

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 1127 of 2012

1. Dayaram, S/o. Bhola Singh, Aged About 37 Years
 2. Dhanukdhari Singh, S/o. Jailal Singh, Aged About 52 Years,
 3. Bhagat Singh, S/o. Dhanukdhari Singh, Aged About 27 Years,
 4. Tilakdhari Singh, S/o. Harilal, Aged About 52 Years,
 5. Ramdev, S/o. Tilakdhari, Aged About 22 Years.
- All R/o. Village Shivpur, P.S. and Tah. Khadgawa, District - Korea (C.G.)

---- Appellants

Versus

State Of Chhattisgarh, Through – S.H.O., Police Of P.S. - Khadgawa, Distt. - Korea C.G.

-----Respondent

For Appellants	: Mr. Anil Gulati, Advocate
For Respondent/State	: Mr. Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

30/01/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Second Additional Sessions Judge, Manendragarh, District Korea (C.G.), in Sessions Trial No.86/2010 on 18.10.2012, convicting the appellants for the offence under Section 148 read with Section 34 of the Indian Penal Code and sentencing them to under go R.I. 3 years and fine of Rs.500/-, for the offence under Section 341 read with Section 34 of the Indian Penal Code and sentencing them to under go S.I. 1 month and fine of Rs.100/- and for the

offence under Section 307 read with Section 34 of the Indian Penal Code and sentencing them to under go R.I. 10 years along with fine of Rs.1500/- with default stipulations.

2. Facts of the case in brief is this that the victim Lalman Singh (P.W.-1) and the appellants had some enmity with respect to the possession of some land in dispute. On 04.07.2010, when the victim Lalman Singh (P.W.-1) was on his way to home from the market in Khadgawa at about 8.30 PM, the appellants having common intention to cause death of the victim, assaulted him jointly. Juvenile offenders Ram Kishun assaulted the victim on his back with battle axe and rest of the appellants assaulted the victim with clubs, sticks, hands and fist. On raising alarm, Sanjay Kumar Gond (P.W.-5) and Anita (P.W.-4) arrived on the spot, seeing them the appellants made their escape. Lalman Singh (P.W.-1) lodged FIR (Ex.P-1) in the police station. During the investigation, the victim was medically examined and statement of the witnesses were recorded. Seizure of clubs and sticks were made from the possession of the appellants in this case. On completion of investigation, charge-sheet was filed before the concerned Court.
3. Appellants were charged with offence under Section 341/34, 147/34, 148/34, 307/34 of the Indian Penal Code. The appellants denied the charges and prayed for trial. The prosecution examined as many as 11 witnesses on its behalf. On examining the appellants under Section 313, they denied all the

incriminating evidence against them and pleaded innocence and false implication. Appellant – Dhanukdhari Singh examined himself in defence under Section 315 of Cr.P.C.. On completion of trial, judgment has been delivered, in which the appellants stands convicted and sentenced as mentioned hereinabove.

4. It is submitted by the learned counsel appearing on behalf of the appellants that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The medical evidence itself shows that the intention of the appellants was not that of causing death of the victim, therefore, on the basis of the injuries found present on the body of the victim, the case would have been made out under Section 324 of the Indian Penal Code. Therefore, the conviction of the appellants under Section 307 of the Indian Penal Code is bad-in-law. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellants in that case, at least sentence imposed upon the appellants, which appears to be too harsh may be reduced.
5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. According to the statement given by Lalman Singh (P.W.-1) and other witnesses namely Anita (P.W.-4) and Sanjay (P.W.-5), the appellants assaulted the victim with intention to cause his death

and they could not succeed in the same as the witnesses arrived on the spot, therefore, no case is made out for acquittal or for reduction of the sentences. Hence, the appeal be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
8. Lalman Singh (P.W.-1) has stated that on the date and time of the incident, when he arrived on the spot of the incident, the appellants along with juvenile offender Ram Kishun and Sahdev assaulted him with clubs and battle axe. He was assaulted with battle axe by juvenile offender Ramkishun and Sahdev. When he raised alarm, his daughter Anita (P.W.-4) and son Sanjay (P.W.-5) arrived on the spot, who intervened and rescued the victim from the appellants. He has stated that he was immediately taken to the hospital, where he was admitted for treatment and thereafter sent for Baikunthpur hospital for further treatment. He has stated about lodging of FIR in the police station. In cross-examination, he has admitted about previous enmity with the appellants and he has remained firm on the statement given by him in examination in chief. Further there is no admission made by him in the cross-examination so as to hold that his statement has been contradicted.

9. Anita (P.W.-4) is another witness of the spot. She has stated that on hearing cries, from the spot of the incident, she along with her brother Sanjay (P.W.-5) arrived on the spot and saw all the appellants present on the spot armed with clubs. She also saw that her father was being assaulted by juvenile offenders Ramkishun and Sahdev and then she intervened. In cross-examination, her statement has remained unrebutted and she has denied all the adverse suggestion given in defence. Sanjay (P.W.-5) has made similar statement and his statement has also remained unrebutted and un-contradicted in his cross-examination.
10. Dr. R.P. Singh (P.W.-7) examined the injured Lalman Singh (P.W.-1) and found one lacerated wound of size 1.5x0.2" obliquely present on left side of the skull. One incised wound of size 1.5x0.1" was present on the right thumb of the victim. Another incised wound of size 4.5 x 1.5" and muscle deep was present obliquely on the left scapular region. He also found one incised wound on the right side of the lower back of size 1.5 x0.2". Contusion were found on the left side of the chest, middle of the back and another contusion again on the chest of the victim. One more lacerated wound was found in the left hand size 0.3x0.2". He has opined that incised wound were caused by some sharp object and rest of the injuries were caused by hard and blunt object. He has authored the report Ex.P-9A and advised for x-ray examination of the victim. He has further stated that by making

an observation of the x-ray plates, he has again opined in Ex.P-10-A that no bony injuries were found on the body of the victim Lalman Singh (P.W.-1) and further has given opinion vide Ex.P-11A that in case injuries could have not been treated within time, they may have proved fatal. In cross-examination, his evidence regarding presence of injuries on the body of the victim has remained unrebutted and denied all the adverse suggestion and his statement has remained un-contradicted. Rest of the witnesses examined by the prosecution are regarding investigative procedure, which needs no scrutiny and examination in this appeal.

11. After closely scrutinizing all the evidence on record of the trial Court, I am of this opinion that the prosecution has failed to establish the ingredients in this case that the appellants and the juvenile offenders had intention to cause death of the victim, however, their act comes under the definition of Section 308 of Indian Penal Code and it can be held that the appellants had intention and knowledge that as result of the act committed by them, death may have been caused of the victim. The maximum sentence prescribed under Section 308 of the Indian Penal Code is 7 years. As it has been submitted and informed to this Court that the appellants are in jail since about 6 years and 10 months, therefore, there is no need to impose further sentence to the appellants and it is a fit case in which the sentence of imprisonment can be ordered for the period already undergone

by the appellants in jail. Therefore, this appeal is allowed in part. The conviction of the appellants are modified and the appellants are convicted under Section 308 of the Indian Penal Code, instead of Section 307 of the Indian Penal Code and sentenced with the period of imprisonment already undergone by them in jail and with fine of Rs.1500/- each. In default of payment of fine further undergo R.I. for 3 months. The conviction of the appellants in rest of the offences is maintained as it is. Out of the fine amount deposited by the appellants, compensation of Rs.10,000/- be given to the victim Lalman Singh (P.W.-1) under the provisions of Section 357 of Cr.P.C.

12. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge