

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2084 of 2000

- 1. Bijelal, son of Gujwa, aged about 60 years --- Dead, His appeal has been abated
- 2. Yadoram, son of Bijelal, aged about 35 years,
Both residents of Village Bortara, Police Station Guru, District Durg, M.P. (now Chhattisgarh)

---- Appellants

versus

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

--- Respondent

For Appellants	:	Shri Vijay Deshmukh, Advocate
For State/Respondent	:	Shri Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

12.1.2018

- 1. At the beginning of the argument, Learned Counsel appearing for the Appellants, presenting an attested copy of death certificate of Appellant No.1, Bijelal, submitted that Appellant Bijelal has died during pendency of this appeal on 24.1.2013 and, therefore, his appeal may be abated. Learned Counsel appearing for the State/Respondent does not oppose the submission. The instant appeal, so far as it relates to Appellant Bijelal, is abated. Copy of the death certificate be made part of the record of this appeal.
- 2. The appeal has been preferred against the judgment dated 28.7.2000 passed by the Additional Sessions Judge, Balod, District Durg in Sessions Trial No.45 of 2000 convicting and sentencing the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 307/34 of the Indian Penal Code (3 Counts)	Rigorous Imprisonment for 5 years (3 Counts, Sentences to run concurrently)

During trial, one of the accused, namely, Hira Singh had died.

3. Facts of the case, in brief, are that on 22.1.1995, Lakhanlal (PW4) was returning along with his son Dilip (PW5) from the market. When they reached near Jaistambh, the accused came there with lathi and assaulted them. When Bhagwat (PW7) reached there behind them, they assaulted him also. The incident was witnessed by Santosh, Mansadas and other persons. Lakhanlal lodged First Information Report (Ex.P5) on the same day. Injured Lakhanlal, Dilip and Bhagwat were examined by Dr. B.R. Kosariya (PW8), who gave his report Ex.P7 in respect of Lakhanlal, Ex.P8 in respect of Dilip and Ex.P9 in respect of Bhagwat. 1 lathi from Hira Singh vide Ex.P1, 1 lathi from Bijelal vide Ex.P3 and 1 lathi from Yadoram vide Ex.P4 were seized. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the accused under Sections 294, 506B, 325 and 307 of the Indian Penal Code. Charges were framed against them under Section 307 read with Section 34 of the Indian Penal Code in three counts.
4. In support of its case, the prosecution examined as many as 10 witnesses. Statements of the accused were recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. Accused Bijelal and Yadoram examined themselves as defence witnesses.
5. After trial, the Trial Court convicted and sentenced the accused/Appellants as aforestated in this judgment. Hence, this appeal.
6. Learned Counsel appearing for accused/Appellant Yadoram argued that there was an earlier quarrel between the parties due to which the incident took place. It was further argued that no

grievous injury was caused on any vital part of the body of the injured persons. There was no intention on the part of the accused to commit murder. Instead of Section 307/34 of the Indian Penal Code (3 counts), the act alleged to have been committed by the accused falls under Section 308 or 335 of the Indian Penal Code. Appellant Yadoram has already undergone for about 1 year. No purpose would be served in sending him back to jail. Therefore, he be sentenced with the period already undergone by him.

7. Per contra, Learned Counsel appearing for the State supported the impugned judgment and opposed the arguments advanced by Learned Counsel for the Appellant.
8. I have heard Learned Counsel appearing for the parties and perused the record with utmost care.
9. Naindas (PW1) is the witness of seizure memo (Ex.P1). He has stated that from the possession of accused Hira (dead), 1 lathi was seized in his presence. Bhuvan (PW2) has stated that from the possession of Complainant Lakhanlal (PW4), police had seized his clothes vide Ex.P2. Ramdas (PW3) is the witness before whom 1-1 lathi were seized from the other accused vide Ex.P3 and P4. They have supported the said seizures.
10. Lakhanlal (PW4) has stated that at the time of incident, he and his son Dilip (PW5) were returning from the market and as soon as they reached near the rice mill, accused Bijelal (dead) assaulted him (Lakhan) with a danda on the head and hand. Resultantly, he fell unconscious. After some time, he became conscious and later on lodged the FIR (Ex.P5). He admitted in cross-examination that there was his earlier dispute with the accused. He further admitted that he did not know about the assault given to Dilip. He has not stated anything about the assault given to Bhagwat (PW7).

11. Dilip (PW5), son of Lakhanlal has stated that when he and his father were returning and reached near the rice mill, accused Bijelal assaulted his father with a lathi on the head and hand and thereafter accused Yadoram and accused Bijelal assaulted him with a lathi. He sustained injuries on the head. He has further stated that on being shouted, Bhagwat (PW7) came there and tried to intervene. He was also assaulted by accused Yadoram with a lathi. He has also admitted that there was an earlier dispute between the parties.
12. Bhagwat (PW7) has also supported the above statements of Lakhanlal (PW4) and Dilip (PW5) and stated that when he reached near the rice mill, he saw that accused Yadoram, Bijelal and Hira were assaulting Lakhanlal and Dilip. When he tried to intervene, he was also assaulted by the three accused and as a result thereof he sustained injury on the head. He remained firm in his cross-examination.
13. Motilal (PW6) has also stated that when he reached near the rice mill, he saw that accused Yadoram and Bijelal were assaulting Lakhanlal (PW4) and Dilip (PW5).
14. Dr. B.R. Kosariya (PW8) examined Lakhanlal (PW4), Dilip (PW5) and Bhagwat (PW7) on 22.1.1995. He gave report (Ex.P7) in respect of Lakhanlal in which he found (i) incised looking wound in left side of frontal head in vertical size of 6x1½x1 cms. with contusion over it of 8x3 cms., (ii) pain and swelling on left forearm, size 5x7 cms., with tenderness and (iii) pain and swelling with tenderness in between right thumb and index finger, size 3x3 cms. He advised for x-ray examination of all the injuries. He has further stated that he examined Dilip (PW5) on the same day and gave report (Ex.P8) in which he found (i) incised looking wound on right

frontal head, size, 2x½ cms. with swelling contusion, size 5x2 cms., (ii) abrasions below right thumb, 1 cm lengthy, with pain and (iii) contusions in right side scapulars, size 3x1 cms, 2x1½ cms. He opined that the injuries were simple in nature. He also examined Bhagwat (PW7) and gave his report (Ex.P9) in which he found (i) incised looking lacerated wound on mid parietal area (central) vertical in position, size 5x1x1 cms. with contusion over it, size 7x1x3 cms., bleeding present (ii) incised looking lacerated wound on occipital region vertical in position, size 7x1x1½ cms. with contusion over the injury, size 8x1x3 cms., fresh bleeding was present. He opined that the injuries were grievous in nature. He has further stated that as per the x-ray report (Ex.P13), injury No. (iii) of Lakhanlal was grievous in nature. No x-ray report of injured Bhagwat was submitted or proved by the prosecution.

15. Patwari Anil Kumar (PW9) is the witness who prepared the spot-map (Ex.P14). Assistant Sub-Inspector J.S. Chouhan (PW10) was the Investigating Officer of the offence in question.
16. On minute examination of the evidence available on record, it is clear that there was an earlier dispute between the parties. Due to that dispute, the occurrence in question took place. From the evidence, it is also clear that Lakhanlal (PW4), Dilip (PW5) and Bhagwat (PW7) were assaulted by the accused. The case of the prosecution is duly corroborated by the medical examination reports (Ex.P7, P8, P9 and P13) and the statement of Dr. B.R. Kosariya (PW8). From the medical evidence, it is also clear that Dilip had sustained simple injuries. Though Dr. Kosariya (PW8) has stated that the injuries sustained by Bhagwat were grievous in nature yet no x-ray report of any of the injuries sustained by him is available on record. Thus, the injuries sustained by Bhagwat were

grievous in nature is not established. It is also clear that injury No. (iii) of Lakhanlal was only grievous in nature and the injury sustained by him on the head was simple in nature. It is further clear that none of the injured persons had sustained any grievous injury on any vital part of their bodies. From the evidence adduced by the prosecution, it is not established that there was any intention on the part of the accused to commit murder of the three injured persons, rather the offence committed falls within the purview of Section 325 read with Section 34 of the Indian Penal Code. Therefore, the conviction and sentence imposed upon Appellant Yadoram under Section 307/34 of the Indian Penal Code are set aside and instead thereof he is convicted under Section 325/34 of the Indian Penal Code.

17. So far as sentence part is concerned, it is submitted that Appellant Yadoram has already undergone for about 1 year. He is facing the *lis* since 1995. The matter is pending for about 22 years. He has no known criminal antecedent. Therefore, at this stage, it would not be appropriate to send him back to jail. Hence, he is sentenced with the period already undergone by him.
18. Consequently, 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