

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2200 of 1999

1. Mukesh Kumar S/o Manharan Yadav, aged about 21 years, R/o Sanjay Nagar, Supela (**Accused No.1 – Name deleted vide order dated 25.08.1999**)
2. Guddu @ Hemant Kumar S/o Janardhan Prasad Satnami, aged about 21 years, R/o Village Pendari, P.S. Navagarh, At present- Kumhar Para, Sanjay Nagar, Supela (**Accused No. 2**)
3. Rajju @ Rajesh Satnami S/o Kraparam, aged about 20 years (**Accused No. 3**)
4. Punitram Geda, S/o Mansharam Geda, aged about 18 years (**Accused No. 4**)
5. Rekhuram S/o Komalram Marar, aged about 21 years
Appellants/Accused No. 3 to 5 residents of Kumharapara, Sanjay Nagar, Supela, P.S. Supela, District Durg, MP (Now Chhattisgarh)

---- Appellants/Accused

Versus

- The State of Madhya Pradesh (Now Chhattisgarh) Through P.S. Supela, District Durg

---- Respondent

For Appellants/Accused : Ms. Mandvi Bhardwaj, Shri Chandrabhushan Kesharwani and Shri Sanjay Agrawal, Advocates

For Respondent/State : Mrs. Seema Dixit, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

05.09.2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 12.08.1999 passed by the Sixth Additional Sessions Judge, Durg in Sessions Trial No. 321/1998, whereby, the appellants namely Guddu @ Hemant Kumar (A-2), Rajju @ Rajesh Satnami (A-3), Punitram Geda (A-4) and Rekhuram (A-5) stand convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Appellant No.5 (A-5): Under Sections 147 & 148 of IPC	Rigorous imprisonment for one year and pay a fine of Rs. 500/- and in default of payment to further undergo rigorous imprisonment for three months

Under Section 307 of IPC	Rigorous imprisonment for five years and pay a fine of Rs. 500/- and in default of payment to further undergo rigorous imprisonment for three months
<u>Appellants No. 2 to 4 i.e. (A-2), (A-3) & (A-4):</u> Under Sections 147 & 148 of IPC Under Section 307/149 of IPC	Rigorous imprisonment for one year each and pay a fine of Rs. 500/- and in default of payment to further undergo rigorous imprisonment for three months each Rigorous imprisonment for five years each and pay a fine of Rs. 500/- and in default of payment to further undergo rigorous imprisonment for three months each
All the sentences to run concurrently	

2. Case of the prosecution, in brief, is that on 07.07.1997 at about 10:45 pm Sanjay Yadav (PW-1) and his friend Madhao (PW-2) had gone towards pond for answering the call of nature and while returning from there, accused namely Rekhura (A-5), Punitram Geda (A-4) and Guddu @ Hemant Kumar (A-2) caught hold of Sanjay Yadav and gave him (Sanjay Yadav) fist blows. During the scuffling, Madhao tried to pacify them, at that time co-accused Lalitram, Rajju (A-3), and Mukesh (A-1) were saying that not to leave Madhao alive, suddenly Rekhu (A-5) took out knife from his pocket and gave knife blows on the abdomen and chest of Madhao. Other accused i.e. A-4, A-2, A-1 and co-accused Lalitram were beating Madhao by hands and fists.

3. First Information Report (FIR) was promptly lodged by Sanjay Yadav (PW-1) within one hour in police station Supela vide Ex.-P/1 against the accused/appellants including Mukesh (A-1) and co-accused Lalitram which was registered under Sections 307, 147, 148 & 149 of IPC. Injured Madhao (PW-2) was sent for treatment in District Hospital Durg and Madhao was medically examined by

PW-7 Dr. Dr. V.K. Sao and he gave MLC report Ex.P/10. As per MLC report (Ex.-P/10), Doctor found following injuries on the body of Madhao:

- i) Incised wound in size of $\frac{1}{2} \times \frac{1}{2} \times 1$ inch on the chest and the blood was oozing;
- ii) Incised wound in size of $\frac{3}{4} \times \frac{1}{4} \times \frac{1}{2}$ inch on the right palm; &
- iii) Incised wound on the right side below the abdomen and some part of intestine came out from the body.

Doctor (PW-7) advised for X-ray and found that injury No. iii is dangerous to life.

4. Dying declaration of Madhao was recorded vide Ex.P/2 on 09.07.1997 by the Executive Magistrate PW-6 Sanjay Kumar Dewan at 02:15 pm. As per bed-head ticket (Ex.-P/15), Madhao was discharged from hospital on 16.07.1997.

5. Memorandum statement of appellant Rekhuram (A-5) was recorded vide Ex.-P/4 consequent to which one knife vide Ex.-P/5 and one T-shirt vide Ex.-P/6 were seized from his possession. One shirt was seized from the possession of appellant Punitram (A-4) vide Ex.-P/7. From the place of occurrence, blood stained soil and plain soil were seized under Ex.- P/8 by the investigating officer and seized articles were sent for examination to Forensic Science Laboratory, Raipur, from where FSL report was received vide Ex.-P/16. As per FSL report, blood was found on all the articles, except plain soil.

6. After completion of investigation, the charge-sheet was filed against all the accused/present appellants i.e. A-1, A-2, A-3, A-4 & A-5 and co-accused Lalitram under Sections 147, 148, 149 & 307 IPC and while framing the charges, the trial Judge framed the charges against A-5 under Sections 147, 148 & 307 IPC and the charges against A-1, A-2, A-3, A-4 and co-accused Lalitram under Sections 147, 148, 307/149 IPC.

7. So as to hold the accused persons/appellants guilty, the prosecution, in all has examined as many as 12 witnesses namely Sanjay Kumar Yadav (PW-1),

Madhao (PW-2), Sarju (PW-3), Chhannu Yadav (PW-4), Ishwar (PW-5), Sanjay Kumar Diwan (PW-6), Dr. V.K. Sao (PW-7), Dhansai Lahuriya (PW-8), Shyamlal Manjhi (PW-9), Lakhan (PW-10), Dr. M.C. Mahonot (PW-11) and Rajeev Sharma (PW-12). Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C., in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication and they examined two defence witnesses i.e. DW-1 Pawan Kumar and DW-2 Mangal Das in support of their case.

8. After appreciation of the evidence available on record, learned Sixth Additional Sessions Judge, Durg convicted and sentenced the accused/appellants namely Guddu @ Hemant Kumar (A-2), Rajju @ Rajesh Satnami (A-3), Punitram Geda (A-4) and Rekhuram (A-5) as mentioned above in para-1 of this judgment. However, accused Mukesh Kumar (A-1) is acquitted of the charges levelled against him under Sections 147, 148, 149 & 307 of IPC, therefore, in the instant appeal his name has been deleted from the array of appellants vide order of this Court dated 25.08.1999.

9. It is not in dispute that co-accused Lalitram son of Kartikram has been declared absconded by the trial Court due to his absence during trial since 22.06.1999 and the co-accused was separated from the trial under Section 299 of Cr.P.C. by the trial Court.

10. Learned counsel for the Appellants submits that accused Mukesh Kumar (A-1) was acquitted of the charges framed against him. His name is also mentioned in the F.I.R. (Ex.-P/1), but prosecution witnesses have not proved the presence of Mukesh Kumar in the incident, therefore, benefit goes to all the accused/appellants because Mukesh Kumar was falsely implicated by Sanjay Kumar Yadav (PW-1) and Madhao (PW-2). It is further submitted that first incident happened regarding beating of Sanjay Kumar Yadav by Rekhuram (A-5), Punitram (A-4) and Guddu @

Hemant Kumar (A-2), but no any injury was found and proved by the prosecution that Sanjay Kumar Yadav had sustained any injury, therefore, the prosecution case was doubtful. It is argued that looking to the evidence of Sanjay Kumar Yadav (PW-1), and Madhao (PW-2), only Rekhuram (A-5) assaulted Madhao by knife. Madhao himself was informed by Chhannu Yadav (PW-4) that Rekhuram assaulted him by knife. Therefore, entire prosecution case becomes doubtful and the trial Court has wrongly convicted and sentenced the accused/Appellants i.e. A-2 to A-5. The last contention is that there was no intention to commit murder or attempt to murder Madhao and on the place of incident, some dispute arose between Appellants and Sanjay Kumar Yadav along with Madhao and all of a sudden without any premeditation or common object, knife injury was caused by Rekhuram (A-5). It is submitted that accused Rekhuram (A-5) has almost completed his entire sentence and he has been released from jail after extending benefit of remission provided by the State. Learned counsel for the appellants further submit that accused Rekhuram (A-5) has assaulted Madhao by knife and accused/Appellants i.e. A-2, A-3 & A-4 assaulted by hands and fists, even if the entire prosecution is taken as it is, the appellants cannot be held guilty under Section 307/149 IPC and at best, they can be convicted under Section 324/149 of IPC.

11. On the other hand, counsel for the Respondent/State supports the judgment impugned. It has been argued by the State counsel that the conviction of the Appellants is in accordance with law and there is no infirmity in the same.

12. Heard the counsel for the respective parties and perused the evidence on record.

13. It is not disputed by the parties that victim Madhao sustained three incised wounds which were mentioned in MLC report (Ex.-P/10) and some part of the intestine came out from the body. As per evidence of Doctor V.K. Sao (PW-7), the injuries were caused by hard & blunt object. Dr. M.C. Mahonot (PW-11) who treated

Madhao found that some intestine came out from the body which was operated by him. PW-11 opined that the injury was fatal. PW-11 further stated that victim Madhao was hospitalized from 08.07.1997 to 16.07.1997 and was discharged from hospital on 16.07.1997 and no any serious complication due to injury was noticed by Doctor (PW-11). Doctor V.K. Sao also stated that injury no. (iii) was dangerous for life of Madhao.

14. In the present case, firstly the dispute arose between Rekhuram (A-5) and Sanjay Kumar Yadav (PW-1) and all the appellants assaulted Sanjay Yadav by hands and fists, during that time Madhao (PW-2) tried to pacify them and all of sudden, appellant Rekhuram (A-5) took out knife from his pocket and gave knife blows on the chest and abdomen of Madhao and other appellants beat by hands and fists.

15. Sanjay Kumar Yadav (PW-1) and Madhao (PW-2) both proved this fact that when they were near Sanjaynagar Pond, Rekhuram (A-5) and other appellants assaulted Sanjay Yadav (PW-1) and when Madhao (PW-2) tried to pacify the dispute, then Rekhuram assaulted Madhao on the chest and abdomen by knife and other accused/Appellants alongwith co-accused Lalitram assaulted by hands and fists. Therefore, may be the act of accused persons was not premeditated and they may not have intention to commit murder or attempt to commit murder of Madhao (PW-2), however, the fact remains that dispute arose between present appellants and Sanjay Kumar Yadav (PW-1) & Madhao (PW-2) in which Madhao sustained knife injuries caused by Rekhuram (A-5). Madhao was immediately shifted to hospital and prompt FIR (Ex.-P/1) was lodged by Sanjay Kumar Yadav against the present Appellants and co-accused. There are no contradictions or omissions in FIR (Ex.-P/1) and statement of Sanjay Kumar Yadav (PW-1) and the statement of Madhao (PW-2). The incised wounds were found on the chest, right palm and right side below the abdomen, but no size of injury on the abdomen was mentioned in MLC report (Ex.-P/10) by Dr. V.K. Sao (PW-7) and as per Ex.-P/15, Dr. M.C.

Mahonot (PW-11) treated Madhao for about 8 days in hospital and discharged Madhao on 16.07.1997 in normal condition.

16. DW-1 Pawan Kumar and DW-2 Mangal Das were not present at the time of incident and they have stated that accused Rekhuram (A-5) was not present at the place of occurrence, but eye-witnesses proved that Rekhuram was present at the time of incident beyond all reasonable doubt and actively participated in commission of the crime.

17. Looking to the entire evidence, in the facts and circumstances of the case, it is proved beyond all reasonable doubt that the present Appellants alongwith co-accused Lalitram constituted unlawful assembly and with common object the Appellants made assault on Sanjay Kumar Yadav (PW-1) and Madhao (PW-1) on 07.07.1997 near Sanjaynagar pond, but no any evidence has been adduced against accused Mukesh Kumar by the prosecution to prove the guilt of his presence in the incident. Therefore, while acquitting accused Mukesh Kumar (A-1) in crime in question, the trial Court has convicted accused Rekhuram (A-5); accused Guddu @ Hemant Kumar (A-2), Rajju @ Rajesh Satnami (A-3) and Punitram Geda (A-4) under Sections 147 & 148 of IPC. This Court finds no illegality or infirmity in the evidence so recorded by the trial Court.

18. Now the question which arises for consideration of this Court is whether the act of the accused/appellants make them liable for conviction under Section 302 of IPC or for any lesser offence. In order to bring home the charge under Section 307, the prosecution has to establish the followings:-

(i) death of human being was attempted to be caused by or in consequence of the act of the accused;

(ii) such act was done by the accused with intention of causing death or with intention of causing such bodily injury as the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death, or that by doing such an act as the accused knew to be so imminently dangerous that it must in all

probability cause death or such bodily injury as is likely to cause death.

In other words, the prosecution should make out facts and circumstances as envisaged in Section 300 of IPC. Unless it can be said that the intention or knowledge of the accused was to cause such bodily injury as would come within the scope of Section 300 of IPC, he cannot be found guilty under Section 307 of IPC. It must be proved that if act complained of would have culminated in the death of the victim, the offence would have come within the ingredients as envisaged in Section 300 of IPC. I must hasten to add that it is not necessary that in all cases injury must have been caused to the victim to bring home the charge under Section 307 of IPC. In a given case offence under Section 307 of IPC can be said to have been committed even without the slightest injury. It is the nature of the act and not the result thereof that is the determinative factor.

19. From the materials available on record, it is apparent that while there was a quarrel, Appellant Rekhuram (A-5) took out the knife from his pocket and gave blows on the chest, palm and abdomen of Madhao (PW-2) and Madhao sustained three incised wounds. Both the Doctors Dr. V.K. Sao (PW-7) and Dr. M.C. Mahonot (PW-11) found incised wound on the right side below the abdomen which was fatal to life, but the size of the wound on the right side below the abdomen was not mentioned. The same cannot be attributed to the assault by appellant Rekhuram (A-5) beyond reasonable doubt, as the prosecution story is highly discrepant on this score. The size of the knife with which the injury was inflicted is about 10 inch including 5½ inch of the handle portion. No doubt, the assault has been given on the right side below the abdomen, but keeping in view the nature of the injury, the manner of assault as well as the fact that the incident arose out of a sudden quarrel, it cannot be said beyond all reasonable doubt that the appellant Rekhuram intended to commit the offence under Section 307 of IPC.

20. The next question is whether the offence which has been committed is one

under Section 326, or under Section 324 of IPC. If the injury caused by the action of the accused Rekhuram (A-5) was grievous in nature, there would be no escape from the conclusion that the offence is one under Section 326, otherwise it will be under Section 324 of IPC. In the present case, the Doctors, examined as PW-7 and PW-11, have baldly stated that the injury was grievous in nature or dangerous to life without giving any reason as to why they consider the injury to be grievous or dangerous to life. What is considered to be "grievous injury" under the IPC is ascertainable from Section 320 of IPC, wherein eight clauses have been included. Section 320 runs as follows :-

"320. Grievous hurt.— The following kinds of hurt only are designated as 'grievous' :

- Firstly.* – Emasculations.
- Secondly.* – Permanent privation of the sight of either eye.
- Thirdly.* – Permanent privation of the hearing of either ear.
- Fourthly.* – Privation of any member or joint.
- Fifthly.* – Destruction or permanent impairing of the powers of any member of joint.
- Sixthly.* – Permanent disfigurements of the head or face.
- Seventhly.* – Fracture or dislocation of a bone or tooth.
- Eighthly.* – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

Evidently, the injury does not come under the first seven clauses. In the present case, the injury inflicted also does not come under the 8th clause as there is no material on record to come to a conclusion that the injury endangered the life of the injured Madhao (PW-2) who was discharged from the hospital after eight days. There is no material on record to conclude that the injury caused severe physical pain for twenty days or that the victim was unable to follow his ordinary pursuits for twenty days. In the absence of any categorical evidence on record through the mouth of Doctor that the injury had endangered the life of the victim, it would not be appropriate to come to a conclusion that a grievous injury had been caused in spite of opinion of the two Doctors to the contrary.

The medical evidence is “opinion evidence” admissible under Section 45 of the Evidence Act. Medical evidence is only with regard to the physical aspects of the injury and the opinion of a medical expert on that score is relevant. The Doctor while giving evidence in court also gives evidence on facts based on his own examination of the injured. His evidence regarding the situs, the extent and the physical appearance of the injury is “evidence of fact.”, whereas his evidence regarding the possible weapon used, the nature of injury, that is to say, whether simple or grievous, is “opinion evidence”. Such opinion should be backed by actual observation as well as reasons. The records should reveal as to why a Doctor considers a particular injury to be grievous in nature. If from the facts observed by the Doctor, the court is not in a position to come to a conclusion that the injury comes within any of the eight clauses mentioned in Section 320, it becomes difficult for the court to come to a definite conclusion regarding the nature of the injury. No doubt, keeping in view the situs and the extent of injury, the court may come to its own conclusion. However, in the absence of clear materials in this case, it is difficult to come to a conclusion from the mere *ipse dixit* of the two Doctors that grievous injury had been caused. In short, it is held that offence committed is one under Section 324 of IPC and not under Section 307 or Section 326 of IPC.

21. It is stated that all accused/appellants are on bail since 05.11.1999 & 12.04.2001 respectively. It is also mentioned that as per report received from Central Jail, Bilaspur, appellant Rekhuram (A-5) had been released on 12.02.2002 after getting benefit of remission.

22. The material available on record shows that the accused/appellants Guddu @ Hemant Kumar (A-2), Rajju @ Rajesh Satnami (A-3), Punit Geda (A-4) and Rekhuram (A-5) have already remained in jail for more than three and half months. Presently, they are on bail. Therefore, keeping in mind the peculiar facts and circumstances involved in this case, this Court is of the considered opinion that no useful purpose would be served in again sending them to jail. Therefore, the

conviction of appellant Rekhuram (A-5) under Section 307 of IPC is altered to Section 324 of IPC. Likewise, conviction of appellants Guddu @ Hemant Kumar (A-2), Rajju @ Rajesh Satnami (A-3) and Punit Geda (A-4) under Section 307/149 is altered to Section 324/149 of IPC. However, their conviction under Sections 147 and 148 of IPC is kept intact. Jail sentence imposed upon accused/appellants i.e. A-2 to A-4 under the aforesaid Sections is reduced to the period already undergone by them.

23. In result, the appeal is allowed. Conviction of the appellants i.e. A-2 to A-5 under Sections 147 & 148 of IPC is kept intact. However, conviction under Section 307 of IPC of Rekhuram (A-5) is altered to Section 324 of IPC and likewise conviction of appellants Guddu @ Hemant Kumar (A-2), Rajju @ Rajesh Satnami (A-3) and Punit Geda (A-4) under Section 307/149 of IPC is altered to Section 324/149 of IPC. Since appellant Rekhuram (A-5) has already been set free after granting him the benefit of remission, there is no requirement for passing any order regarding his release or otherwise etc. However, the jail sentence imposed upon appellants Guddu @ Hemant Kumar (A-2), Rajju @ Rajesh Satnami (A-3) and Punit Geda (A-4) under the aforesaid Sections is hereby reduced to the period already undergone by them. The fine amount imposed on them (A-2 to A-5) with default sentence by the trial by the trial Court shall remain intact. They are reported to be on bail, therefore, their bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge