

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.154 of 2011

Judgment Reserved on : 26.7.2019

Judgment Delivered on : 18.10.2019

1. Devendra Prasad Thakur, S/o Dev Prasad Thakur, 25 years,
2. Dwarika Prasad Thakur, S/o Dev Prasad Thakur, 27 years,
Both R/o Rampur Camp, Kirandul, P.S. Kirandul, District Dantewada,
Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through District Magistrate, Dantewada,
Chhattisgarh

--- Respondent

For Appellants : Shri Prafull N. Bharat, Advocate
For Respondent : Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 8.2.2011 passed by the Additional Sessions Judge, South Bastar Dantewada in Sessions Trial No.280 of 2007, whereby each of the Appellants has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 307 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.500/- with default stipulation

2. Facts of the case, in brief, are that on 18.4.2007 at 4:30 p.m., Complainant Tilakraj (PW1) was talking with Kumari Laxmi (PW3), who is sister of both the Appellants. At that point of time, both the

Appellants came there. Allegedly, Appellant Dwarika assaulted Complainant Tilakraj (PW1) by hands and fists and Appellant Devendra assaulted the Complainant by a club. As a result of the assault, the Complainant sustained injury on head. After receiving treatment, the Complainant lodged First Information Report (Ex.P1) in Police Station Kirandul on 29.4.2007. On completion of the investigation, a charge-sheet was filed. Charges under Section 307 read with Section 34 of the Indian Penal Code were framed against the Appellants.

3. In support of its case, the prosecution examined as many as 12 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt. No witness has been examined in their defence.
4. Before the Trial Court, it was the defence of the Appellants that at the time of incident, Appellant Dwarika was not present at the spot. Virtually, Complainant Tilakraj was talking with Laxmi, sister of the Appellants. Thereafter, the Complainant started pulling hands of Laxmi and for saving Laxmi Appellant Devendra pushed the Complainant away as a result of which the Complainant sustained injury.
5. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellants submitted that without there being any evidence on record against the Appellants the Trial Court has convicted them. The incident took place on 18.4.2007, but the FIR (Ex.P1) was lodged on 29.4.2007, i.e., after

passing of 11 days. Delay in lodging the FIR has not been explained properly. It was further submitted that initially after the alleged incident when the injured/Complainant went to Bacheli Hospital for treatment, at that time, he had disclosed that he suffered injury due to falling down from a tree. It was further submitted that from the statements of the Complainant and other witnesses, it is established that only one injury was suffered by the Complainant and there was no previous enmity. The Complainant had caught hand of Kumari Laxmi, sister of the Appellants and, therefore, the alleged dispute took place. Thus, there was no intention on the part of the Appellants to commit murder of the Complainant. It was further submitted that from the statement of Laxmi as well as admission made by the Complainant, it is also established that at the time of incident the Complainant was pulling hands of Laxmi and, therefore, Appellant Devendra had tried to save Laxmi and for this he had pushed the Complainant away as a result of which the Complainant suffered injury. Since the Complainant had caught hand of Laxmi, Appellant Devendra, being a brother of Laxmi, had a right to private defence and exercising this right he pushed the Complainant away. Therefore, no offence is made out.

7. 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 record with due care.
9. Complainant Tilakraj (PW1) has deposed that at the time of incident he was talking with Laxmi. In the meanwhile, Appellant Dwarika came there and scuffled with him due to his talking with

Laxmi. Appellant Devendra also came there with a danda and assaulted him with that danda. As a result of the assault, he fell down and got unconscious. He was thereafter taken to Bacheli Hospital. Thereafter, he was taken to Jagdalpur Hospital and from there he was taken to Raipur Hospital. He returned after 10-11 days and then he lodged the FIR (Ex.P1) in Police Station Kirandul. As stated by this witness, the incident was witnessed by Laxmi (PW3), Saroj (PW5) and Renu Sahu (PW8) (mother of Complainant/witness Tilakraj). Tilakraj, during his cross-examination, has admitted the fact that first when he was taken to Bacheli Hospital, at that time, he told the doctor that he suffered the injury due to his fall. At that time, he did not tell anything that he was assaulted by the Appellants. He has further admitted that he was under treatment at Raipur for 8-10 days, but he did not file any document in this regard.

10. Laxmi (PW3), who is one of the eyewitnesses, has deposed that at the time of incident, Complaint Tilakraj (PW1) called her and told that Liladhar was calling her. When she reached to the house of Liladhar, she did not find him there. Then she asked the Complainant why did he call her by deceiving her then the Complainant pulled her hand and started to drag her inside the house. She tried to come out of his clutches and called her brother Devendra (Appellant). Appellant Devendra came there and for saving her he pushed the Complainant away. As a result of which, the Complainant fell down on the stairs and suffered injury near his ear. This witness has been declared hostile. However, Complainant Tilakraj (PW1), in paragraph 19 of his cross-examination, has admitted the fact that in his presence police had inquired Laxmi and recorded her statement. At that time, Laxmi

had told that the Complainant, saying her that Liladhar was calling her, called her to the house of Liladhar. On this, she had gone to the house of Liladhar. She did not find Liladhar at his house then she asked the Complainant why did he cheat and called her there. Complainant Tilakraj (PW1) has further admitted that Laxmi had also stated before the police that he had asked Laxmi to keep mum and he had tried to pull her hand and on this she had shouted.

- 11.** Savita (PW4) and Saroj (PW5) are other eyewitnesses of the incident. They have not supported the case of the prosecution and have been declared hostile.
- 12.** Alok (PW6) and Pyarelal (PW7) are the witnesses before whom memorandum statement (Ex.P5) of Appellant Devendra was recorded and seizure of a club was done from him vide Ex.P6. But, both these witnesses have also not supported the case of the prosecution and have been declared hostile.
- 13.** Renu Sahu (PW8) is mother of injured/Complainant Tilakraj. She has stated that at about 4:00 p.m., she was talking with Saroj (PW5). At that time, having heard shouts of assault, she came out and saw that Appellant Devendra was having a danda in his hand. Devendra had already given a danda blow to the Complainant and on her reaching there Devendra again tried to assault the Complainant with the said danda. She intervened and stopped Devendra. But, these facts are not mentioned in her case diary statement (Ex.D2). In paragraph 8 of her cross-examination, this witness has also admitted that Appellant Devendra had not assaulted the Complainant in her presence.
- 14.** Dr. A. Naidu (PW9) has deposed that on 18.4.2007 he had taken

out x-ray of Complainant Tilakraj in which he found a fracture in right parietal bone. However, he has admitted that this injury could occur due to fall.

- 15.** Sub-Inspector S.S. Thakur (PW10) is the Investigating Officer of the offence in question. He has also admitted that in the treatment related medical documents of Complainant Tilakraj, reason of the injury is mentioned to be due to fall.
- 16.** Patwari Mohan Singh (PW11) prepared spot-map (Ex.P9). Inspector Kaushal Kishore Wasnik (PW12) recorded the FIR (Ex.P1) on 29.4.2007. He has also admitted that the dispute had taken place due to Laxmi.
- 17.** On a minute examination of the above evidence, it is clear that Complainant Tilakraj sustained only one injury on his right parietal bone and the injury was a fracture. The injury was suffered by the Complainant due to assault by Appellant Devendra has not been established because as stated by Laxmi (PW3), Complainant Tilakraj had caught her hand and on her shouting Appellant Devendra had reached at the spot and Complainant Tilakraj (PW1) has also admitted that Laxmi had also stated the same thing to the police in his presence. From the admission made by Complainant Tilakraj (PW1) and Investigating Officer S.S. Thakur (PW10), it is also clear that initially, soon after the incident, when the Complainant was examined at Bacheli Hospital, at that time also, he had told that he had suffered the injury due to his fall. If he had suffered the injury due to an assault, he would have stated so in the hospital and lodged a report immediately in this regard. Even if the statement of the Complainant is considered to be true that he was admitted in the hospital and was undergoing treatment for

about 10-11 days and was not able to lodge any report, why his mother Renu Sahu (PW8), who claimed to be an eyewitness of the alleged incident, did not lodge any report regarding the alleged assault. Thus, delay in lodging the FIR (Ex.P1) has not been explained properly by the Complainant. From the evidence adduced by the prosecution, it seems that the Complainant had caught hand of Laxmi and to save her his brother Appellant Devendra had pushed the Complainant away and as a result of which the Complainant sustained the injury and, therefore, when the Complainant reached to Bacheli Hospital, he told that he suffered the injury due to fall. The Complainant had caught hand of Laxmi, who is sister of the Appellants. Therefore, even if Appellant Devendra pushed the Complainant away to save Laxmi, this act of Appellant Devendra falls within the purview of right to private defence. For the reasons discussed above, in my considered opinion, no offence is proved beyond reasonable doubt.

- 18.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.
- 19.** 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