

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgement Reserved on : 10.08.2018

Judgment Delivered on : 06.10.2018

CRA No. 604 of 2002

- Puneetram (Dead) As Per Hon'ble Court Dated 22/08/2014.
- Naresh Kumar S/o Devlal Tandon Aged About 26 Years Occupation Labour, R/o Village Bhurki, P. S. Bemetara Distt. Durg Now Bemetara Chhattisgarh, District : Bemetara, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through P. S. Bemetara District Durg Now Bemetara Chhattisgarh, District : Bemetara, Chhattisgarh.

---- Respondent

For Appellant	: Shri Atul Pandey, Advocate
For Respondent /State	: Shri Manish Nigam, Advocate

Hon'ble Smt. Justice Rajani Dubey

CAV Judgment

This appeal is preferred against the impugned judgment and order dated 16.05.2002 passed by the Third Additional Sessions Judge, FTC, Bemetara, District – Durg, Chhattisgarh in Sessions Trial No. 08/1999 whereby the appellants has been convicted under Section 326/34 IPC and sentenced to undergo RI for four years and fine of Rs. 3000/- with default stipulation. Accused/appellant namely Punit Ram (dead) had been convicted under Section 326/34 IPC and sentenced to undergo RI for four years & fine of Rs. 3000/- and to pay fine of Rs. 700/- u/s. 323 IPC with default stipulation.

2. Brief facts of the prosecution case are that on 22.08.1998 complainant Vedram (PW-7) and Jagmohan (PW-1) were going to Bemetara court on a motorcycle. At about 11:00 am when they reached the Court, they came to know that on that day it was holiday. Then they went to the hotel had their meals and while returning for their village, they were stopped by the accused/appellants accused/appellants namely Punitram (dead) and Naresh Kumar, who were armed with Lathi and crow bar (tabbal), gave a lathi blow to Jagmohan on his back as a result of which he fell down, at that time, accused/appellant Naresh assaulted Vedram with tabbal and he got injured and fell down. Thereafter the appellants ran away from the spot. Jagmohan (PW-1) lodged FIR vide Ex. P-1 at the nearby police station, on the basis of which offence under Section 307/34 IPC was registered against both the accused. After completion of investigation, charge-sheet was filed before the court of Judicial Magistrate First Class, who, in turn committed the case to the Session Court.

3. In order to prove the guilt of the accused/appellants, prosecution has examined as many as eleven witnesses. Statement of the accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the crime in question. This apart one defence witness was examined.

4. After providing opportunity of hearing to the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellants as mentioned in Para 1 of the judgment. Hence, the present appeal.

5. I have heard learned counsel for the parties and perused the

judgment impugned and records of the trial Court.

6. Learned counsel for the appellant (Naresh Kumar) vehemently argued that in the present case, conviction is substantially based on conjectures, surmises and without any legal evidence. He further states that the place of incident is a public place and the occurrence could have been seen by the people over there but they were not examined as prosecution witnesses. The trial Court has not appreciated the evidence on record properly and had erroneously come to a conclusion while passing judgment of conviction which is liable to be set aside.

7. On the other hand, learned State Counsel opposed the counsel for the appellant and supported the findings of the lower Court.

8. In the present case, Jagmohan (PW-1) and Vedram (PW-7) had narrated the whole incident in their evidence and in the cross-examination they remained firm and nothing could be elicited from them. Dr. B.L. Chandrakar (PW- 9), Dr. Rajendra Prasad (PW-8) and Dr. N.K. Tiwari examined complainant Vedram and Jagmohan and proved their report vide Ex.P-13, Ex.P-12 and X-ray plates Ex.P-11 and he has opined that there were incised wounds, lacerated wound on the forearm. Injured Vedram was examined and it was opined after the x-ray of upper arm and forearm that there was fracture in between the upper arm and humerus bone and the radius and ulna bone were broken of both the hands.

9. Close scrutiny of the evidence makes it clear that the accused/appellants namely Naresh Kumar (dead) and Punithram assaulted and caused grievous injuries to Vedram on his forehead, hands and to Jagmohan on his back. The complicity of the

accused/appellants in commission of the offence has been duly proved by the prosecution.

10. Thus, looking to the act of the accused/appellants and evidence as adduced by the prosecution, their conviction under Section 326 of Indian Penal Code appears to be justified and therefore, the same is maintained. Thus, I do not find any illegality or infirmity in the judgment of conviction and order of sentence. Consequently, the appeal being devoid of merits is liable to be dismissed and is hereby dismissed. Appellant is on bail. He be taken into custody to serve out the remaining part of the sentence imposed on him.

Sd/-

(Rajani Dubey)
Judge