

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2517 of 1999

Judgment reserved on 07.11.2019

Judgment delivered on 22.01.2020

1. Hriday Ram Patel, S/o Shri Chandan Singh Patel, Aged about 45 years,
 2. Salikram S/o. Chandan Singh Patel, Aged about 40 years,
- Both cultivators resident of village Sahaspuri, Police Station Pussore, District Raigarh (MP)

---- Appellants

Versus

State of Madhya Pradesh through the District Magistrate,
Raigarh (MP) now CG

---- Respondent

For Appellants -	Shri Gajendra Kumar Sahu, Advocate
For Respondent -	Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

The facts of the case in brief are that on 28.05.1998 at about 4.00 PM when injured Suklambar (PW-2) and his brother Ajitram (PW-1) were erecting wall, the accused/appellants came there, objected to the raising of wall and also dismantled the same. When PW-2 asked as to why his wall was being dismantled, accused/appellants started abusing and that accused Salikram caught hold of his waist and then accused/appellant Hridayram inflicted injuries on his head with the help of crowbar as a result of which he fell down and his injury started bleeding. Etwar (PW-4), Shoukilal (PW-5), Bhuru (PW-6) and Amilal (PW-7) are said to have seen the incident. Subsequently, Ajitram (PW-1) took his injured brother (PW-2) to the Police Station in a jeep where FIR (Ex.P-1) was registered against the accused/ appellants under Sections

307/34 IPC. After medical examination of the injured, and completion of investigation charge sheet was filed against the accused/appellants under the same section followed by framing of charge accordingly. During investigation, seizure of pillow kept under the head of the victim was made under Ex.P-2 and that of crowbar from accused Hridayram was made under (Ex.P-3) and that of club from accused Salikram was made under (Ex.P-4) - all in presence of witnesses Satyanand (PW-3) and Shoukilal (PW-5).

2. Learned court below vide judgment dated 16.09.1999 passed in Sessions trial No. 99/98 convicted the accused Hridayram Patel under Section 307 IPC and accused Salikram under Section 307/34 IPC and sentenced each of them to undergo RI for four years. Hence, this appeal.

3. Counsel for the accused/ appellants submits that the findings recorded by the Court below are contrary to the material available on record and therefore, they are liable to be set aside. He submits that the so called eyewitnesses PW-4, PW-5, PW-6 and PW-7 though have turned hostile yet this fact has been ignored by the Court below while passing the judgment impugned convicting and sentencing the accused/appellants for causing injuries to PW-2. He further submits that the statement of defence witnesses has also not been considered by the court below.

4. State counsel however, supports the judgment impugned and submits that the findings recorded by the Court below being strictly in accordance with law, are not required to be interfered with.

5. Injured (PW-2) has stated in his evidence that on the date of incident when he was raising wall in the presence of labourers examined as PW-4, PW-5, PW-6 and PW-7, the accused/ appellant Hridayram who was carrying crowbar and accused Salikram who was carrying a club came there and started pulling down the wall. According to this witness, when he tried to stop the accused/ appellants from doing so, they started abusing, that accused Salikram caught hold of his waist and accused Hridayram inflicted

injuries on his head with the crowbar, as a result of which he fell down. Seizure of blood stained cloth was also made from him under (Ex.P-2). Ajitram (PW-1) - the brother of injured who was also present at the time of incident has supported the case of the prosecution stating in the same manner like PW-2. He is also the lodger of the report (Ex.P-1). This witness has specified that on account of the crowbar injuries inflicted by the accused/appellants, PW-2 had fallen down and become unconscious. He however has denied that injured PW-2 had caught hold of accused Hridayram and that when Satyanand (PW-2) was assaulting him (Hridayram), he bowed down as a result of which the blow fell on the head of PW-2. Though the eyewitnesses PW-4, PW-5, PW-6 and PW-7 have turned hostile yet the evidence of Etwar (PW-4) supports the fact that when the wall was being raised by PW-2, accused/appellants Salikram and Hridayram armed with club and crowbar respectively came there and thereafter on account of fear he ran away. Doctor R.N. Mandavi (PW-8) who examined the injured vide report (Ex.P-9) has stated that there was incised wound on his head in the size of $4 \times \frac{1}{2} \times \frac{1}{2}$ cm which was grievous in nature. Radiologist- M.D. Joshi (PW-11) has stated that there was fracture on the left side of frontal bone of the head of PW-2 vide report (Ex.P-12). During hospitalization, the injured also received treatment from Dr. A.M. Gupta (PW-9) and Dr. A.K. Bajpai (PW-13) and they both have supported the case of the prosecution. PW-13 has even stated that the victim remained hospitalized for 11 days. Satyanand (PW-3) another eyewitness has also supported the case of the prosecution stating in the same terms like PW-1 and PW-2. He has been specific in stating that on account of crowbar injuries caused by accused Hridayram to the victim after being held by accused Salikram, it started bleeding and then he was taken to police station by PW-1. This witness has also supported the seizure of *lathi* from accused Salikram under (Ex.P-3) and that of crowbar made from accused Hridayram under (Ex.P-4). According to Doctor (PW-8), the injuries to the victim could have been caused with the crowbar produced before him for examination and his report to this effect is (Ex.P-10). This Court does not find any force in the evidence of the defence

witnesses that as accused Hridayram tried to ward off the blow of Satyanand (PW-3), it fell on PW-2 making him suffer injuries on head. All this appears to be an afterthought on the part of the defence just to save the accused/ appellants from the clutches of law, and being so, it is hereby struck down. Evidence of PW-1, PW-2 and PW-3 duly corroborated by the medical evidence does not give any scope to this Court to take a view other than the one taken by the Court below. The manner in which the accused/ appellants approached the victim carrying crowbar and club, objected to the raising of wall, even started dismantling the same and when PW-2 tried to stop them from doing so, accused Salikram held him and then accused Hridayram dealt a crowbar blow on his vital part being head with such an intensity that the victim started bleeding and became unconscious and remained hospitalized for 11 days, demonstrates the intention and knowledge on the part of the accused/ appellants that such bodily injuries could cause death in the ordinary course of nature.

6. In view of the aforesaid discussion, there appears to be no illegality or irregularity in the conviction part of the judgment impugned and accordingly it is hereby maintained. As regards sentence, considering the incident being quite old having occurred in the year 1999, that by now the accused/appellants must have been bearing the burden of family liabilities and that they have already remained inside for about a year, this court is inclined to reduce their sentence to the period already undergone by them, in the interest of justice. Ordered so. Since the accused/appellants are already on bail, no observation to set them free etc is needed.

7. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)
Judge