

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 245 of 2009**

1. Vijay Kumar S/o Bishat Satnami, aged about 28 years,
 2. Mahendra S/o Bishat Satnami, aged about 22 years,
 3. Govind S/o Bishat Satnami, aged about 24 years
- All are resident of Gadadih, Police Station Bori, District Durg (CG)

---- Appellants**Versus**

State Of Chhattisgarh Through District Magistrate Durg (CG)

---- Respondent

For Appellants : Mr. Pankaj Agrawal, Advocate

For State/ Respondent : Mr. Raghvendra Verma, Govt. Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****28/01/2019**

1. Shri H.S. Patel, Shri SRJ Jaiswal and Shri Shashank Thakur, Advocates have been engaged by the appellants, but despite repeated calls, none appeared, therefore, Mr. Pankaj Agrawal, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellants.
2. This appeal is preferred against the judgment of conviction and order of sentenced dated 7th July, 2008, passed in S.T. No. 194/2007 by the 12th Additional Sessions Judge (FTC), Durg (CG), wherein the said Court has convicted all the three appellants for commission of offence under Sections 326 r/w

Section 34 and 342 of the IPC and sentenced to undergo R.I. for 6 years and fine of Rs.100/-; R.I. for 6 months with default stipulation. All the sentences were directed to run concurrently.

3. As per version of the prosecution, on 14.6.2007, victim namely, Khemdas was going from village Arsi to village Bori in his motorcycle bearing registration No.CG 07 LC 4079, on his way the appellant Vijay Kumar stopped him and asked him to bring his brother Govind from the country liquor shop, Bori. The complainant brought Govind and Mahesh from Bori on which the appellant Vijay Kumar asked him to drop them at their place. On reaching the house of the accused persons, Vijay Kumar asked Govind and Mahendra to eliminate the victim and after this the accused persons took the complainant inside the house and bolted the doors from inside and started assaulting him. On hearing the cries of the victim, witnesses came to the spot and rescued him. The matter was reported and investigated and after completion of trial, the appellants were convicted and sentenced as above.
4. I have heard learned counsel for the parties and perused the record.
5. Learned counsel for the appellants submits as under :
 - (i) The trial Court has failed to appreciate the contradiction in the incident as narrated by the victim which was recorded in Dehati Nalishi as well as in the FIR and the Court statement.

- (ii) Charandas (PW8) and Vishnu (PW9) have not supported the prosecution version and there is material contradiction in the evidence given by the victim Khemdas (PW3), Shivprasad(PW4) and Devla Bai (PW13).
 - (iii) The trial Court has not appreciated the evidence rightly, therefore, finding of the trial Court is liable to be set aside.
6. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on proper marshalling of oral and documentary evidence which is just and proper and the same is not liable to interfered with invoking jurisdiction of appeal.
7. Victim Khemdas (PW3) deposed before the trial Court that all the three appellants assaulted him by axe and crowbar and he sustained injuries on different parts of his body. Version of this witness is supported by the version of Shivprasad (PW4) and Devla Bai (PW13), who are eye-witnesses to the incident. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Version of these witnesses is supported by the version of medical expert, Dr. R.K. Nayak (PW12) who examined the victim on 14.6.2007 at District Hospital, Durg and noticed following injuries :
- (i) L.W. of 1 ½ x 1 x 1 cm on left leg of medial aspect 3rd
 - (ii) L.W. of 2 x 1 x ½ cm on medial aspect of m/3rd left leg

- (iii) L.W. of 2 x 1 x ½ cm on left knee
 - (iv) L.W. two in numbers of 3 x ½ x ½ cm below right knee
 - (v) L.W. of 1 x ½ x ¼ cm u/3rd right leg
 - (vi) L.W. of 2 x ½ x ½ cm L/3 right leg
 - (vii) L.W. of 1 x ¼ x ¼ cm l/3 right leg
 - (viii) Linear scratch 1 cm on chin frontal area & left side of face.
 - (ix) Swelling & deformity on right and left ankle
 - (x) Swelling, tenderness, bozy crypt upper half left FA
8. As per version of this medical expert injuries were caused within 12 hours of the examination and he advised for x-ray of the victim. After taking x-ray Dr. A.K. Sahu (PW2) who is Radiologist opined that the victim sustained comminuted fracture on tibia bone of right leg, comminuted fracture on lower 1/3rd of fibula bone, segmental fracture on ulna of left hand and fracture on 1st metacarpal bone in left hand.
9. From the evidence of medical expert it is clear that the victim was subjected to deadly weapon and he sustained multiple fractures on his body as mentioned above. Version of direct and medical evidence is again supported by the FIR Ex. P/18 which is lodged a day after incident at Police Station Bori in which name of the appellants is mentioned as culprit and their act of assaulting the victim is also mentioned. There is no material

contradiction in the statement of any of the witness. There is nothing on record to say that the appellants have been falsely implicated in the crime in question. Evidence of the victim and other witnesses inspires confidence and therefore, it cannot be said that there is contradiction in material point. Minor contradictions which do not go to the root are insignificant in deciding the issues. Therefore, arguments advanced on behalf of the appellants is not sustainable.

10. The trial Court has elaborately discussed the entire evidence and recorded finding of conviction of the appellants for the offences mentioned above. After re-assessing the evidence, this court has no reason to record a contrary finding. Causing grievous injury by dangerous weapon is an offence under Section 326 of the IPC and confinement of the victim in the house of the appellants is an offence punishable under Section 342 of the IPC for which the trial Court has convicted the appellants and same is hereby affirmed.

11. Heard on the point of sentence:

The trial Court has awarded sentence of R.I. for 6 years for offence under Section 326 IPC, but the offence is punishable for imprisonment for life. Looking to the provisions, it cannot be said that the sentence awarded by the trial Court is harsh, disproportionate or unreasonable. Therefore, the sentence part is also not liable to be interfered with. Accordingly, the conviction

of the appellants is hereby affirmed. The appeal being devoid of merits is liable to be and is hereby dismissed.

12. It is reported that the appellants are in jail, therefore, no order for their arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
JUDGE