

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 98 of 2013**

1. Danesh @ Devnath S/o Chaturmath Yogi Aged About 45 Years R/o Village Daukapa Nayapara, P.S. Kawardha, Distt. Kabirdham Kawardha C.G., Chhattisgarh
2. Dhansingh @ Ghananath S/o Amarnath Yogi Aged About 40 Years R/o Village Daukapa Nayapara, P.S. Kawardha, Distt. Kabirdham Kawardha C.G. , District : Kawardha (Kabirdham), Chhattisgarh

---- Appellants**Versus**

State Of Chhattisgarh S/o Through - P.S. Kawardha, Distt. Kabirdham
C.G. , Chhattisgarh.

---- Respondent

For the Appellants : Shri Pankaj Agrawal, Advocate.
For the Respondent/ State: Shri Ashish Shukla, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****28.11.2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 23.1.2013 passed by the Learned Additional Sessions Judge, Kabirdham (Kawardha), Chhattisgarh in Sessions Trial No.20 of 2012, whereby and whereunder, the learned Additional Sessions Judge has convicted the appellants under Section 307/ 34 (in three counts) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs.1,000-1,000/-, in default of payment of fine, to further undergo RI for 1-1 year with a direction to run all the sentences concurrently.

2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. The facts of the case, in brief, are that on 6.3.2012 at about 5:00 pm, victim – Pekhannath (PW-2) was assaulted by the appellants and juvenile offender - Laxminath with iron rods because of which, injury was caused on his head (Ex. P/1). When complainant – Juthelnath and his brother Bharatnath came to intervene, they were also assaulted by the appellants and the juvenile offender. Unnumbered *dehati nalisi* was lodged by complainant – Juthelnath (PW-1). On the basis of which, numbered FIR vide Ex. P/1A was separately registered. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, the charge-sheet was filed before the concerned Court.

4. During trial, the Court below framed the charges against the appellants under Sections 307/ 34 (in three counts) of the Indian Penal Code. The prosecution examined 11 witnesses to prove the guilt of the appellants. One witness was examined in defence. Statements of the appellants were recorded under Section 313 of the Cr.P.C. wherein the appellants denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question.

5. After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellants as aforementioned.

6. I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

7. Learned counsel appearing on behalf of the appellants submits that the appellants have been erroneously convicted by the trial Court without there being any evidence of the prosecution beyond reasonable doubt. Hence, the appellants were entitled for acquittal. It is also submitted that the appellants have undergone the full sentence of imprisonment imposed upon them and have been released from the concerned Jail. Hence, It is prayed that on these grounds, the appeal may be allowed and the appellants may be acquitted of the charges framed against them.

8. Per contra, learned counsel for the Respondent/ State opposed the grounds raised in the appeal and submissions. It is submitted that the prosecution has proved its case beyond reasonable doubt and there is no reason to interfere in the impugned judgment. Hence, no case is made out for acquittal of the appellants.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

10. Pekhannath (PW-2) has given statement regarding the assault made by the appellants and the juvenile offender by using iron rods, hands and fists and also that they assaulted his father – Juthelnath (PW-1) and his uncle – Bharatnath (PW-3), in cross-examination the statement about the

injuries caused to all of them by the appellants has remained unrebutted. Juthelnath (PW-1) and Bharatnath (PW-3) have supported this version.

11. Dr. P. Maheshwar (PW-7) has examined the injuries of Pekhannath (PW-2) and found one lacerated wound on his head vide Ex. P/12. He also examined Bharatnath (PW-3) and found one lacerated wound on his head vide Ex. P/13. His statement has remained unrebutted in his cross-examination.

12. After closely examining and scrutinizing all the evidence on record of the trial Court, I am of the opinion that the trial Court has not committed any error in giving to this conclusion that the appellants have committed the aforesaid offences and has rightly convicted them. Hence, no interference is called for in this appeal.

13. Accordingly, the appeal is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge