

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1049 of 2015

1. Surendra, S/o- Dasrathi Khamhari, Aged about- 37 years, R/o- Village - Baigandih, P.S. and Post Basna, Civil and Revenue District - Mahasamund (C.G.)
2. Seetaram, S/o- Dhannu Khamhari, Aged about- 60 years, R/o- Village - Baigandih, P.S. and Post Basna, Civil and Revenue District - Mahasamund (C.G.)
3. Dasrathi, S/o- Dhannu Khamhari, Aged about- 67 years, R/o- Village - Baigandih, P.S. and Post Basna, Civil and Revenue District - Mahasamund (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through- Police Station Basna, Civil and Revenue District - Mahasamund (C.G.)

---- Respondent

For appellants : Mr. Manoj Paranjpe and Mr. Bharat Sharma,
Advocates

For State : Mr. Ishwar Jaiswal, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

14/11/2019

1. This appeal is preferred against the judgment dated 20th August, 2015 passed by Additional Sessions Judge, Saraipali, District- Mahasamund (C.G.), in sessions trial No. 12/2014, wherein the said Court convicted all the appellants for charge under Sections 307 read with Section 34 and 324 of Indian Penal Code, 1860 and sentenced to undergo R.I. for 10 year and fine of Rs. 2000/-, R.I. for 1 year and fine of Rs.1000/- with default stipulations.
2. In the present case, name of the victim is Nandlal (PW-1). As per version of the prosecution on the date of incident i.e 13th August, 2013 at about 4.30pm at village Dagandry all the

appellants in furtherance of common intension caught hold the said victim Nandlal. Appellant Surendra assaulted him by sickle on his neck. The matter was reported and investigated and appellants were charge sheeted as mentioned above.

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

(I) Evidence of prosecution witnesses are contradictory in nature, therefore, finding of the Trial Court is based on such statements which is not liable to be sustained.

(ii) Medical evidence is not corroborating evidence to the direct witnesses, therefore, finding of the Trial Court is liable to be reversed.

(iii) The Trial Court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial Court may 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 whether the victim Nandlal is assaulted by appellants in furtherance of their common intension. As per version of Nandlal (PW-1), the appellant Sitaram and Dasrathi caught hold his hand and thereafter appellant Surendra assaulted him on his neck by sickle. Version of this witness is supported by version of

Subhash (PW-2) and Jalsingh(PW-3). These witnesses are unrebutted during cross examination. Version of direct evidence is supported by the evidence of Dr. Jaiprakash Pradhan (PW-4) who examined the victim on 13th August, 2013 at Community Health Center, Basna and noticed incised wound on his neck, left side of head and left side of ear. Version of Dr. Jaiprakash Pradhan (PW-4) is supported by Dr. V.K. Singh (PW-12) that superior jugular vein was sliced and he operated the victim. From the evidence of Dr. V.K. Singh, it is established that injury was grievous in nature and same was fatal, if not treated in time.

6. From the totality of the fact, it can be inferred that appellants were attempted to kill the victim Nandlal and mischief of the appellants falls within offence under Section 307 of IPC for which the Trial Court convicted them and same is not liable to be interfered. Accordingly, offence of appellants under Section 307 of IPC is hereby affirmed.
7. Section 324 of IPC is merged with Section 307 of IPC, therefore, no sentence is required separately for offence under Section 324 of IPC. Sentence imposed on appellants for offence under Section 324 of IPC is hereby set aside.
8. Heard on point of sentence.

The appellant Surendra is in Jail since 24th February, 2012, he has suffered jail term for 5 years and about 9 months. The other appellants are in jail from date of judgment of the Trial Court i.e. 20th August, 2015 and they have suffered jail term

for 4 years and 3 months. Again, they have suffered 1 month jail term during investigation/trial. Considering the facts and circumstances of the case, this Court is of the opinion that ends of justice would be served if the jail sentence imposed by the Trial Court is reduced to period already undergone by the appellants. It is ordered accordingly. All the appellants be set at liberty forthwith, if not required in any other case.

9. Accordingly, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge