

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2052 of 1998

- 1. Lahuraman Prasad Satnami, S/o Maheshram Satnami, aged about 22 years,
 - 2. Maheshram, S/o Pachkol Satnami, aged about 58 years --- **Dead, His appeal has been abated on 4.1.2017,**
 - 3. Rohit, S/o Peelaram Satnami, aged about 40 years,
 - 4. Manharan, S/o Shriram Satnami, aged about 32 years,
- All residents of Village Sarwa, District Raipur, M.P. (now Chhattisgarh)

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh) through Police Station Kasdol, District Raipur, M.P. (now Chhattisgarh)

--- Respondent

For Appellants	:	Shri C.R. Sahu, Advocate
For State/Respondent	:	Shri Sumit Jhanwar, Panel Lawyer
For Complainants	:	Shri Sunil Sahu, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

5.1.2018

- 1. The instant is an appeal against the judgment dated 26.8.1998 passed in Sessions Trial No.336 of 1993 by the 2nd Additional Sessions Judge, Baloda Bazar 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 1 year
Under Section 307/149 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation
Under Section 323/149 of the Indian Penal Code	Rigorous Imprisonment for 1 year

Appellant No.2, Maheshram died during pendency of the appeal. Vide order dated 4.1.2017, his name has been deleted from the array of cause-title and the appeal so far as it related to him has been abated. Now, the appeal needs to be adjudicated in respect

of the rest three Appellants only. Furthermore, vide order dated 1.3.2017, the offences under Sections 147 and 323/149 of the Indian Penal Code have been compounded and the contesting Appellants have been acquitted of the charges framed under Sections 147 and 323/149 of the Indian Penal Code. Now, the appeal remains to be decided only for the conviction and sentence imposed under Section 307/149 of the Indian Penal Code.

2. Facts of the case, in brief, are that on 3.12.1992 at about 7:00 p.m., Balisram (PW3) went towards the house of his *Mami* (aunt) Budharabai (PW1). At that time, he saw that Tularam, brother of Appellant Lahuraman was assaulting Budharabai with fist. On his intervention, Appellant No.1, Lahuraman brought a Tangiya and abusing assaulted him (Balisram) on the head due to which he fell down. Villagers Kariya (PW12), Parasram (PW5) and Bhagram (PW6) came there to save him. On this, the Appellants and their companions assaulted him and the above-named three villagers with Tangiya, Lathi and stones. The occurrence was telephonically informed to Rajeev Sharma (PW11), Station House Officer, Police Station Kasdol. He immediately reached to the spot. Dehati Nalishi (Ex.P17) was recorded by him on the spot. A Tangiya from Appellant No.1, Lahuraman, a Danda from Appellant No.2, Maheshram, another Danda from Appellant No.3, Rohit, another Danda from Appellant No.4, Manharan and 40-50 stones were seized from the spot. First Information Report (Ex.P18) of the occurrence was registered in Police Station Kasdol by Rajeev Sharma (PW11). Vide the FIR, crime under Sections 147, 148, 336 and 323/149 of the Indian Penal Code was registered against the accused. On 4.12.1992, Balisram was examined by Dr. P.K.

Tiwari (PW8). He gave his report (Ex.P8) in which he found an incised wound on the scalp measuring 5 cms x 1 cm, bone deep. On completion of the investigation, a charge-sheet was filed against the accused for offences punishable under Sections 147, 148, 149, 336, 323 and 307 of the Indian Penal Code. Accused Tularam died during trial. Charges were framed against rest of the accused under Sections 147, 307/149, 323/149 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 13 witnesses. Statements of the accused were recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt. 1 witness, namely, Dr. Pramod Kumar Tiwari was examined in their defence. Dr. Pramod Kumar Tiwari (DW1) had examined deceased accused Tularam, accused Lahuraman and found simple injuries on their bodies.
4. Learned Counsel appearing for the Appellants argued that there are material contradictions and omissions in the evidence of the prosecution witnesses. The fight between the parties took place suddenly in which both the parties sustained injuries. There was no intention on the part of the Appellants to commit murder. Even if the evidence of the prosecution witnesses is taken as it is, the offence under Section 307 IPC is not made out and instead thereof, offence under Section 308 or 324 IPC is made out.
5. Per contra, Learned Counsel appearing for the State, supporting the impugned judgment, opposed the submission made on behalf of the Appellants and argued that the injuries were caused on the head which shows that there was intention to commit murder.

Therefore, the offence under Section 307 IPC itself is made out.

6. I have heard Learned Counsel appearing for the parties and perused the record with due care.
7. Budharabai (PW1) has stated that at the time of incident, she was taking back her daughter Urmila (PW7). At that time, on being requested by her, Hathiram (PW9) allowed her daughter Urmila to sit on his bicycle. At that time, the accused were present there. Hathiram taking her daughter on his bicycle moved ahead. When she reached home, Urmila told her that the accused had abused her. She went to the accused and asked them why did they abuse her daughter. On this, they abused and assaulted her. She has further stated that her Bhanja (nephew) Balisram (PW3) came to the spot and intervened. The accused assaulted him also. Accused Lahuraman assaulted Balisram with a Tangiya and remaining accused assaulted him with stones and fists. Ramsagar, Kariya (PW12), Dulari (PW2) and Amrautin came to the spot and intervened. They were also assaulted by the accused. She has further stated that on being made a telephonic call to the police, they reached to the spot.
8. Balisram (PW3) has supported the above statement of Budharabai (PW1) and stated that at about 8:00 p.m., he went to the house of Budharabai. At that time, accused Tularam and accused Lahuraman were assaulting Budharabai. On his being stopped, accused Lahuraman assaulted him with a Tangiya. As a result of which, he fell down and became unconscious.
9. Urmila (PW7), daughter of Budharabai has also supported the statement of Budharabai and stated that when she was going on

the bicycle of Hathiram (PW9), accused Tularam abused her. When her mother Budharabai reached home, she told her about the incident. When Budharabai went to the accused and asked them why did they abuse her, the accused assaulted Budharabai. She has further stated that when Kariya (PW12), Parasram (PW5), Dulari (PW2) and Amrautin intervened, they were also assaulted by the accused.

10. Hathiram (PW9) has stated that on being requested by Budharabai (PW1), he had taken her daughter Urmila (PW7) on his bicycle to her house. After some time, when he again came out for walk, he saw that both the parties were abusing each other. He has not further supported the prosecution story.
11. Kariya (PW12), husband of Budharabai has stated that when he came to know about the incident, he went to the spot. On the spot, accused Tularam assaulted his wife Budharabai in his presence. When Balisram (PW3) reached there and intervened, accused Lahuraman assaulted Balisram with a Tangiya on the head. He has further stated that when they intervened, they were also assaulted by the accused.
12. Kotwar Manbodhi (PW4) is the witness before whom the police had seized one Lathi from accused Tularam vide Ex.P4, another Lathi from accused Mahesh vide Ex.P5, another Lathi from accused Rohit vide Ex.P6. He has not supported the case of the prosecution and has been declared hostile.
13. Bhagram (PW6) is one of the eyewitnesses of the incident. He has not supported the case of the prosecution and has been declared hostile.

- 14.** Dr. P.K. Tiwari (PW8) examined Balisram. He has stated that he gave his report (Ex.P8) in which he found an incised wound on the scalp measuring 5 cms x 1 cm, bone deep. He has further stated that the injury was caused by a hard and sharp cutting weapon and the injury was dangerous to life. He also examined the seized Tangiya and gave his report (Ex.P9). He has stated that the aforesaid injury could be caused by the seized Tangiya. In paragraph 12 of his cross-examination, he has stated that when Balisram was brought to him for examination, he was conscious.
- 15.** Station House Officer Rajeev Sharma (PW11) investigated the alleged offence. He has supported the case of the prosecution. Head Constable Ghanshyam (PW13) partly investigated the offence in question.
- 16.** A minute examination of the evidence on record makes it clear that at the time of occurrence, the accused/Appellants assaulted Balisram. It is further clear that at that time Appellant Lahuraman was having a Tangiya and he assaulted with the Tangiya on the head of Balisram. From the evidence of Dr. P.K. Tiwari (PW8) and his report (Ex.P8), it is clear that Balisram received the aforesaid bone deep incised injury of 5x1 cms on the head.
- 17.** Learned Counsel appearing for the Appellants argued that as per the opinion of Dr. P.K. Tiwari (PW8), only one injury was found on the head of Balisram, which was a simple injury in nature. It was further argued that Dr. P.K. Tiwari has only opined that the injury could be of grievous in nature, but not a single document has been filed to show that the said injury was of grievous nature. It was further argued that the fight took place suddenly. There was no

previous enmity between the parties. Therefore, there was no intention on the part of the Appellants to commit murder.

- 18.** From a bare perusal of the evidence available on record, it is evident that the fight took place suddenly in which Balisram had sustained simply injury on the head. But, the said injury was deep to the bone. There is no evidence on record to show that any further assault was given to Balisram on the head or on any other part of his body. Therefore, it is not established that the injury suffered by Balisram was caused with an intention to commit his murder. Therefore, in this circumstance, in my opinion, offence under Section 307 of the Indian Penal Code is not made out and instead thereof the offence committed by the Appellants falls under Section 308 of the Indian Penal Code. Therefore, the conviction and sentence imposed upon the Appellants under Section 307 of the Indian Penal Code are set aside and instead thereof, they are convicted under Section 308 of the Indian Penal Code.
- 19.** So far as sentence part is concerned, it was submitted on behalf of the Appellants that the Appellants have remained in jail for about 4 months. The Appellants and the Complainant are relatives. They have no previous enmity. The Appellants are facing the *lis* since 1992. The matter is pending for about 25 years. The Appellants have no criminal antecedent. Therefore, the sentence imposed upon them be restricted to the period already undergone by them.
- 20.** Having regard to the facts and circumstances of the case, the evidence adduced by the prosecution and the submissions put-forth on behalf of the parties, I am of the considered opinion that sentencing the Appellants with the period already undergone by

them would serve the interest of justice. Ordered accordingly.

- 21.** Consequently, the appeal is allowed in part to the extent indicated above.
- 22.** 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