

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 624 of 2007

1. Mohardas Chelak, S/o- Lakoi Ram Chelak, Aged about- 32 years.
2. Ghasiram Chelak @ Jhabli, S/o- Lokairam Chelak, Aged about- 45 years.
3. Anand Ram Chelak, S/o- Kanshiram Chelak @ Makadu, Aged about-32 years
4. Kanshi Ram Chelak@ Mukadu, S/o- Lokoiram Chelak, Aged about- 55 years.

All are R/o- Village Murethi, Police Station-Mandir Hasoud, District- Raipur (C.G.)
--- Appellants

Versus

State of Chhattisgarh, Through- Station House Officer, Police Station Mandir Hasoud, District- Raipur (C.G.)

--- Respondent

For appellants in : Mr. Y.C. Sharma , Advocate

For State : Mr. Ravish Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

15/11/2019

1. This appeal is preferred against the judgment dated 9th July, 2007 passed by 11th Additional Sessions Judge, Raipur (C.G.), in Sessions Trial No. 449/2006 wherein the said Court convicted all the four appellants for charge under Sections 307 read with Section 34, 323 read with Section 34 and 323 read with Section 34 of Indian Penal Code, 1860 and sentenced them to undergo R.I. for 10 years and fine of Rs. 1000/-, R.I. for 6 months and fine of Rs.500/-, R.I. for 6 months and fine of Rs. 500/- respectively with default stipulations.

2. In the present case, name of the victim for offence under Section 307 of IPC is Devanand (PW-2) whereas Bhagwat (PW-1) and Jitendra(PW-3) are the victims for the offence under section 323 read with section 34 of IPC. As per version of prosecution, on the date of incident i.e. 9th March, 2006 at about 5 PM in front of house of Mohar Das at village Murethi, all the appellants assaulted the victims by club, fists and hands. Injury found on the head of the Devanand was fatal in nature as per medical report. The appellants were charge-sheeted and convicted as mentioned above.

3. Learned counsel on behalf of appellants submits as under -

(I) There is no evidence against the appellants Mohar Das, Anand Ram and Ghasiram for causing any grievous injury to Devanand, therefore, charge under Section 307 of IPC is not made out against them.

(ii) Evidence of prosecution witnesses is contradictory in nature, therefore, the same is not dependable to arrive any conclusion to guilt of the appellants.

(iii) The Trial Court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial Court be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the

evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. First question for consideration of this Court is as to which of the appellant is responsible for causing fatal injury to Devanand (PW-2). Bhagwat(PW-1) and Jitendra Chelak (PW-3) are the eye witnesses account to the case. As per version of Bhagwat (PW-1) the appellant Ghasiram Chelak @Jhabli assaulted Devanand by club. As per version of Devanand (PW-2) the appellant Ghasiras @ Jhabli assaulted him on his head by club, same is the version of Jitendra (PW-3). Name of Ghasiram Chelak @ Jhabli is mentioned as culprit in FIR which was lodged on the date of incident i.e. 9th March, 2006 at Police Station Mandir Hasoud. Version of prosecution witnesses is unrebutted and the same is supported by FIR. Again, it is supported by the version of Dr. K.S. Rai (PW-9) who examined the victim Jitendra and it is further supported by medical evidence of Dr. Sunil (PW-12) who opined that injuries caused on the head of Devanand were fatal in nature. From the entire evidence, it is clear that appellant Ghasidas Chelak @ Jhabli is the person responsible for causing head injury which was fatal in nature. When the number of persons have been prosecuted, the prosecution is under obligation to clarify as to which of the appellant caused fatal injury to the victim.
6. In the present case, from the entire evidence, it is established that appellant Ghasiram @ Jhabli has caused fatal injury and

no other appellants caused him any fatal injury, therefore, only appellant Ghasiram Chelak @ Jhabli is responsible for causing fatal injury which falls within mischief under Section 307 of IPC. There is no evidence against the other appellants that they caused fatal injury to Devanand.

7. The next question for consideration of this Court is as to which of the appellants is responsible for causing injury to the victim Bhagwat and Jitendra. As per version of Bhagwat all the four appellants assaulted Bhagwat and version of these two witnesses is supported by Dr. K.S. Rai (PW-9) who examined Bhagwat and found lacerated wound and contusion on his left ear, left leg, left thigh and on back side. As per version of this witness injuries were simple in nature which are caused by hard and blunt object before 12 hours of examination.
8. From the entire evidence, it is clear that the appellants assaulted Bhagwat and caused simple injury to him. From the evidence the case of the appellants does not fall in any of the exception as mentioned in the Indian Penal Code from Section 76 to 106. The appellants were aware of the fact that injuries will cause pain and injury to the victim, therefore, the act of the appellants is voluntary in nature which falls within mischief of offence under Section 323 read with Section 34 of IPC.
9. In view of the above discussion, it is not established that appellants Mohar Das, Anand Ram and Kanshi Ram caused any fatal blow to Devanand therefore, charge under Section 307 read with Section 34 of IPC is not established against

them. Their conviction for the said offence is liable to be and is hereby set aside. All these three appellants are acquitted of the said charge.

10. All the appellants have caused voluntary simple injury to Devanand which is offence under Section 323 read with Section 34 of IPC, therefore, conviction of the appellants for this Section is upheld. Therefore, conviction of the appellants for this Section is upheld. All the appellants have suffered jail term from 9th July, 2007 to 17th September, 2007 i.e 2 months 9 days and sentence awarded by the Trial Court for the said offence is reduced to the period already undergone by them. However, fine amount imposed by the Trial Court on appellants shall remain intact.

11. Appellant Ghasidas is convicted under Section 307 of IPC, 1860, his sentence awarded by the Trial Court cannot be termed as harsh, disproportionate or unreasonable, therefore, sentence part is not liable to be disturbed and appeal is hereby dismissed. As per report of the jail authority the appellant has suffered full jail term and released after getting remission. Therefore, no further order for his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge