

HIGH COURT OF CHHATTISGARH AT BILASPURCRA No. 2318 of 1999

Jitu alias Chitu S/o Purshottam, aged about 22 years, R/o village Moti talabpara, Jagdalpur (MP).

---Appellant

Versus

State of M.P.

---Respondent

For Appellant	:	Shri Rajkumar Pali, Advocate (Amicus curie appointed by the Court).
For State	:	Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/06/2018

1. Present is an appeal filed by the appellant in the year 1999. There was no representation on behalf of the appellant when the matter is called.
2. Since the appeal is of the year 1999, this Court thought it fit of engaging Shri Rajkumar Pali, Advocate a Panel Lawyer under the Legal Aid to assist this Court in the disposal of the appeal.
3. Let necessary power in this regard be given by the Legal Aid department to Shri Rajkumar Pali, Advocate for the assistance rendered by him.
4. Present is an appeal filed by the appellant assailing the judgment of conviction passed by the learned Second Additional Sessions Judge, Jagdalpur in Sessions Trial No. 63/1998 decided on 02/07/1999.

5. Vide the impugned order, the trial court has found the appellant guilty of having committed the offence under Sections 326 and 323 of I.P.C. and sentenced him to undergo R.I. for 4 years with a fine of Rs. 1,000/- and R.I. for 3 months respectively.

6. As per the case of prosecution, on 16.5.1994 at about 2.30 pm, PW/3-Chetan – the father of Vishnu and Usha Thakur (PW-4) reached to Police Station Jagdalpur and lodged a report against the appellant and also against co-accused persons. The Police registered Crime No. 217/battle under Sections 458 and 307/34. Complainant Chetan (PW/3) stated in the report that, prior to the incident, the appellant assaulted him by hard and blunt object for which he lodged report. Thereafter the appellant along with other co-accused persons armed with sword, battle axe and other weapons reached to the place where his son Vishnu was sleeping. The appellant assaulted Vishnu by sharp edged weapon. When Vishnu called for help, Chetan and Usha reached to the spot. The appellant along with other co-accused persons assaulted them also and fled from the spot. Lateron, the matter was put to trial. In all, the prosecution has examined as many as 10 witnesses and no witness examined in defence. After the conclusion of trial, the present applicant was found guilty for the offence punishable under Sections 326 and 323 of IPC and sentenced him as mentioned in the preceding paragraph.

7. The contention of the counsel for the appellant is that, the appellant has been wrongly convicted for the offence under Sections 326 & 323 of IPC and that there was no strong evidence against the present applicant of having

played any overtact in the assault made upon the injured persons and therefore the finding of guilt against the appellant deserve to be set-aside. He further submits that, whatever evidences that the prosecution had collected were against the other accused persons and not against the present appellant and on this ground also, he prayed for setting aside of the judgment of conviction.

8. However, perusal of record would show that, the prosecution in the instant case have examined two major witnesses, both of whom are eye-witnesses i.e. PW/3-the complainant himself who is the injured person so also PW/3 – Usha - the daughter of PW/3 who had also been assaulted by the appellant and the co-accused person.

9. What is also relevant at this juncture to take note of is that a Criminal Appeal No.1986/1999 was preferred by two accused persons – Sunil and Hari and the said appeal came up for hearing before this Court on 25/11/2014 and this Court has affirmed the judgment of conviction against the two accused persons namely Sunil and Hari.

10. So far as the evidences which have been adduced in the case, on perusal it reveals the presence of appellant armed with a 'Lathi' in the course of assaulting the injured person namely PW/3-Chetan, his son-Vishnu and his daughter PW/4-Usha. A Doctor – PW/8 was also examined and have stated that the injury which has been received by PW/3 were grievous in nature.

11. Given the aforesaid facts and circumstances of the case and also taking note of the judgment of this Court in the case of co-accused persons decided

on 25/11/2014 in Criminal Appeal No.1986/1999 this Court is of the opinion that, no strong case has been made out by the counsel for the appellant calling for an interference with the impugned judgment of conviction against the present appellant and the same therefore deserve to be and is accordingly affirmed and the appeal thus being devoid of merit deserve to be and is accordingly rejected.

12. The record shows that the appellant has since completed the entire jail sentence imposed upon him, hence no further action is required.

13. The present Criminal Appeal accordingly stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit