari Bai PW/4 and Sumitra Yadav PW/3 wife of complainant had raised alarm, that appellant and other co-accused persons are on there door to assault them. Later on, he came to know that Khirodhar PW/10 was assaulted in Titli Pahri forest by the appellant and other co-accused persons. This evidence has remained unrebutted, in cross-examination. Sulochana PW/15 has stated similarly that she saw her brother Khirodhar PW/10 in injured condition. She has also stated that there is a land dispute with appellant Shanker Ram, for this reason, her brother was assaulted and injured. In cross-examination, she has denied that because of land dispute she is stating untruth against the appellant. Roopsai PW/16 is the person, who informed father of complainant that he heard commotion in Titli Pahri forest, then he along with Ratu PW/2, Leeladhar Yadav PW/13, Khagpati PW/1 went to Titli Pahri forest and saw the motorcycle of complainant and complainant Khirodhar PW/10 himself, who had injuries in both of his eyes and bleeding. He has not stated anything against the accused persons. Hence, for this reason he was declared hostile by the prosecution.

17. The evidence of prosecution regarding the witnesses of incident the witnesses who came to know of the incidents, is discussed above. On complete analysis of the evidence on this point, it is clear that

Khirodhar PW/10 is the only eyewitness in this case. The discrepancies, omissions and contradictions as alleged by the appellant is immaterial and insignificant, which cannot be considered to have affected the credibility of his statement. Apart from that there is further corroboration from the medical evidence.

18. Dr. R.N. Dubey PW/5 was the first person, who examined Khirodhar PW/10 in C.H.C. Bagicha on 02.09.2005. He found one incised wound on Iris of his left eye, one incised wound on eyelid along with swelling and a deep wound in conjuncture with blood clots. On examining right eye of the complainant, he found one incised wound on eyelid, 5 abrasion around the eye and deep wound below the right eye coupled with swelling, he had doubts about the eyesight of the complainant, hence, he referred him for further treatment to Ambikapur vide his report Ex.P/4. His statement has remained unchallenged, in cross-examination. He has further denied such the injuries could be caused due to fall from motorcycle on some thorny shrubs.

19. Dr. Sanjay Goyal PW/19 treated Khirodhar PW/10 in government hospital Ambikapur vide admit card Ex.P/28. On request of P.S. Bagicha, he gave report vide Ex.P/30 the eyesight of right eye of Khirodhar PW/10 was completely lost, he advised for Sonography test vide his report Ex.P/30. There is nothing against this report in cross-examination and has denied to adverse suggestions from the defence side.

20. Dr. A.A. Usman PW/11 conducted the Sonography test of PW/10 and

reported vide Ex.P/24, that Khirodhar PW/10 had corneal detachment and vitreous hemorrhage in his right eye, whereas his left eye was normal. The injury in right eye of Khirodhar PW/10 was grievous in nature, which was reported by Dr. Sanjay Goyal PW/19. This medical evidence corroborates and confirms the statement of Khirodhar PW/10. The statement of S.I. Bhardwaj Singh PW/12 further corroborates, the statement of Khirodhar PW/10, this witness lodged FIR Ex. P/23 at the instance of complainant. There is no delay in lodging the FIR, the time of incident is 1:30 p.m. whereas the time of lodging FIR is 2:30 p.m. on the same day, which is a strong circumstance in favour of prosecution. Statements of rest of the witnesses needs no consideration. Considered the grounds of appeal, the finding is arrived at, that there is no infirmity in the judgment of trial Court. The finding of conviction against the appellant Shanker Ram has been rightly recorded, the so called discrepancy, omission and contradiction etc. as alleged and pleaded by the appellant, is without substance. Hence, on the basis of reasons aforementioned, this appeal has no merit.

21. As regards the grounds of revision, after considering the statement of Dr. R.N. Dubey PW/5, Dr. Sanjay Goyal PW/19 and Dr. A.A. Usman PW/11, it is very clear that none of these witnesses have opined that the injuries caused to complainant Khirodhar PW/10, was life threatening. There is no evidence to form this opinion, that injury caused to complainant was sufficient to cause death in ordinary course of nature, neither there is statement of Khirodhar PW/10 that

appellant and others intended to cause his death. Under these circumstances, this revision is also totally devoid of merits.

22. In view of above discussions, we find no substance in this appeal and revision. Accordingly, both are dismissed.

Sd/-

**(Pritinker Diwaker)**  
JUDGE

Sd/-

**(R.C.S. Samant)**  
JUDGE