

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 525 of 2015

Chinta Ram S/o Late Bodhiram Gond Aged About 35 Years R/o
Village- Janglibheja, Police Station- Gurur, District- Balod,
Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through: Station House Officer, Police Of
Police Station- Gurur, District- Balod, Chhattisgarh

---- Respondent

For appellant – Shri B.P. Singh, Advocate.
For State- Shri Adhiraj Surana, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

09/01/2018

Heard.

1. Instant appeal is against the judgement of conviction and order of sentence dated 16/04/2015 passed in Sessions Case No.12/15 wherein the appellant has been convicted under section 326 of IPC and has been sentenced to 7 years RI and fine of Rs.1000/- and in absence of payment of fine, he has been sentenced to 60 days further SI.
2. As per the prosecution case, the injured Johanram Gond and the accused were related. The report was made by way of Ex.P-2 on 4/11/2014 by the complainant Lila Bai Gond at Police Station Gurur that when she alongwith her husband Johanram Gond and daughters Tileshwari and Parmeshwari were coming back to their home after harvesting the crop, at that time one of the co-accused Dileshwar stopped their way and objected to the cutting of the crop and abused in the name of the mother and the sister. Subsequently, they were joined by Chinta Ram (present appellant), Kamal and Hembai whereby they assaulted them and Johanram was given a blow on back of his head. It was further

stated that Tileshwari and Parmeshwari were also assaulted. On the report of the complainant initially offence under section 294, 506 Part II, 323, 307, 341/34 of IPC was registered and after the investigation and the seizure taking into medical report and the statement charge sheet was filed under section 294, 506 Part II, 323, 307, 341 read with section 34 of IPC.

3. During the course of trial, the appellant abjured the guilt and claimed to be tried and in their defence it was contended by the appellant and the other accused that they have been falsely implicated, thereby they may be acquitted of the charges.

4. The accused were in this case apart from the appellant Chinta Ram, Dileshwar and Hembai were convicted under section 323 IPC and were ordered to pay fine of Rs.500/- each for each count and in absence of payment of fine, they were directed to undergo 30 days of simple imprisonment. The said appellants have deposited the fine. Consequently, appeal is considered only with respect to Chinta Ram who is before this court and was convicted u/s 326 of IPC.

5. Learned counsel for the appellant would submit that the incident happened when the complainant tried to forcefully harvest the crop which was sown by the accused and their family. He submits that despite no right over the crop, it was forcefully harvested and in respect of the land civil suit was pending in between the parties wherein injunction order was operating in favour of accused. He submits that over a trivial dispute on a sudden provocation the incident happened that too when the right of the accused were interfered by the complainant and complainants were instigator and aggressor. He further submits that subsequently dispute in between the family members has been settled which would be evident from the deed of compromise filed in this appeal and submits the parties have settled their dispute as per Ikrarnama which has been filed in this

case. He further referred to the copy of the affidavit of Lila Bai and would submit that complainant also do not want to prosecute their cause against Chinta Ram and therefore he may be acquitted of the charges.

6. Learned State counsel opposes the prayer and submits that order passed by the learned court below is well merited which do not call for any interference.

7. Perused the record of the court below.

8. Injured Johan Ram in this case was examined as PW-1. He stated that the accused were his relative. He stated that while he was coming back from the field one of the other co-accused pulled him by way of scarf by putting it on his neck whereby he fell down. At that time, his wife Lila Bai and daughter Tileshwari and Parmeshwari were with him. Thereafter, the appellant has assaulted by way of axe on the back of his head and one blow was given near the eye. Subsequently, he became unconscious. Witness further stated that the incident happened because of the fact that they went to cut the crop in the field and that was the reason of the dispute. Thereafter, he was admitted to the hospital. Cross examination of this witness would show that civil suit was pending in between the family members in respect of the agricultural land wherein certain stay order was operating however they were informed by their counsel to go into the field to take over possession and were advised that the appeal has been dismissed. Thereafter, when the complainant tried to harvest the crop the incident happened. He further submits that the accused has sown the field and paddy was grown on it to which the complainant wanted to harvest and that was the reason of dispute. He further admitted the fact that accused has told him and warned that civil suit was pending, therefore asked not to enter the field. However when the complainant forcefully tried to enter and cut the crop the dispute started.

9. PW-2 Lila Bai has stated that the accused are the relative. She

further stated that after they went to harvest the crop and while they were coming back they were stopped on the way and her husband was assaulted by way of axe and the club and her daughter was also assaulted by the club. She further stated that because of such assault her husband became unconscious. Thereafter, he was taken and admitted to the hospital and the FIR was lodged by Ex.P-2. Perusal of the FIR would show that similar incident has been narrated by the witness PW-2 and the FIR was recorded on 4/11/2014. In the cross examination of this witness she admitted the fact that civil dispute was going on in between the parties and they admitted the fact stay was operating in favour of the accused by the civil court at the relevant time of the incident. She further stated that they were given possession by the court and they had gone to reap the harvest which was sown by the appellant. She also affirms the fact that on the advise of the counsel that civil suit has been decided in their favour they had gone to take over the possession.

10. Other witness Tileshwari PW-3 has also stated similar incident and stated that she alongwith her mother Lila Bai, father Johan Ram and sister Parmeshwari had gone to field to harvest the paddy. While they were coming they were intercepted on their way and Chinta Ram had assaulted by way of axe to his father. She further stated that they were abused in the name of the mother and sister and after assault her father became unconscious. In the cross examination of the witness with respect to the assault nothing in the cross examination has come up to disbelieve the statement.

11. Likewise in the statement of PW-9 Parmeshwari she has also stated that at the time of the incident on 4/12/2014 she alongwith the mother, father and sister had gone to reap the harvest while they were coming back they were attacked. Reading of the statement of Johan Ram PW-1, Lila Bai PW-2 and Tileshwari PW-3 it would show that at the time of

the incident because of the fact that complainant tried to reap the harvest which was sown by the appellant and the dispute erupted.

12. The doctor who initially examined the injured is PW-10 namely Dr. T.R. Thakur. According to his statement on 4/11/2014 he had examined Tileshwari PW-3 and gave his medical report by Ex.P-8A and the following injuries were found.

(i) 0.5x0.2 cm one abrasion on the little finger of the right hand and she also complained of pain on her waist. Nature of the injury were simple and healing period was stated to be 2-3 days.

13. Likewise, the injured Parmeshwari PW-9 was also examined and the report was given by Ex.P-9A and no injury was found on her body.

14. The injured Johan Ram PW-1 was examined and his report was given by Ex.P-10A and the following injuries were found.

(i) one lacerated wound on the back of the head which was of 4x3x3.5 cm in zig zag shape and was having depth of 0.5 cm.

(ii) one lacerated wound in the shape of Y in the back of the head which was 6x4x0.25 cm and was having depth of 0.6 cm.

(iii) one lacerated wound over the eye brow at the left side of the head 4x1x1 cm.

(iv) one swelling over the left eye near eye of 4x3 cm and swelling was over the right eye of 3.5x5 cm.

15. According to the doctor the injury No.3 was inflicted by any sharp weapon. Rest of the injury were inflicted by hard and blunt object. According to the doctor all the injuries on the apparent reading were found to be simple in nature and thereafter he was referred for X ray.

16. Prosecution has examined Radiologist Dr. Chandrika Sahu as PW-13 and the CT scan report is proved as Ex.P-14 and the following internal injuries were found.

(i) Fracture of left parietal bone with involvement of lambdoid

suture.

(ii) Few small hemorrhagic contusions at right fronto-temporal region with minimal adjacent subdural hematoma causing mass effect & midline shift.

17. Therefore, the fracture was caused by the injury. The doctor PW-12 Smith Kumar had examined the injured Johan Ram and had given his report by Ex.P-13 in the Dhamtari Christian Hospital. According to this doctor also he found that parietal bone of the injured was fractured and there was contusion in the brain wherein clotting was present which was pressing the brain. Apart from that two lacerated wound were also found as per this doctor. On a query made to the nature of the injury he has opined by Ex.P-11 that injury No.1 which was of the fracture of the parietal bone which has caused contusion in the brain and clotting was fatal. Therefore, considering the statement of the doctor the prosecution was able to substantiate the fact that the injury which was inflicted by the appellant had caused the fracture.

18. As has been settled in the law laid down in **AIR 1988 SC 2127** in between **Hari Kishan & State of Haryana Vs. Sukhbir Singh & ors** when the act irrespective of the result whether was done with the intention or knowledge to consider it as attempt to murder and the intention has to be gathered from all the circumstances and not merely from the consequences. That ensue as the nature and the background of the offence, weapon used, manner in which it was used and the motive etc. In the instant case, the evidence has come on record that both the complainant and the appellant are related to each other and because of the fact that complainant wanted to reap the harvest by force which was sown by the appellant and their family member, the dispute started.

19. To constitute an offence under Section 307 IPC, following ingredients of the offence must be present;

- a. An intention or knowledge relating to commission of murder and
- b. doing of an act towards it.

For the purpose of Section 307 IPC, what is material is the intention or knowledge, and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with the intention of causing death but which fails to bring about intended consequence on account of initiation on account of intervening circumstances. The intention or knowledge of the cause must be such as is necessary to constitute murder. In the absence of intention or knowledge which is necessary ingredient of Section 307 IPC, there can be no offence of attempt to murder. Therefore, taking into such principles the evidence if are examined in case would show that all of a sudden the incident happened when complainant acted as aggressors. As per the statement of Johan Ram PW-1, Lila Bai PW-2, Tuleshwari PW-3 and Parmeshwari PW-9 they have stated that while they were coming back after harvesting the crop the incident happened on the way when they were intercepted. Consequently, it do not show that there was prior consent or meeting of the mind in between the accused and the intention was carried out in furtherance of committing murder. In the result, the court below has rightly held that the offence under section 307 IPC is not made out.

20. Further more, the prosecution has proved the seizure of the axe by Ex.P-6 which was recovered pursuant to the memorandum by the appellant i.e. Ex.P-5. Seizure has been proved by witness PW-6 Dev Singh wherein he stated that the accused are the relative and at the instance of the appellant Chinta Ram the axe was seized. Dr. PW-12 Smith Kumar in his evidence has stated that the axe which was seized from the appellant was sent for examination and after examination of entire axe he found that the inflicted injury could have been caused by

such axe and the report was given by Ex.P-12A. Therefore, prosecution was able to prove the fact that the injury which was inflicted to Johan Ram was inflicted by way of axe which was seized from the appellant.

21. Section 326 IPC speaks about the voluntarily causing hurt by dangerous weapon as would be evident from the medical report in this case there was fracture was found alongwith the lacerated wound, therefore the injury is covered within the definition of grievous hurt and further it is proved that it was inflicted by way of axe. Prosecution was able to prove that the same was caused by the axe which was seized. Therefore, considering such facts alongwith the statement of the injured witness and the doctor finding arrived at by the learned court below appears to be correct. Thereby conviction made by the court below under Section 326 of the IPC is held to be justified.

22. Now with respect to the jail sentence, affidavit has been filed by the complainant Lila Bai wife of Johanram who is also related to the appellant that in respect of the land settlement has been arrived at and prayer is made that the appellant Chinta Ram may be acquitted. One of the copy of the settlement styled as 'Rajinama' is also placed on record which shows that parties have demarcated their land by mutual consent. Admittedly, complainant and the appellant were relative and over harvesting of the crop the incident happened wherein both the parties complainant and the appellant and the other co-accused were claiming their right. In view of this, taking into fact that the appellant is in jail since 9/11/2014 till date, jail sentence is held to be following the principles laid down in case of **Surendra Nath Mohanty and Another Vs. State of Orissa** reported in **(1999) 5 SCC 238** jail sentence is reduced to the period already undergone and the fine of Rs.1000/- is enhanced to Rs.7500/- which would be payable to the victim Johanram Gond. In absence of payment of fine, the appellant shall undergo RI for 6 months.

23. With such observation, the appeal is partly allowed. The appellant is in jail. He be released forthwith if not required in any other case.

Sd/-

(Goutam Bhaduri)

JUDGE

gouri