

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1648 of 1999

Judgment reserved on 26.09.2019

Judgment delivered on 06.11.2019

1. Panchram Nirmalkar S/o. Budhram Nirmalkar, Aged about 35 years, Resident of village Ameri, Police Station Chakarbhata, District Bilaspur (M.P.) (now C.G.)
2. Boriram Nirmalkar, S/o. Budhram Nirmalkar, Aged about 35 years, Resident of village Ameri, Police Station Chakarbhata, District Bilaspur (M.P.) (now C.G.) **(Deleted)**

---- **Appellants**

Versus

State of Madhya Pradesh through Station House Officer, P.S. Chakarbhata District Bilaspur (C.G.)

---- **Respondent**

For Appellants : Mr. Malay Shrivastava, Advocate.
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

1. The appellants have preferred this appeal against the judgment dated 19.05.1999 passed by the Additional Sessions Judge Bilaspur, in Sessions Trial No. 492 of 1998, whereby the appellants were convicted for the offence punishable under Sections 307, 307 and 324 IPC and sentenced them to undergo RI for 7 years under Section 307 IPC, RI for 7 years under Section 307 IPC and RI for 1 year under Section 324 IPC with default stipulation.

2. The prosecution case in brief is that, on 04.10.1998 FIR Ex.P-1 was lodged by complainant Hanuman Singh stating therein that on the date of incident his daughter Vandana (PW-11) came and informed him that appellant Pancharam assaulted his son Jitendra with sword like weapon. It is alleged that previously on account of taking bath in a pond there was some dispute between the son of the complainant and the appellants where some *marpeet* with him had taken place. After receiving this information, the complainant reached the spot and saw appellant Pancharam inflicting injuries on the face, jaw, stomach and rib of his son which were bleeding also. When he tried to save his son, he too was assaulted by accused Panchram with some sharp edged weapon causing injuries on his head, ear, left hand and left side of rib with an intention to cause his death. Even his daughter Vandana was also assaulted by accused Panchram. The injured persons were taken to hospital by Shriram Yadav, Mahesh Yadava and Baba Thakur but unfortunately they have not been examined by the prosecution. It is further stated by injured Jitendra that while he was being assaulted by accused Panchram, the other accused Bodiram was holding him, and thereafter taking him to be dead, both the accused appellants went into hiding. FIR Ex.P-1 was registered by Sub Inspector K. S. Ratiya (PW-5) against the appellants and thereafter the injured were admitted for their medical treatment vide Ex. P-8, 9 and Ex. P-10. After medical examination of the victims and completion of investigation charge sheet was filed against the accused/appellants under Sections 307/34 but the Court below framed the charge against both of them under Sections 307 IPC.

3. After conclusion of trial the Court below convicted the accused/appellants under Sections 307 (twice) and 324 IPC with imposition of sentence of RI for seven years u/s. 307 IPC each and that of one years under Section 324 IPC. Hence, this appeal.

4. Counsel for the accused/appellants submits that though the prosecution could not establish its case beyond all reasonable doubt yet the accused/appellants have been convicted as referred to above. Even number of contradictions and omissions in the statements of the witnesses have been ignored by the Court below while passing the judgment impugned. The Court below, according to the counsel for the appellants, has not taken into consideration the fact that the prosecution has not proved that the injuries caused by the accused/appellants were sufficient to cause death in ordinary course of nature. He further submits barring the interested witnesses, no independent witness has stood by the prosecution. As regards accused Bodiram, it is submitted that he had no role to play in the incident but yet he has been implicated in a false and concocted case.

5. State counsel however, supports the judgment impugned to be fully justified and submits that the prosecution has proved its case regarding involvement of the accused/appellants in causing grievous injuries with lethal weapons like sword to Jitendra and his father and the simple ones to Vandana, and being so, the conviction of the accused/appellants under Sections 307 (twice) and 324 IPC cannot be said to be inappropriate warranting any inference in this appeal.

6. Minute examination of the evidence of the witnesses suggests that there was some previous dispute between the accused/appellants and injured PW-2 which subsequently resulted in this bloodshed like incident. Statement of injured PW-1 Hanuman Singh, PW-2 Jitendra Singh (father and son respectively) and PW-11 Vandana (daughter of PW-1 and sister of PW-2) clearly demonstrates that on the fateful day the sole surviving accused Panchram had caused grievous injuries to Jitendra (PW-2) and when PW-1 went to his safety, he was also assaulted by him with some sharp edged weapon. Evidence further discloses that accused/appellant did not spare even Vandana (PW-11) and caused injuries to her also, may be simple in nature. As per the evidence of these witnesses, while the accused/appellant was indulged in assault, other accused Bodiram (died during pendency of this appeal) was assisting him by holding PW-2. Evidence of PW-1, PW-2 and PW-11 also receives corroboration from the evidence of PW-9 – the doctor who medically examined all the three victims. PW-9 apart from describing injuries suffered by all the three injured persons has categorically stated that on account of excessive bleeding condition of injured PW-2 was deplorable and, therefore, he was kept in the surgical ward. Likewise, on account of injuries being caused to PW-1 by some sharp edged weapon, he too was admitted in the surgical ward. Medical reports in respect of injured PW-1, PW-2 and PW-11 are Ex.P-8A, Ex.P-9A and Ex.P-10A respectively. Injuries of PW-11 however have been opined to be simple in nature by the examining doctor (PW-9). Moreover, on the disclosure statement of the accused/appellant Ex.P-7, seizure of

blood stained sword like weapon and the clothes was made under Ex.P-6. The doctor PW-9 has also given his report Ex.P-12 stating that after examining the sword produced before him he gave his opinion that the injuries to PW-1, PW-2 and PW-11 could be caused with the said weapon. He has further reiterated that the injuries to PW-1 and PW-2 could be dangerous to life in case immediate medical aid was not provided to them. Thus the act of the surviving accused/appellant in assaulting PW-1, PW-2 and PW-11 is unequivocal from the material available on record and being so the Court below has rightly arrived at the conclusion of holding the accused/appellant guilty and then imposing the sentence referred to above. No legal flaw is noticeable in the well written finding under assail in this appeal. Being based on the evidence on record the judgment impugned does not need any interference by this Court and accordingly it is hereby maintained.

7. Appeal being without any substance is therefore, liable to be and is hereby dismissed. The appellant appears to be on bail and therefore, his bail bonds stand canceled and he is directed to be arrested and sent to jail forthwith for completing the sentence imposed on him.

Sd/-
(Vimla Singh Kapoor)
JUDGE