

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 354 of 2008

1. Nihal Sharma S/o. Late Shri Parasram Sharma, aged about 23 years,
2. Deepak Ojha S/o. Krishna Kumar Ojha, aged about 26 years,
3. Raju Ganveer S/o. Shri Ghasiram Ganveer, aged about 23 years,
Appellant No. 1 to 3 residence of Naharnaka Chowk Dhamtari,
District Dhamtari (CG)
4. Rekhram S/o. Chandulal Dhruv, aged about 26 years, R/o. Village
Karetha, Thana Arjuni, District Dhamtari (CG)

---- **Appellants**

Versus

State of Chhattisgarh, through District Magistrate, Dhamtari, District
Dhamtari (C.G.)

---- **Respondent**

For Appellants : Mr. Sunil Sahu, Advocate.

For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

24.08.2020.

As per prosecution story, the incident is said to have taken place on 26.01.2006 at about 4.45 PM, when the complainants were coming on a Heropuch moped from Kukrel, Kantabhanji to Dhamtari and

reached Achhota bridge the appellants who were already standing there started quarreling with Chhabilal saying that he was eve teasing with the girls. On seeing the quarrel, the complainants started their vehicle and went ahead from there and when they reached near Shanti Ghat, then the appellants also came there and stopped Chhabila and abused him thereafter appellant No.1 took a small bat and assaulted on the head of Chhabilal, as a result of which he became unconscious and when Tokan Lal (PW-10) intervened in the scuffle then he was beaten by the appellants. The incident was seen by Chintaram, Vedram, Omprakash and thereafter, FIR (Ex.P-15) was lodged by (PW-10) in police station. After completion of investigation, charge sheet was filed against the appellants under Sections 341, 294, 323/34, 307/34 IPC followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 19.03.2008 passed in Sessions Case No. 08/2006 acquitted the accused/appellants under Sections 294, 323/34 IPC but has held them guilty under Section 307/34 IPC with imposition of sentence of three years RI and to pay fine of Rs. 500/- each under Section 307/34 IPC. Hence, this appeal.

3. Counsel for the appellant submits that the judgment of conviction and order of sentence passed by trial court is arbitrary, illegal and contrary to the evidence collected by the prosecution. Learned counsel for the appellants submits that the star witnesses have turned hostile and not supported the case of the prosecution. He submits that the evidence adduced by the prosecution is not sufficient to establish the

guilt because the basic ingredients of the offence is lacking in the present case. He submits that there are number of contradictions and omissions in the statements of witnesses which makes the case of the prosecution doubtful. Lastly, he submits that even if the testimony of injured Chhabilal and Token Lal is accepted at their face value, no offence under Section 307 IPC would be made out as none of the injuries was ultimately found to be dangerous to life.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. The evidence of the witnesses in particular that of victim Chhabilal (PW-9) and Tokenlal (PW-10), makes it explicit that on the date of incident the dispute arose between the parties merely on the trivial matter and after some verbal altercation both the group parted their ways. The record further shows that when victim (PW-9) and (PW-10) came near a bridge called Achhota pull, the accused/appellants followed them and again started an altercation with them. During verbal altercation accused Nihal Sharma picked up a wooden bat (locally called as *Kutela*) and gave an intense blow on the head of the victim (PW-9), as a result of which he became unconscious, fell on the ground and his wound started bleeding profusely. Evidence on record

further shows that when Tokenlal (PW-10) came to intervene in the matter, the other accused persons also thrashed him with hands and fists causing number of injuries on his body. Chabbilal (PW-9) was hospitalized and a lacerated wound was noticed by Dr. D.S. Dev (PW-11) on the middle of his head vide report Ex.P-16. According to the doctor, the blow on the head of PW-9 could have been caused by some hard and blunt object. X-ray report taken of by Orthopedic surgeon, however, does not spell out any fracture on the head of the victim (PW-9). One thing which is worth mentioning here is that after first altercation between the parties, there was ample opportunity for the accused/appellants to cool down but they did not do that and nurturing an evil intention to cause injury to PW-9 they moved ahead, again met him near Shanti Ghat, picked up verbal altercation with them where accused Nihal Sharma lifted up a small wooden bat and dealt a blow on the middle of his head making him unconscious there and fall on the ground coupled with profuse bleeding. The part of the body chosen by the accused party for causing injuries to the victim shows their intention to inflict such injuries to PW-9 which may be dangerous to life in the ordinary course of nature. Of course, the accused/appellants did not use any deadly weapon while causing injuries to PW-9 but this is not the end of the matter in a case falling under Section 307 IPC. The determinative factors for gathering the intention of the accused/appellants are many in number i.e. the weapon used, the intensity with which it was used, and the part of the body chosen for assault. May be, in this case the weapon used for

commission of the crime is a wooden bat but the part of the body chosen for making assault was the head which is termed as the vital one. Thus, the material on record clearly shows that while causing injuries on the head of the victim PW-9, their intention was to cause such bodily injuries which could be fatal to his life but fortunately the victim was lucky enough to survive the said attack. The act of the accused/ appellants, therefore, clearly falls under Section 307 IPC, and being so their conviction under the said section cannot be said to suffer from any legal flaw warranting any interference by this Court, and being so, it is hereby maintained.

7. As regards sentence, keeping in view the fact that the incident had taken place in the year 2006, that the accused/appellants have already remained in jail for a period of about 23 days and further that by now they must be leading a well settled life saddled with innumerable responsibilities, this Court thinks it proper to reduce the sentence imposed on them to the period already undergone.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi / Santosh