

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.264 of 2011**

Semlal @ Bidur S/o. Chhanga Gond, aged about 50 years, R/o. Village Kanhar Para, Dhanpur, Thana Pendra Distt. Bilaspur (CG)

---- Appellant

Versus

State Of Chhattisgarh through Police Station Pendra Distt. Bilaspur (CG)

---- Respondent

AND**Criminal Appeal No. 272 of 2011**

Santan Singh, S/o. Semlal @ Bidur aged about 30 years, R/o. Village Kanhar Para, Dhanpur, Thana Pendra Distt. Bilaspur (CG)

---- Appellant

Versus

State Of Chhattisgarh Through Police Station Pendra, Distt. Bilaspur (CG)

---- Respondent

 For the appellants : Shri Bharat Rajput, Advocate
 For the respondent/State : Shri VB Singh and Smt. Shubha
 Shrivastava, Panel Lawyers

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****08.02.2019.**

1. Shri Yogendra Chaturvedi, Advocate has been engaged by the appellants, but despite repeated calls, none appeared, therefore, Shri Bharat Rajput, Advocate present in the Court is appointed as Amicus Curiae to argue the matter on behalf of the appellants.

2. Since both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

3. Both the appeals are directed against judgment dated 17.3.2011 passed by Additional Sessions Judge (FTC), Pendra Road, Distt. Bilaspur (CG) in Session Trial No.18/2010 wherein the said Court convicted appellant Semlal for the charges under Section 326 IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.1000/- and convicted appellant Santan Singh for the charges under Section 324 IPC and sentenced him to undergo RI for one year and to pay fine of Rs.500/- with default stipulation.

4. In the present case, name of the victim is Patel Gond. As per the version of the prosecution, on 19.10.2009 at about 5.00 pm both the appellants assaulted the victim by axe and club resulting fracture on his multiple bone. The matter was reported and the appellants were charge sheeted and after completion of the trial, both the appellants have been convicted as mentioned above.

5. Learned counsel for appellants submits as under:

(i) Conviction of the appellants is based on the statement of victim Patel Gond (PW-3) and his daughter Leela Bai (PW-6) but independent witness Arjun has not supported the version of the prosecution therefore, finding of the trial Court based on the statement of the interested witnesses is not sustainable.

(ii) The trial Court misinterpreted the statement of Patel Gond (PW-3) and Leela Bai (PW-06) and came to a wrong conclusion.

(iii) Seizure witnesses have not supported the version of the prosecution and there exist previous enmity between the parties which was over looked by the trial Court, therefore, finding of the trial Court is liable to be reversed.

6. 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.

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

8. In the present case date of incident is 19.10.2009. Report was lodged at Police Station Pendra vide Ex-P/5 on the next date i.e. on 20.10.2009 in which names of both the appellants were mentioned as culprits and their act of assaulting the victim is also mentioned.

9. Victim Patel Gond (PW-3) deposed that at the time of the incident, when appellant Semlal was cutting the grass of his land he made objection on that account. Appellant Semlal assaulted him by axe on his hand, shoulder, thigh and head. He further deposed that appellant Santan Singh assaulted him by club. As per the version of this witness, Leela Bai and other witnesses interfered but at the same time he fell unconscious. Version of this witness is supported by the version of Leela Bai (PW-6) who

was eyewitness account of the incident. Both the witnesses have been subjected to searching cross-examination, but they were unshaken in their statement and nothing could be elicited in favour of the defence. Version of both the witnesses is supported by version of Dr. HK Tanwar (PW-4) who examined the victim Patel Gond at Community Health Centre, Pendra and noticed following injuries:

(1) Lacerated wound on lateral aspect of left mid arm of 0.2 x 0.2 cm, swelling around the wound of 5 x 5 cm, fracture on the left humerus.

(2) Swelling and deformity on left thigh of 10 x 15 cm, lacerated wound on lateral aspect of left thigh of 1 x 1 cm

(3) Lacerated wound of left parietal of scalp of 1 x 1 cm x subcutaneous

(4) Lacerated wound over left parietal occipital region of scalp of 3 x 2 cm

As per the version of the doctor the injuries were serious in nature and caused within 12-24 hours of the examination. Version of this witness is unshaken during cross-examination and there is no other medical expert opinion contrary to the opinion of this witness, therefore, it is established from his statement that the victim suffered grievous hurt by the assault of the appellants. There is no material contradiction in the statement of the victim and minor contradictions which do not go to the root of the case are insignificant.

10. After reassessing the evidence, this Court has no reason to say that the appellants have been falsely roped with the charges

in question. Version of Patel Gond (PW-3) and Leela Bai (PW-6) and medical expert (PW-4) are unshaken, therefore, this Court has no reason to hold that the appellants have been falsely implicated on the basis of their statements. Statement of the victim and other witnesses is quite natural, inspires confidence, therefore, their version cannot be discarded. Arguments advanced on behalf of the appellants is not sustainable.

11. The trial Court convicted appellant Semlal for commission of offence under Section 326 IPC for causing grievous hurt by sharp weapon and looking to the incised wound sustained by the victim it is established that the victim had suffered grievous injury by sharp cutting object. Case of appellant Semlal does not fall in any of the exception mentioned in the IPC and, therefore, his act is with knowledge and intention. Charge under Section 326 IPC is established against appellant Semlal for which the trial Court has rightly convicted. This Court has no reason to substitute a contrary finding. Accordingly, his conviction under Section 326 IPC is hereby affirmed.

12. The trial Court convicted appellant Satan Singh for the offence under Section 324 IPC. Looking to his assault by club which is a deadly weapon his conviction is also not liable to be interfered. Accordingly, conviction of Satan Singh for commission of offence under Section 324 IPC is hereby affirmed.

13. The trial Court awarded the sentence of seven years to appellant Semlal which cannot be termed as harsh, disproportionate or unreasonable. Therefore, sentence part is also not liable to be interfered. Accordingly, appeal filed by the

appellant is liable to be dismissed. As the appellant is reported to be in jail, therefore, no order for his arrest etc. is required.

14. So far as appellant Satan Singh is concerned, he assaulted by club and the trial Court awarded minimum sentence of one year. He was in custody from 22.10.2009 to 02.02.2010 i.e. about three months and nine days. 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 appellant Satan Singh is reduced to the period already undergone by him while fine sentence imposed by the trial Court shall remain intact. With this modification, appeal filed on behalf of appellant Satan Singh is allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**