

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 791 of 2000**

- 1) Rajaram S/p Pawan Sai Mahantpanika, aged about 20 years, occupation Student & agriculturist, R/o Mohalla Machhari Kachhar, Village Marok, P.S. Kansabel, Distt. Jashpur Nagar (M.P.)
- 2) Radhelal S/o Garibdas Panika, aged 26 years, Occupation Agriculturist, R/o Village Tangerdih, P.S. & Tah. Bagicha, at present residing at Village Mohalla Machhari Kachhar, Village Marok, P.S. Kansabel, Distt. Jashpur Nagar (M.P.)

**---- Appellants****Versus**

State of M.P. through District Magistrate, Jashpur Nagar (M.P.) (Now Chhattisgarh).

**---- Respondent**


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| For Appellants | : | Ms. Pragya Pandey, Advocate |
| For Respondent | : | Ms. Smriti Shrivastava, PL  |

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Hon'ble Shri Justice Arvind Singh Chandel

**Order on Board****14/01/2020**

1. This appeal has been preferred against the judgment dated 23/02/2000 passed in Sessions Trial No. 134/1999 by the Additional Sessions Judge, Jashpur, whereby the Appellants have been convicted under Section 307/34 of the Indian Penal Code and sentenced to undergo RI for 5 years and to pay fine of Rs. 2000/- with default stipulation.
2. There is no dispute on the point that Appellant Rajaram is brother of Victim Vifundas and Radhelan is son-in-law of Vifuldas. There is also no dispute on the point that Suruchi Bai (PW2) is wife of the Victim. As

per prosecution story, on 26/07/1999 at about 7:00 pm, the Victim and his wife Suruchi Bai were returning from market and visited to the house of Sarhadas, brother of Suruchi Bai. They were talking with the mother of Suruchi Bai namely Udwaso Bai (PW3) and Phulo Bai. At that time, both the Appellants reached there. Seeing the Viful Das, both the Appellants abused him and chanting they will kill him. Thereafter, both entered into the Veranda and Appellant Radhelal caught hold Vifun Das and assaulted him by a Lathi. Appellant Rajaram also assaulted him by a spade. Due to that, the Victim sustained injuries on his head. When Udwaso Bai tried to intervene, Appellant Radhelal also assaulted her by a Lathi. Thereafter, both have fled away from the spot. The matter was informed by Kotwar Sukhsai (PW4). On the next day on 27/07/1999, Suruchi Bai (PW2) lodged FIR (Ex.P-1). On the basis of said, offence has been registered. Victim Viful Das was medically examined by Dr. Ashok Kumar Sanyal (PW8). He found that there was incised wound size 2 ½ X ½ inch bone deep on occipital region. There was swelling on left hand of the Victim. He found two injuries, first on head and second on hand. Both the injuries were of grievous nature. State of witnesses under Section 161 of the Cr.P.C was recorded. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 8 prosecution witnesses have been examined. One defence witness has been examined. Statements of the Appellants under Section 313 of the Cr.P.C have been recorded, wherein they have pleaded their innocence and false implication in the matter.

3. After trial, the trial Court has convicted sentenced the Appellants as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellants submits that the trial Court has wrongly convicted the Appellants without there being sufficient evidence available on record. All the witnesses examined by the prosecution are interested witnesses, therefore, their statements are not reliable. No independent witness has been examined by the prosecution. He further submits that from the medical evidence also, it is established that only one injury occurred on head of the victim. Since, the incident occurred in sudden quarrel, therefore, there was no intention of the Appellants to commit the murder of the Victim. Therefore, offence under Section 307 is not proved.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. Vifun Das (PW1) in his Court statement has stated that at the time of incident at about 6:00 pm, when he was returning from market along with his wife, he took shelter in the house of Sarhadas. The Appellant came there and started to abuse them. Saying to kill him, they entered into the house. Thereafter, Appellant Rajaram assaulted him by a spade on his head. When he fell down then Appellant Radhelal assaulted him by a Lathi in his leg and hands. Thereafter, he Appellants fled away from the spot. According to this witness, the

incident was witnessed by Udwaso Bai (PW3), Phulo Bai and Suruchi Bai (PW2). The above statement of this witness is duly corroborated by Suruchi Bai (PW2) and Udwaso Bai (PW3). Both have categorically stated that at the time of incident, Suruchi Bai and Vifuldas were in the house of Udwaso Bai. At that time, both the Appellant came there and assaulted the Victim by a spade and Lathi. Due to assault, the Victim sustained injuries on his head and leg. Suruchi Bai (PW2) further deposed that the matter was informed by them to the Kotwar Sukhsai (PW4), who supported the above statements of these witnesses and stated that at the time of incident, he was also returning, when he reached to the house of Sarhadas, he saw Vifuldas in injured condition. At that time, Suruchi Bai and Udwaso Bai told him that the Appellants had assaulted Vifuldas. According to this witness, the Victim was in unconscious condition at that time and on the next day, the Injured/Victim was taken to the police station and thereafter to the hospital. There, he was treated by a doctor.

8. Ghuran Ram Bhagat (PW7) is the witness who recorded FIR (Ex.P-1). During course of investigation, according to this witness, he prepared spot map vide Ex.P-7 and recorded statement of witnesses under Section 161 of the Cr.P.C.
9. The Injured/Victim was medically by Dr. Ashok Kumar Sanyal (PW8) on 27/07/1999. According to this witness, he found two injuries on the body of the Victim. First injury was on his occipital region size 2 ½ X ½ inch bone deep, second injury was swelling in the left hand size 1 ½ X 1 inch. There was pain in the injury. This witness has advised for X-ray for both the injuries. On being examination of X-ray, it was found

that the skull bone was broken and both the bones of left hand were broken. According to this witness, Injury No. 1 was caused by hard and sharp object and injury No. 2 was caused by hard and blunt object. The nature of injuries was grievous, which were caused within 24-48 hours. According to this witness, injury No. 1 was dangerous for life to the victim. This witness has denied the suggestion that injuries was caused due to falling on the stone.

10. On minute examination of above evidence, it makes clear that there was some previous dispute between the Appellant and the Complainant. From the statement of Viful Das (PW1), it is also established that at the time of incident, when he was in the house of Udwaso Bai along with his wife, both the Appellant came there and by saying to kill him, they assaulted him by a Lathi and spade. Both Suruchi Bai (PW2) and Udwaso Bai (PW3) have duly supported the above statement of the Injured/Victim. All the witnesses were remained firm during their cross-examination. Though Suruchi Bai (PW2) and Udwaso Bai (PW3) are close relatives of the Victim/Injured, only on this account, their statement cannot discarded. Sukhsai (PW4) also supported the statement of above witnesses. From the statement of above witnesses, it is duly proved that Viful Das was assaulted by the Appellant by a spade and Lathi. From the statement of Dr. Ashok Kumar Sandyal (PW8) and his report, it is also established that though Viful Das sustained only two injured, out of them one injury has been caused on occipital region and according to this witness, both the injuries were of grievous nature, and injury No. 1 was dangerous to life. Thus, on the basis of above evidence, the trial Court has rightly

convicted the Appellants under Section 307/34 of the IPC.

11. With regard to the sentence part, Appellant No. 1 Rajaram has undergone about 7 months and Appellant No. 2 Radhelal has undergone about 5 months, there is no previous antecedent registered against him and they are facing the *lis* since 1999, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellants, the jail sentenced awarded to them is reduced to 3 years against each of the Appellants.
12. Consequently, the appeal is partly allowed. The conviction of the Appellants under the aforementioned sections is affirmed and their sentence under Section 307/34 is reduced to 3 years against each of the Appellants.
13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-  
**(Arvind Singh Chandel)**  
Judge