

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 10-1-2019****Pronounced on 18-1-2019****CRIMINAL APPEAL 687/2008**

(Arising out of judgment of conviction and order of sentence dated 28-2-2008 passed by Addl. Sessions Judge, Katghora, Distt. Korba CG in Sessions trial No. 73/2006)

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1. Leel Sai son of Bhagirathi Kumhar, aged about 22 years

2. Bhagirathi son of Geela Kumhar, aged about 50 years

Both R/o. Teliyamar, P.S. Pasan, Tahsil Katghora, Distt. Korba (CG)

---Appellants**-VERSUS-**

State of Chhattisgarh, through PS Pasan, Distt. Korba (CG)

---Respondent

For appellant	: Mr. Tarun Dadsena, Adv.
For respondent/State	: Mr. I. Lakra, Dy. Govt. Advocate.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 28-2-2008 passed by Addl. Sessions Judge, Katghora, Distt. Korba CG in Sessions trial No. 73/2006 whereby and whereunder he convicted the appellants as under:-

Appellant No. 1 Leela Sai

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
307, IPC	10 Years	500/-	3 months

Appellant No. 2 Bhagirathi Kumhar

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
307/34, IPC	10 Years	200/-	1 month

2. In brief the prosecution story is that on 14-3-2006 at about 19.30 hr. at Kumhar Mohalla, Pasan, appellants reached near the complainant Premlal. They caused injuries on the body of complainant by an axe. On very day complainant intimated police station Pasan where

Rojnamcha Sanha was written. Thereafter an FIR was lodged. After completion of investigation, a charge sheet was filed against them. The trial Court framed the charge against them under Sections 307/34 of the Indian Penal Code (in brevity 'IPC'). After completion of trial, trial Court convicted and sentenced the appellants as aforesaid.

3. Being aggrieved the appellants have preferred this criminal appeal.

4. Counsel for the appellants argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellants are bad in eyes of law. Hence, appellants may be acquitted of the aforesaid charge.

5. Counsel for the State argued that the conviction and sentences of the appellants are based on clinching evidence. The conviction and sentences of the appellants do not call for any interference by this Court.

6. As per the alleged MLC report Ex. P-7, P.W. 7 Dr. K.S. Pandro, had examined complainant Premlal and found following injuries on his body :-

1.	Incised wound	9" x ½" x upto vertebrae from lumber to sacrum bleeding maximum on sacrum region.
2.	Incised wound	3" x ½" x 2" on right gluteal region
3.	Incised wound	2" x ½" x 1 ½" on right thigh outer and upper portion.

7. P.W. 7 Dr. K.S. Pandro had opined that all injuries could be caused by sharp cutting object. Injuries No. 2 and 3 were simple in nature. Injury No. 1 was critical.

8. There is no such evidence on record on the strength of which it can be said that Ex. P-7 is not believable, thus this Court believes on Ex. P-7.

9. As per the query report Ex. P-10, P.W. 7 Dr. K.S. Pandro had opined that if complainant would not have been treated immediately then he could have died.

10. There is no such evidence on record on the strength of which it can be said that Ex. P-10 is not believable, thus this Court believes on Ex. P-10.

11. P.W. 1 Premlal in para 3 says in his statement given on oath that appellants had caused injuries on his body by axe.

12. P.W. 2 Ashish in para 3, P.W. 3 Ramsewak Gupta in para 3 and 4 of their statements given on oath that they had seen appellant No. 1 Leel Sai was beating said complainant by axe. Appellant No. 2 Bhagirathi had caught hold him.

13. P.W. 4 Samaru who is the father of the said complainant says in para 3 of his statement given on oath that said complainant had told him that appellants had beaten him.

14. P.W. 5 Sukhram says in para 2 of his statement given on oath that said complainant had told him that appellant No. 1 Leel Sai had caused blow on complainant's body by axe.

15. P.W. 6 Iliazar Bakla in para 2 of his statement given on oath says that appellant No. 1 Leel Sai had caused injuries on complainant's body by axe.

16. In FIR Ex. P-1 it has been mentioned that appellants had caused injuries on body of the complainant by axe.

17. There is no such evidence on record on the strength of which it can be said that Ex. P-1 is concocted or is an afterthought in the reference that appellant No. 1 Leel Sai had caused injuries on body of said complainant by axe.

18. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Premlal, P.W. 4 Samaru are not simple, not natural, not normal in the reference that, allegedly appellant No. 1 Leel Sai had caused injuries on body of P.W. 1 Premlal by axe.

19. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 2 Ashish, P.W. 3 Ramsewak Gupta, P.W. 5 Sukhram, P.W. 6 Iliazar Bakla are not simple, not natural, not normal.

20. Looking to the aforesaid facts and circumstances, this Court finds that prosecution has succeeded to prove the charge punishable under Sections 307 and 307/34, IPC respectively against the appellants.

21. Thus, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellants as aforesaid. Hence, the appeal deserves to be dismissed. The appeal is accordingly

dismissed. The conviction and sentences of the appellants No. 1 and 2 under Section 307 and 307/34, IPC respectively are hereby affirmed.

22. As per the report received from the office of Jail Superintendent, Central Jail, Bilaspur dated 9-12-2018, the appellant No. 1 and appellant No. 2 have been released on 17-12-2018 and 18-12-2018 respectively after getting the benefit of remission extended to them. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge