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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2065 of 2000

Judgment Reserved on : 8.2.2018

Judgment Delivered on : 7.5.2018

1. Kalwant Singh, S/o Preetam Singh, aged 30 years, r/o Salavpur, Police Station Kadiya, District Gurudaspur (Punjab), Presently residing at Bhim Nagar, Supela, Near Sharab Bhatti, P.S. Supela, District Durg
2. Raju Yadav, S/o Auri Yadav, aged 28 years, r/o Gathia, Police Station Chourichora, District Gorakhpur, Presently residing at Section – 6, Street – 2, Quarter No. 2-I, Bhilai Nagar, District Durg, M.P. (now Chhattisgarh)
3. Vimal Kumar alias Deedu, son of Jagannath Sharma, aged 26 years, R/o Ghodasahan, District Motimpur, Bihar, Presently residing at Sector-2, Street No.17, Qr. No.18-A, Bhilai Nagar

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh) through Station House Officer, Police Station Sector – 6, Kotwali, Bhilai Nagar, District Durg

--- Respondent

and

Criminal Appeal No.2184 of 2000

1. Premdas alias Prem, S/o late Radhamohan Soni (Oriya), aged 26 years,
2. Vijay Soni, s/o late Radhamohan Soni (Oriya), aged 21 years,
3. Jogeshwar alias Yogesh, s/o late Radhamohan Soni, aged 25 years,

All are residents of Qr. No. 10D, Str. No.3, Sector-6, Bhilai Nagar, Durg, M.P. (now Chhattisgarh)

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants	:	Shri Mateen Siddiqui, Advocate
For Respondent/State	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Since these two appeals arise out of a common judgment, they are heard together and decided by the following common judgment.
2. The appeals are directed against the judgment dated 27.7.2000 passed in Sessions Trial No.99 of 1999 by the 6th Additional Sessions Judge, Durg 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 6 months
Under Section 148 of the Indian Penal Code	Rigorous Imprisonment for 6 months
Under Section 341 of the Indian Penal Code	Fine of Rs.200/- with default stipulation
Under Section 307 of the Indian Penal Code, in the alternative under Section 307/149 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation

3. Facts of the case, in brief, are that an earlier dispute was existing between Jankirao (PW10), his brother Punnaram and the present Appellants for installation of cable tv connection. On 11.12.1998, Jankirao (PW10) along with Rakesh Kumar Patil (PW8) was going from Akash Ganga, Supela to Sector 6 on a scooter. On the way, in Street 3 of Sector 6, all the Appellants, due to the old dispute, surrounded and assaulted them. Jankirao sustained injuries above

the eyes, on the head and on the hand and legs and Rakesh sustained injuries on left cheek and legs. Both the injured were taken to Police Station Kotwali by Punnaram, brother of Jankirao in a tempo vehicle. Punnaram lodged First Information Report (Ex.P28). Jankirao and Rakesh were medically examined by Dr. Lal Mohd. Khan (PW2). Jankirao was referred to Sector 9 Hospital, Bhilai where Dr. Kalpana Kumari (PW9) admitted him in Neuro-Surgery Ward. Statements of witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Sections 307, 147, 148, 149, 341, 427, 325 of the Indian Penal Code and Sections 25 and 27 of the Arms Act. Charges were framed against them under Sections 147, 148, 341, 307 in the alternative under Section 307/149 of the Indian Penal Code.

4. To rope in the Appellants, the prosecution examined as many as 15 witnesses. Statements of the Appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the guilt and pleaded innocence. No witness has been examined in their defence.
5. The Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the Appellants argued that the witnesses of memorandum and seizure have not supported the case of the prosecution. There was no enmity between the Appellants and Jankirao. The Appellants were not engaged in the

business of cable tv connection. Statement of injured Jankirao (PW10) is not reliable. As per the FIR (Ex.P28), the assault was made by a sharp edged weapon, but what was the weapon is not described by the prosecution. Later on, to fulfill the investigation, a knife has been seized. Only the interested witnesses have been examined by the prosecution. Other injured witness Rakesh Kumar Patil (PW8) has not supported the case of the prosecution. It was further submitted that no injury was caused on any vital part of the body and there was no intention to commit murder. The offence alleged under Section 307 of the IPC is not made out. At the most, conviction under Section 324 of the IPC can be imposed. It was also prayed that the Appellants may be sentenced with the period already undergone by them.

7. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
9. Injured Jankirao (PW10) has deposed that his brother Punnaram was engaged in the business of installation of cable tv connection. The Appellants had old rivalry. On the date of incident, i.e., 11.12.1998, when he was returning to home along with Rakesh (PW8) on a scooter, the Appellants stopped them in Street 3 of Sector 6. The Appellants assaulted him with a rod and sword. He sustained injuries on head, left leg and on the right hand. He got unconscious. His brother Punnaram and father Paparao lifted him up and took to the hospital. He became conscious in the hospital. During cross-examination, in paragraph 18, he has stated that

before the incident, there was a dispute with Appellants Jogeshwar, Vijay and Premdas. In paragraph 30, he has further stated that he or his brother Punnaram had no dispute with Appellants Raju, Kalwant and Vimal prior to the incident. In paragraph 20, he has stated that 2-3 persons were already standing with rod and 2-3 persons came there armed with rod. He has further stated that he was unable to state that who was already standing on the road and who had come with rod. In paragraph 22, he has stated that he had sustained injuries with rod and some other article, but he was unable to state what was the other article used for the assault.

10. Rakesh Kumar Patil (PW8) has partly supported the above statement of Jankirao (PW10) and has stated that he was returning along with Jankirao on a scooter in the night. At that time, 5-6 boys assaulted them with lathi. He sustained injury near the left ear. Jankirao sustained injuries near the eye and left knee. He has stated in paragraph 8 that Punnaram was not present at the spot and he came to the hospital directly. This witness has denied that he recognised any of the Appellants. He has been declared hostile.
11. Assistant Sub-Inspector M.L. Patel (PW11) has stated that on the information received from Punnaram, he recorded FIR (Ex.P28). Punnaram is brother of Jankirao (PW10). Since after few days of the incident, another incident of murder of Punnaram took place, statement of Punnaram could not be recorded before the Trial Court. This witness has admitted in paragraph 8 that in the FIR, it is not mentioned that the *marpeet* (fight) was done with hockey, danda or rod. He has further admitted that Punnaram had witnessed the incident is not mentioned in the FIR. As per the FIR,

the incident was witnessed by Mohan, Manoj and K. Mohan Rao, but they have not been examined before the Trial Court.

12. Dr. Lal Mohd. Khan (PW2), first examined injured Jankirao (PW10) and Rakesh Kumar Patil (PW8) at Sector 9 Hospital, Bhilai on 11.12.1998 at 10 p.m. After examination of Jankirao, he gave his report Ex.P3 in which he found (i) 4 multiple incision, 2, 3, 4 cms. linear present on left butt, (ii) laceration of $4\frac{1}{2} \times \frac{1}{4}$ cms. present on the scalp, (iii) laceration of 'u' shape present on the scalp, size $2 \times 2 \times \frac{1}{4}$ cms., (iv) bone deep laceration of 10×1 cms. present on the frontal bone of scalp, (v) swelling present on left and right hands, (vi) laceration of $1\frac{1}{2} \times \frac{1}{4}$ cms. present on left corner of the jaw, (vii) laceration of $6\frac{1}{2} \times \frac{1}{2}$ cms. present on left parietal bone of the scalp, (viii) complaining of pain in joints of butt and (ix) complaining of pain in left eye. For injuries No.(ii), (iii), (iv), (vi) and (vii), he referred Jankirao to surgeon. For injury No.(v), he referred him to Orthopedist and for injury No.(ix), he referred him to eye specialist. He advised for x-ray of scalp, pelvic bone and both hands. He has further stated that after examination of Rakesh (PW8), he gave his report Ex.P4 in which he found (i) abrasion of 3×3 cms. on left cheek and (ii) abrasion of 4×3 cms. on left ankle. He opined that both the injuries were simple in nature. He has further stated that in reply to a query, he opined vide Ex.P5 that the injuries suffered by Jankirao (PW10) were sufficient to cause his death. He has further stated that a knife (Article A) was produced before him for examination. On examination of the knife, he has reported vide Ex.P6 that the injuries sustained by Jankirao could be caused by the said knife. He has stated that no rod was produced before him for examination. In paragraph 9, he has

stated that in Ex.P5, he has not mentioned any specific injury to be sufficient for causing death of injured Jankirao. He himself has stated that he had given his opinion based on the examination of all the injuries. But, this fact is not mentioned in his report (Ex.P5). In paragraph 12, he has categorically stated that injury No.(i) was not sufficient to cause death. Regarding injuries No.(ii), (iii), (iv), (vii) and (viii), without examination of x-ray report, he was unable to state whether these injuries were sufficient to cause death or not. Injuries No.(v) and (vi) were not sufficient to cause death and injury No.(ix) was simple in nature. He has further stated in paragraph 17 that when Jankirao was brought to the hospital, he was conscious and was able to speak. Injured Jankirao was further treated in Sector 9 Hospital, Bhilai by Dr. Kalpana Kumari (PW9). She has stated that smell of liquor was coming out from the mouth of Jankirao and he had sustained injuries on many parts of the body. Her report is Ex.D1.

13. As per the statement of G.P. Sharma (PW1), Jankirao was admitted in Sector 9 Hospital, Bhilai on 12.12.1998 and was discharged on 17.12.1998. Bed head ticket was seized vide Ex.P2.
14. Nizamuddin Khan (PW3), M.K. Elangoswami (PW4), Akhilesh Singh (PW5), Dhanau (PW6) and B. Mohan (PW7) are the witnesses before whom memorandum statements of the Appellants were recorded and some articles were seized, but they have not supported the case of the prosecution and all of them have been declared hostile.
15. Sub-Inspector K.L. Tandan (PW12), Inspector Shiv Kumar Yadav

(PW13) and Sub-Inspector Suresh Bhagat (PW14) are the witnesses who investigated the offence in question in parts separately. S.K. Sahu (PW15) is the witness who prepared the spot-map (Ex.P42).

- 16.** On minute examination of the above evidence, it is clear that except the statements of Jankirao (PW10) and Rakesh (PW8), no statement of any eyewitness was recorded by the prosecution. Rakesh has only stated that 5-6 persons had stopped and beat them with lathi, but he could not disclose about the identity of the assailants. Jankirao has categorically stated that he was assaulted by the Appellants. FIR (Ex.P28), which was lodged by Punnaram, brother of Jankirao immediately after the incident, is a named FIR. Though due to death of Punnaram he has not been examined before the Trial Court yet Jankirao has categorically stated that he had been assaulted by all the Appellants. He has remained firm on this point during his cross-examination. From the statement of Dr. Lal Mohd. Khan (PW2) and M.L.C. Report (Ex.P3) of injured Jankirao (PW10), it is also clear that Jankirao had sustained total 9 injuries on his body. From the admission of Jankirao, it is also clear that no dispute or quarrel had taken place with any of the Appellants before the present incident. From the statements of Rakesh (PW8) and Jankirao (PW10), it is also clear that when they were returning, at that time, suddenly the assailants, who were the Appellants, assaulted them. As per the statement of Jankirao, he was assaulted by rod, but he could not state about the other article from which he was assaulted. As per the opinion of Dr. Lal Mohd. Khan (PW2), the injuries sustained by Jankirao could be caused by rod and knife. Though Dr. Lal Mohd. Khan has opined that the

injuries of Jankirao were sufficient to cause his death yet which of the injuries sustained by him were sufficient to cause his death is not opined by him. As per his statement, injuries No.(i), (v) (vi) and (ix) were not sufficient to cause death. He has stated that he could give his opinion regarding rest of the injuries only after examination of x-ray report, but no x-ray report is proved by the prosecution. In these circumstances, it is not established that any of the injuries sustained by Jankirao was grievous in nature or sufficient to cause his death. From the evidence available on record, it is also clear that there was no previous enmity between the Appellants and the injured. The incident took place suddenly in the night. As stated by Jankirao (PW10), the weapon, which was used in the assault, was a rod. Though injuries No.(ii), (iii), (iv) and (vii) sustained by Jankirao were caused on his head, but all the injuries were simple in nature. In these circumstances, a suspicion raises whether the Appellants intended to commit murder and thus made the attempt. In my view, the Appellants can be attributed to only knowledge that by inflicting such injuries, the Appellants were likely to cause death and attempt to commit such offence which would be punishable under Section 308 of the Indian Penal Code.

17. Therefore, the conviction imposed upon the Appellants under Section 307 of the IPC in the alternative under Section 307/149 of the IPC is set aside and in place thereof they are convicted under Section 308/149 of the IPC. The conviction imposed upon them under Sections 147, 148, 341 of the IPC is affirmed.
18. So far as sentence part is concerned, the Appellants are facing the *lis* since 1999, i.e., for about 19 years. They have no known criminal antecedent. Appellants Kalwant Singh, Raju Yadav, Vimal

Kumar have already undergone about 5 months and Appellants Jogeshwar, Vijay and Premdas have already undergone about 11 months. Taking into consideration the facts and circumstances of the case, I am of the view that ends of justice would be met if for the conviction imposed upon the Appellants they are sentenced with the period already undergone by them. Ordered accordingly. The sentence of fine imposed upon them is affirmed.

19. In the result, the appeals are allowed in part to the extent indicated above.
20. 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