

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1905 of 1998

1. Bal Govind, S/o Mohan, age 36 years, occupation agriculture,
2. Bhagwana @ Bhagwan, S/o Mohan, age 48 years, occupation agriculture,
3. Thepa @ Sundar, S/o Mohan, age 30 years, occupation agriculture,
All residents of Village Korima, P.S. Dhorpur, District Surguja, M.P.
(now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh) through P.S.
Dhorpur, District Surguja

--- Respondent

For Appellants	:	Shri Shakti Raj Sinha, Advocate
For Respondent	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

12.7.2018

1. This appeal is directed against the judgment dated 18.8.1998 passed by the 1st Additional Sessions Judge, Ambikapur, District Surguja in Sessions Trial No.250 of 1991 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 307 read with Section 34 of the Indian Penal Code	Rigorous Imprisonment for 7 years

2. Prosecution case, in brief, is that Complainant Pyarelal (PW3) was working as a Forest Guard. The Appellants were grazing cattle in the forest due to which dispute had been taking place. On 26.2.1991, in the evening hours, Pyarelal (PW3), Jagdish (PW8)

and other guards were returning from their duty. It is alleged that on the way, the Appellants, who were armed with sword, tabbal and tangi, assaulted them. Appellant Bal Govind assaulted by a sword to Complainant Pyarelal due to which he fell unconscious. The matter was reported by Budhauram (PW2) vide Ex.P2. Jagdish (PW8) and Pyarelal (PW3) were medically examined by Dr. Manoj Jaiswal (PW9). He found an incised injury of 15 cms. long from upper border of left ear upto the upper border of the angle of mouth (lips). His report is Ex.P20. Vide Ex.P14A, he opined that if the primary medical treatment had not been given for long, the injury would have been dangerous to the life due to excessive bleeding and mental shock. Statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. On completion of the investigation, a charge-sheet was filed against the Appellants as well as Munu alias Gopal and Bisahu for offence punishable under Sections 307, 323, 34 of the Indian Penal Code. Charges were framed against all of them under Section 307 read with Section 34 of the Indian Penal Code.

3. To bring home the offence, the prosecution examined as many as 9 witnesses. Statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
4. After trial, the Trial Court acquitted Bisahu and Munu alias Gopal of the charges framed against them, but convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants submits that the Appellants are innocent. They have been falsely implicated in the case. The sword by which, allegedly, Complainant Pyarelal was injured, has not been seized. He further submits that there was no previous enmity. Total 5 accused persons were there. Pyarelal sustained only one injury on his face which was simple in nature and no other injury was sustained by him. Therefore, no offence under Section 307 of the Indian Penal Code is made out. He further submits that even if the evidence available on record is taken as it is, the only offence under Section 324 of the Indian Penal Code is made out. He further submits that the matter is of the year 1991. The Appellants have already undergone about 2½–3 months, therefore, they may be sentenced with the period already undergone by them.
6. On the contrary, Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellants and supports the impugned judgment of conviction and sentence. He submits that since the injury was inflicted by a sword and that too the injury was caused on the face, it seems that the injury was caused with an intention to commit murder and, therefore, the conviction under Section 307 of the Indian Penal Code has rightly been imposed by the Trial Court.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Ujitram (PW1) is the witness before whom clothes of Complainant Pyarelal (PW3) were seized vide Ex.P1. Budhauram (PW2), who lodged the FIR (Ex.P2), has stated that wife of Pyarelal informed

him about the incident. Therefore, he went to the spot and saw that Pyarelal was unconscious. Thereafter, he lodged the FIR.

9. Savitri (PW4) is wife of Complainant Pyarelal. She has stated that Kailash told her about the incident. Then she went to the spot. There she saw that her husband Pyarelal was lying down in injured condition.
10. Butandas (PW5) is the witness before whom plain and blood stained soil were seized from the spot and one *gandasa* was seized from Appellant Bal Govind.
11. Pyarelal (PW3), who is the Complainant, has stated that on the date of incident, in the evening hours, he and Jagdish (PW8) were going on their duty. When they reached in front of the house of the Appellants, they were assaulted by them. He has further stated that Appellant Bal Govind assaulted him with a sword, which caused injury on his cheek and as a result of which he fell unconscious. He has further stated that the Appellants used to graze buffaloes, therefore, they assaulted him.
12. Jagdish (PW8) is the witness, who was allegedly present with Complainant Pyarelal (PW3) at the time of incident, but he has not supported the case of the prosecution. Inspector J. Toppo (PW7) investigated the offence in question. Dr. Manoj Jaiswal (PW9) examined Complainant Pyarelal in which he found an incised injury of 15 cms. long from upper border of left ear upto the upper border of the angle of mouth (lips). He has stated that the nature of injury was grievous and probably lower bone had cut. His report is Ex.P20. He has also stated that vide Ex.P14A, he opined that if

the primary medical treatment had not been given for long, the injury would have been dangerous to the life due to excessive bleeding and mental shock. During cross-examination, the doctor has admitted that he was not confirmed whether lower bone had cut or not.

13. A minute examination of the above statements of the witnesses makes it clear that Complainant Pyarelal (PW3) had sustained only one incised injury of 15 cms. on his face. Though Dr. Manoj Jaiswal (PW9) has stated that the injury was of grievous nature, no x-ray report of the injury is available on record on the basis of which it could be presumed that the nature of the injury was grievous. Dr. Manoj Jaiswal (PW9) has admitted that there was probability of cut of lower bone, but he has not confirmed the same. There is nothing on record on the basis of which it could be accepted that Complainant Pyarelal remained admitted in a hospital for 20 days and was unable to do his daily routine work. Therefore, in my opinion, there is nothing on record on the basis of which it could be accepted that Pyarelal sustained any grievous injury as defined in Section 320 of the Indian Penal Code.
14. From the statement of Pyarelal (PW3), it is also clear that he suffered the injury due to assault made by the accused persons. Though eyewitness Jagdish (PW8) has not supported the case of the prosecution, from the statements of Budhauram (PW2) and Savitri (PW4) it is clear that they had seen Pyarelal in injured condition. Pyarelal has remained firm during his cross-examination. There is no reason to disbelieve his statement. Therefore, it is clear that the injury was caused to him by the Appellants only.

15. From the record, it is also clear that there was no previous enmity between the Appellants and Complainant Pyarelal. When the Complainant was passing through the front of the house of the Appellants, he was assaulted by them. Only one injury of simple in nature was sustained by the Complainant on his face. Therefore, in my considered view, it is not established that the injury was caused to commit murder of the Complainant. Accordingly, the conviction is altered from Section 307 read with Section 34 of the Indian Penal Code to Section 324 read with Section 34 of the Indian Penal Code.
16. As regards sentence for the conviction under Section 324 read with Section 34 of the Indian Penal Code, the Appellants have already undergone about 2½–3 months. The matter is of the year 1991, i.e., they are facing the *lis* for about 27 years. They have no known criminal antecedent. Therefore, taking into consideration these facts and circumstances and the present old age of the Appellants, it would be in the interest of justice to sentence them with the period already undergone by them. Ordered accordingly.
17. Consequently, the appeal is allowed in part to the extent indicated above.
18. 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