

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.236 of 2009**

1. Bora @ Manmohan, S/o. Ramashankar, Aged About 20 Years, R/o Village Moharpara, P.S. Manendragarh, Distt.-Korea (CG)
2. Imran @ Immu S/o Shahabuddin, Aged about 19 years, R/o Village Moharpara, P.S. Manendragarh, Distt.-Korea (CG)
3. Firoz S/o Shahabuddin, aged abut 21 years, R/o Village Moharpara, P.S. Manendragarh, Distt.-Korea (CG)
4. Sohan S/o Ramswayambar, aged about 21 years, R/o Village Moharpara, P.S. Manendragarh, Distt.-Korea (CG)
5. Sirazuddin @ Chhotku Kabadi, aged about 48 years, S/o Abdul Gani, R/o Village Moharpara, P.S. Manendragarh, Distt.-Korea (CG)
6. Vinod @ Binnu S/o Hablal Khatik, aged about 19 years, R/o Village Moharpara, P.S. Manendragarh, Distt.-Korea (CG)

---- Appellants**Versus**

- State Of Chhattisgarh Through P.S. Manendragarh, Distt.-Korea (CG)

---- Respondent

For the appellants : Shri Rishi Rahul Soni, Advocate

For the State/respondent : Shri Ravish Verma, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****01.3.2019.**

1. The appeal is directed against judgment dated 14.01.2009 passed by First Additional Sessions Judge, Manendragarh (CG) in Session Trial No.96/2007 wherein the said Court convicted all the six appellants for commission of offence under Sections 307 read with 149, 148, 323 read with 149 and 506 Part-II of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of 500/- each; RI for two years; RI for one year; RI for three years with default stipulation.

2. As per the version of the prosecution, on 15.5.2007 at about 9.00 pm, victim Jainul Haq was working in the beetal shop where other victims namely Guddu @ Rizwan Ahmad was standing nearby and another witness Mohd. Arif was also present there. It is alleged that all the appellants came on the spot carrying club and sword assaulted Guddu @ Rizwan and when the complainant and Arif interfered, the appellants assaulted them also. The matter was reported and the appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) There is no cogent evidence to connect the appellants with the crime in question and the trial Court has not properly appreciated the evidence and came to a wrong conclusion.

(ii) There is serious discrepancies in the First Information Report, statement recorded under Section 161 CrPC and their deposition before the trial Court, therefore, case of the prosecution is under cloud.

(iii) The origin of the story is the misbehaviour with the daughter of the victim Rizwan, therefore, there is no motive of the appellants for commission of offence.

(iv) The trial Court has overlooked the facts that memorandum witnesses have clearly stated that the authorities have taken their signature in blank papers. Therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same

is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Jaffir Ahmed (PW-2), Anul Haq (PW-5), Rizwan @ Guddu (PW-6), Mohd. Arif (PW-7), Jainul Haq (PW-8) are the eyewitnesses account of the incident. As per the version of Rizwan, appellant Sirajuddin @ Chhotku and appellant Bora @ Manmohanm were having sword while other appellants were having club and rod and they assaulted him after altercation and when Jainul Haq interfered they assaulted him also. Version of all these witnesses is supported by version of other witnesses. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence and the material point of the incident is unshaken. Dr. PS Kurre (PW-4) examined Rizwan on 15.5.2007 at Community Health Centre, Manendragarh and noticed following injuries:

(1) Right leg – (a) Incised wound with old clotted blood with reddish colour at anterior aspect of middle of right leg – 1.0"x0.3"x0.4".

(b) Incised wound 1 inch below the first injury anteriors of size 0.3"x0.2"x0.3".

(c) Swelling with pain at right ankle-joint with bluish colour.

(d) Incised wound of 0.3"x0.2"x0.3" on the right thigh with reddish colour.

(2) Left leg- incised wound of 0.3"x0.2"x0.3" on the anterior of middle part.

(3) Left forearm – abrasion with reddish colour posterior of 2.0"x0.4".

(4) Right hand – swelling of 0.4"x0.3"x0.3" on the right anterior part.

- (5) Back – Right side (scapular) region – contusion, mark with reddish colour of 5.0"x1.0".
- (6) Head – (a) Lacerated wound with red colour bleed at vertex region of head scalp with reddish colour of 1.0"x0.3"x upto skull.
- (b) contusion mark at back of right par region of skull of 2.0"x1.0" with bluish colour.
- (c) Incised wound on the frontal region scalp of 1.3"x0.3" upto skull margin.
- (d) Incised wound of 1.0"x0.3"x0.3" on the left side of frontal region of scalp.

This witness also examined Jainul Haq and noticed following injuries:

- (1) Abrasion on the left knee joint with black colour of 2.0"x1.0".
- (2) Scratch mark two in no. on left forearm of 0.3"x0.1".

This witness also examined Mohd. Arif and noticed following injuries:

- (1) Abrasion on the right shoulder region of 1.0"x0.3" with reddish colour.
- (2) Pain at right hand and no external injury seen on examination.

From the evidence of this witness it is established that two incised wounds were caused to Rizwan on his head and as per the version of Rizwan only two person namely Sirajuddin and Bora were in possession of the sword and it appears that incised wounds were caused by these two persons, while other injuries were caused by other appellants who were having club and rod. Dr. AK Karan (PW-3) opined after examination of the X-ray of victim Rizwan that he suffered fracture on right hand and also suffered fracture on ulna. Version of the medical expert is unshaken and there is no other medical expert's opinion contrary to the opinion of this medical expert,

therefore, it is established from the statement of these witnesses that injuries on the vital part i.e. head of Rizwan was caused by appellants Sirajuddin and Bora whereas other injuries were caused by other appellants. From the statement of Dr. PS Kurre (PW-4) it is established that victims Jainul Haq and Arif sustained simple injuries and looking to the statement of the eyewitnesses and medical expert it is established that both these witnesses sustained simple injuries during the assault.

7. Now the point for consideration before this Court is whether the act committed by the appellants constitute offence under Section 307 IPC.

8. To constitute an offence under Section 307 IPC, two ingredients of the offence must be present:

- (a) an intention of or knowledge relating to commission of murder: and
- (b) the doing of an act towards it.

The essential ingredients required to be proved in the case of an offence under Section 307 IPC are:

- (i) That the death of a human being was attempted;
- (ii) That such death was attempted to be caused by, or in consequence of the act of the accused;
- (iii) That such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a)

death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

(iv) To justify conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted.

9. In the present case it can be inferred that appellants Sirajuddin and Bora assaulted the victim Guddu @ Rizwan by deadly weapon and looking to the nature of the weapon and nature of the injury it can be inferred that they have done everything within their power to cause fatal injury but the final result alludes because of the proper treatment in time. Therefore, act of these two appellants fall within mischief under Section 307 IPC for which the trial court convicted them and this Court has no reason to record a contrary finding and the same is hereby affirmed.

10. So far as other appellants are concerned, looking to the nature of weapons and further looking to the fact that they have not assaulted on the head, but they assaulted on the non-vital part of the body, it cannot be inferred that they have any intention to eliminate the victim. Fracture sustained by said victim is an offence of voluntarily causing grievous injury which falls within the mischief under Section 325 read with 149 IPC.

11. In view of the above, conviction of appellants Imran, Firoz, Sohan and Vinod under Section 307 IPC is liable to be set aside and the same is hereby set aside. However, they are convicted for the offence under Section 325 read with 149 IPC.

12. Conviction of all the appellants under Section 323 read with 149 IPC for causing injury to Jainul and Arif is based on proper marshaling of evidence and the same is hereby affirmed.

13. So far as offence under Section 148 IPC is concerned, only two persons namely Sirajuddin and Bora were having deadly weapons with them. For establishing charge under Section 148 IPC it has to be established that the persons charged with the offence must possess deadly weapons, but as per the evidence, appellants Firoz, Imran, Sohan and Vinod were not having deadly weapon therefore, offence under Section 148 IPC is not established against them. Their conviction for the said offence is set aside and they are acquitted of the said charges.

14. So far as offence under Section 506 IPC is concerned, no one deposed before the trial Court regarding threatening to kill except Rizwan (PW-6). Version of Rizwan in this regard is general statement that they threatened him. For establishing charge under Section 506 Part-II IPC words uttered by each of the persons charged should be specific and it should be proved specifically. It cannot be proved by general and bald statement. Therefore, from the statement of Rizwan it is not established that all the appellants have threatened him to kill. Section 506 Part-II IPC is not established against any of the appellants and all the appellants are acquitted of the said charges and their conviction and sentence on the said charges is hereby set aside.

15. On overall assessment, conviction and sentence passed by the trial Court against appellants Sirajuddin and Bora is affirmed but for Section 506 Part-II IPC. The trial Court awarded sentence of ten years which cannot be termed as harsh, disproportionate or

unreasonable. Therefore, sentence part is not liable to interfere with. Accordingly, appeal filed by appellants Sirajuddin and Bora is dismissed in part. They are in custody, therefore, no further order for their arrest is required.

16. Conviction and sentence under Section 307 read with 149, 148 and 506 Part-II IPC against appellants Imran, Firoz, Sohan and Vinod is hereby set aside and they are acquitted of the said charges. However, these four appellants have been convicted under Section 325 read with 149 and 323 read with 149 IPC. Appellants Imran, Firoz and Sohan suffered jail sentence of 218 days during the trial/appeal and appellant Vinod suffered jail sentence for 148 days during the trial/appeal. Considering all the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be served if the corporal sentence awarded by the trial Court to the above four appellants is reduced to the period already undergone by them. They are sentenced to the period already undergone by them. Fine amount awarded under Section 307 IPC shall be treated as fine amount under Section 325 of IPC and the same shall remain intact.

17. With these modifications, appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)
JUDGE