

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2675 of 1998

Judgment Reserved on : 14.8.2018

Judgment Delivered on : 13.11.2018

- 1. Prakash Kumar, S/o Sarjuram, aged 23 years,
- 2. Deepak Kumar, S/o Sarjuram, aged 25 years,

Both R/o Godaripara, Police Station Chirmiri, District Korea

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants	:	Smt. Seema Singh, Advocate
For Respondent	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 6.11.1998 passed by the Additional Sessions Judge, Manendragarh, District Korea in Sessions Trial No.80 of 1997 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 147 of the Indian Penal Code	Rigorous Imprisonment for 6 months
Under Section 148 of the Indian Penal Code	Rigorous Imprisonment for 1 year
Under Section 326/149 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.1,000/- with default stipulation
Under Section 307/149 of the Indian Penal Code	Rigorous Imprisonment for 4 years and fine of Rs.1,000/- with default stipulation

2. Facts of the case, in brief, are that on 6.3.1996 at about 3:00 p.m., injured Complainant Prakash (PW1) and his cousin Pramod (not examined) came out of their house and were going together. The fateful day was the next day of Holi festival. Both the present Appellants and the absconded accused persons were going from opposite direction playing colours. They asked the Complainant and his cousin Pramod to play Holi with them, but they refused. On this, all the accused persons including the Appellants dragged away the Complainant and his cousin Pramod and assaulted them with sword, farsa and stick. Pramod anyhow came out of their clutches and ran away. The Complainant sustained injuries on the head and other parts of his body and fell unconscious. The assailants lifted him up and threw him in a nearby bush and ran away from there. The incident was witnessed by Santosh (PW2), another cousin of the Complainant. Santosh (PW2) went to home and told about the incident to the family members. Banchha, father of the injured/Complainant and Santosh (PW2) took up the Complainant from the spot and got him admitted in a hospital. Doctor of the said hospital informed the police about the admission of the Complainant in injured condition in the hospital. Thereafter, statements of both Complainant Prakash and his cousin Pramod were recorded by Investigating Officer Mukesh Khare (PW8). Complainant Prakash and Pramod were also examined by Dr. Ashok Yende (PW4). On the basis of memorandum of the hospital, First Information Report (Ex.P8) was registered. During investigation, from the possession of Appellant Prakash Kumar, one iron rod and one iron sheet were seized vide Ex.P7. The seized rod and sheet were examined by Dr. Ashok Yende (PW4). Statements of witnesses were recorded under Section 161 of the

Code of Criminal Procedure. Since other assailants Kailash, Ballu and Videshi were absconded, showing them to be absconded, a charge-sheet was filed against accused persons/Appellants Prakash Kumar and Deepak Kumar for offences punishable under Sections 147, 148, 149, 324, 307 of the Indian Penal Code. Charges were framed against the Appellants under Sections 147, 148, 307/149, 324/149 and 326/149 of the Indian Penal Code.

3. To rope in the accused persons, the prosecution examined as many as 9 witnesses. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. No witness has been examined in their defence.
4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that the statement of Complainant Prakash (PW1) is not reliable. There are contradictions and omissions in his statement on material points. Other injured Pramod, cousin of the Complainant has not been examined by the prosecution. Therefore, an adverse inference should be drawn against the prosecution. It was further submitted that as opined by Dr. Ashok Yende (PW4), Complainant Prakash could not sustain the injuries from the iron rod and the iron sheet seized vide Ex.P7. Thus, the whole story of the prosecution vitiates. It was submitted that from the statement of Complainant

Prakash, it is also clear that at the time of incident, he himself had consumed liquor and the Appellants and other assailants had also consumed liquor and the fight took place due to playing of colours of Holi festival. Thus, there was no intention on the part of the Appellants to commit murder of Complainant Prakash and his cousin Pramod. Therefore, the offence alleged against the Appellants under Section 307 of the Indian Penal Code is not made out.

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence. He submitted that statement of Complainant Prakash (PW1) is duly corroborated by Santosh (PW2). The medical evidence also corroborates the story of the prosecution. Therefore, the Trial Court has rightly convicted and sentenced the Appellants.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. Other injured Pramod has not been examined by the prosecution. Thus, the case of the prosecution is mainly based on the statements of Complainant Prakash (PW1) and sole eyewitness Santosh (PW2).
9. Complainant Prakash (PW1), in his Court statement, has stated that the incident took place at the time of Holi festival. The Appellants and absconded accused persons were drunk. They were armed with sword and danda. At that time, he had to go on

his duty. At that time, all the assailants, without any reason, assaulted him with sword and danda. One of the assailants assaulted him on his head from behind and due to which he became unconscious and fell down. Thereafter, he got conscious in the Regional Hospital, Godaripara in the night. He has further stated that the incident was witnessed by Santosh (PW2). In his cross-examination, he has also stated that after the assault given to him, the Appellants and rest of assailants had also assaulted Pramod. He has admitted the fact that at the time of recording of his statement under Section 161 of the Code of Criminal Procedure, he had stated that the incident was witnessed by Santosh (PW2), but in his diary statement (Ex.D1), it is not mentioned.

10. Santosh (PW2) is a child witness aged about 14 years. He has stated that at the time of incident, he was standing about 50-60 *Gaj* away from the place of incident. From there, he saw the incident. He has further deposed that at the time of incident, both the Appellants and other absconded accused persons assaulted Complainant Prakash (PW1) and Pramod with sword and danda. He has further stated that after assaulting Complainant Prakash, he was thrown in a drainage and thereafter the assailants ran away from there. Then he returned and told about the incident to the father of Complainant Prakash (PW1), Banchha. This witness, Banchha and Pramod lifted up injured Prakash from the spot, took him to his house and thereafter he was taken to the hospital.
11. Both Ramchandra (PW3) and Ashok (PW6) have stated that on the date of incident, they were present at the Regional Hospital at

about 12:00 midnight. Pramod told them that he was assaulted by accused persons Prakash, Deepak, Videshi, Ballu and Kailash. But, Pramod has not been examined by the prosecution. Since Pramod has not been examined by the prosecution, statements of Ramchandra (PW3) and Ashok (PW6) cannot be believed that they were told by Pramod that he was assaulted by the aforesaid persons. In these circumstances, the statement of Pramod is essential. Though Ramchandra (PW3) has also stated that 15-20 days after the discharge from the hospital, Complainant Prakash had told him about the names of the assailants, but this fact is not mentioned in his case diary statement (Ex.D3). Apart from this, Complainant Prakash (PW1) has also not stated anything about this.

- 12.** Dr. Ashok Yende (PW4) examined injured Pramod and injured/Complainant Prakash on 9.3.1996. His M.L.C. reports are Ex.P1 and P2. As stated by Dr. Ashok Yende, Pramod had sustained following injuries (Ex.P1):

- (1) Incised wound, 5 cms. lengthy, bone deep, present on the left side of the occipital region and
- (2) Incised wound present over right hand at base of 2nd metacarpal, 6 cms. Long, bone deep, fracture was found on 2nd metacarpal of right hand.

As opined by Dr. Ashok Yende, both the above injuries were caused by a sharp object.

Ex.P2 is M.L.C. report given by Dr. Ashok Yende in respect of

injured/Complainant Prakash. In Ex.P2, he found following injuries on the body of Prakash:

- (1) Incised wound over left side, middle of the left arm, lateral aspect, 1½ cms. bone deep and
- (2) Two incised wounds over scalp; first was situated over left parietal region above the left ear, 10 cms. long; second was situated over occipital region, 6 cms. long, bone deep.

As opined by Dr. Ashok Yende, both the injuries were dangerous to life. This witness has further stated that one iron rod and one iron sheet were also sent to him for examination. As per his opinion, the injuries sustained by Pramod and Prakash could not be caused by the iron rod and the iron sheet.

13. Patwari Ramswaroop Gupta (PW5) prepared spot-map (Ex.P6). Milandas (PW7) is the witness of seizure. He has been declared hostile.

14. Station House Officer Mukesh Khare (PW8) was the Investigating Officer of the offence in question. He has deposed that he received information from the Regional Hospital, Godaripara on 6.3.1996 that a fight had taken place with Complainant Prakash and Pramod and both had been admitted in the hospital. On receiving the information, he went to the hospital and recorded statements of both the witnesses. Thereafter, he registered the FIR (Ex.P8) on the basis of the statements of both the injured and the M.L.C. reports given in their respect.

- 15.** On a minute examination of the above evidence adduced by the prosecution, it is clear that Prakash (PW1) has categorically stated the names of both the Appellants and other absconded accused persons. As stated by him, all the assailants were armed with sword and danda and they assaulted him. He sustained injuries on the head and other parts of his body and got unconscious. His statement is duly corroborated by Santosh (PW2). Both Prakash (PW1) and Santosh (PW2) have remained firm during their cross-examination. There is nothing in the cross-examination of Prakash (PW1) on the basis of which it could be accepted that he had any previous enmity with any of the Appellants. From the medical evidence also, it is clear that both Prakash and Pramod had sustained injuries as mentioned in the respective M.L.C. reports Ex.P1 and P2. All or any of the injuries sustained by Prakash were self caused injuries, no such suggestion was made to Dr. Ashok Yende (PW4) who examined Prakash. There is nothing on record on the basis of which statements of Prakash (PW1) and Santosh (PW2) could be disbelieved. The evidence on record do not show that there was any reason to falsely implicate the Appellants.
- 16.** As stated by Complainant Prakash (PW1), it is also clear that both the Appellants had consumed liquor at the time of incident. The Complainant himself had also consumed liquor at that time. The Complainant has also stated that at the time of incident, the Appellants were heavily drunk. From the statement of Complainant Prakash (PW1), it is also clear that after the fight, he was thrown near the drainage and the assailants ran away from there. From the statement of Prakash (PW1), it is also clear that the dispute had taken place due to playing of colours of Holi

festival. Thus, from the evidence on record, it is clear that there was no previous enmity between the Complainant and the Appellants. The fight had taken place due to playing of colours of Holi festival. All the assailants were heavily drunk. Therefore, there was intention on the part of the assailants to commit murder of Prakash or Pramod is not established. From the evidence, it is also clear that after the fight, the assailants had left Prakash near the drainage and ran away. Had the assailants any intention to kill Prakash, they would have assaulted him again during his unconscious condition. The assailants did not do so and ran away from the spot. Therefore, in my considered opinion, the act done by the Appellants falls within the purview of Section 308 of the Indian Penal Code not under Section 307 of the Indian Penal Code. Hence, the offence of the Appellants is altered from Section 307 of the Indian Penal Code to Section 308 of the Indian Penal Code. The conviction imposed upon the Appellants by the Trial Court under the other sections of the Indian Penal Code is affirmed.

17. So far as sentence part is concerned, the incident is of the year 1996. The Appellants are facing the *lis* for the last 22 years. Appellant Prakash Kumar has already undergone about 4 months and Appellant Deepak Kumar has already undergone about 1½ months. In these circumstances, it would be in the interest of justice that both the Appellants, for their all the offences, are sentenced with the period already undergone by them. Ordered accordingly. Further, each of the Appellants, for the offence under Section 308/149 of the Indian Penal Code, shall pay fine of Rs.25,000/- within one month from the date of receipt of this

judgment. In default of the payment, each of them shall be liable to undergo rigorous imprisonment for six months. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine imposed today. The sentence of fine of Rs.1,000/- imposed by the Trial Court for the offence under Section 326/149 of the Indian Penal Code is affirmed.

18. In the result, the appeal is allowed in part to the extent indicated above.
19. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE