

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1266 of 2003

1. Jairam Gond, aged about 30 years, S/o Sahua Gond,
2. Butan Gond, aged about 30 years, S/o Hublal Gond,
3. Jeetu Gond, aged about 40 years, S/o Sahua Gond,
All R/o Village Ganeshpur, Police Station Jainagar,
Tahsil & District Surguja (CG). ---Appellants

Versus

State of Chattisgarh through the Police Station Jainagar,
Tahsil & District Surguja. ---Respondent

For Appellants : Mr. Shobhit Koshta, Advocate

For Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

17.08.2020

It is alleged that some days prior to the incident victim Ramadhar (PW-1) had caught accused Jeetu red handed while committing theft of wood from the jungle. Thereafter, on 02.12.1997 at about 6:30 PM when victim (PW-1) was accompanying Daljeet (PW-2) and as soon as they reached near their house, the accused/appellants who were already waiting for the victim, waylaid him and opened an assault with the help of Lathis and sword. The accused Jeetu is alleged to have caused club injury on the head of victim (PW-1) and when he fell down on the ground, the other accused persons also pounced upon him and inflicted injuries with Lathis and sword carried with them. On hearing the cries raised by the injured, his family members namely Shiv Prasad, Manohar (not examined) and Moharlal (PW-7) rushed to the spot but on seeing them the accused/appellants fled away. Victim (PW-1) was thereafter taken to hospital at Vishrampur from where looking to the

injuries suffered by him he was referred to District Hospital, Ambikapur and from there to Medical College Raipur. FIR (Ex.P-1) was lodged by the nephew of the victim namely Daljeet (PW-2) on the same day based on which offence under Section 307/34 IPC was registered against them. After completion of investigation the charge sheet was filed and the charge framed under the same section.

2. Learned Court below vide judgment under challenge in this appeal dated 13.11.2003 delivered in Sessions Trial No.115/1998 found the allegations made against the accused/appellants duly proved and thus held them guilty under Section 326/34 IPC by exonerating them from the charge under Section 307/34 IPC. Hence this appeal.

3. Counsel for the accused/appellants submits that if the evidence examined by the prosecution is considered in the right perspective, no offence under Section 326/34 is made out against the accused/appellants. He further submits that even the testimony of so called eyewitness namely Daljeet (PW-2) has not been given thoughtful consideration while passing the judgment impugned. According to the counsel for the accused/appellants though the important witnesses being PW-4 and PW-7 have not supported the case of the prosecution and have been declared hostile yet the Court below has arrived at an erroneous conclusion of holding the accused/appellants guilty under Section 326/34 IPC. As a last resort, counsel for the accused/appellants however submits that if this Court does not interfere with the conviction part of the judgment

impugned at least the sentence imposed on him may be reduced to the period already undergone.

4. State counsel however supports the judgment impugned and submits that looking to the evidence of the victim (PW-1), eye witness (PW-2), as also keeping in mind the medical evidence where depressed fracture was found on right skull bone, their conviction under Section 326/34 IPC is fully justified and cannot be interfered with by this Court in this appeal.

5. From the evidence of victim (PW-1) it appears that preceding to the date of incident victim (PW-1) had caught accused Jeetu red handed while stealing wood from the jungle and thereafter on 02.12.1997 when he along with PW-2 was on the way to their home, the accused persons stopped them and opened an assault on him. Accused – Jeetu is stated to have inflicted a club blow on the head of PW-1 as a result of which he fell down on the ground and his wound started bleeding. Evidence of Daljeet (PW-2) also supports the case of the prosecution where he has narrated the entire incident seen by him stating that on the date of incident when he was accompanying the victim, the accused/appellants met them on the way and started assaulting the victim (PW-1) with Lathis carried by them. Further on the memorandum of accused/appellants being Ex.P-4, Ex.P-6 and Ex.P-14 seizure of club was made under Ex.P-3, Ex.P-5 and Ex.P-7 from their possession. Further the evidence shows that accused Jairam was carrying a sword with him which fell off while leaving the spot and was picked up by Daljeet (PW-2). The said sword was subsequently seized on being produced by Daljeet (PW-2) vide seizure memo Ex.P-2. From the evidence of Daljeet

(PW-2) it is evident that accused Jairam was in a possession of sword and the other were carrying Lathi. Dr. MK Jain (PW-6) the Orthopedic Surgeon is the witness who has taken x-ray of the victim and stated that there was depressed fracture on right skull bone of the victim and the report given by this witness is Ex.P-9. Dr. PK Sharma (PW-12) who medically examined the victim (PW-1) has stated that he noticed lacerated wound on his forehead and right parietal region which was profusely bleeding and for determining the grievousness of the injuries x-ray was suggested by him. According to him injury on forehead was caused by hard and blunt object whereas that on right parietal region was caused by hard and sharp edged weapon. Thereafter the victim was referred to District Hospital Amibkapur. This witness has further opined that the injury on forehead could have been caused by Lathi and the other one on the right parietal region by the sword. Though the circumstances are not suggestive of the fact that accused/appellants were having an intention or knowledge to cause such bodily injuries which could have been fatal to the life of the victim in the long run yet the evidence very much makes it clear that they had caused grievous hurt like depressed fracture on the skull of the victim as is evident from the medical evidence which is provided in Section 320 IPC. What appears to have enraged the accused/appellants against the victim appears to be that some days before the incident victim (PW-1) had nabbed accused Jeetu while committing theft from the jungle but while doing so the victim does not appear to have gone wrong rather he did the lawful act. Thus the act of the accused/appellants under Section 326/34 IPC is well founded and based on the proper appreciation of the evidence collected by the prosecution. The Court

below has not gone wrong in giving a finding to the effect that the accused/appellants are guilty under Section 326/34 IPC. The conviction of the accused/appellants is therefore, maintained.

6. As regards sentence, considering the fact that the incident had taken place in the year 1997 and since then the accused/appellants who happened to be the members of same family have suffered a lot by fighting a prolonged legal war and also keeping in mind the fact that they have already spent about 3 months in jail, this Court deems it just and proper to reduce their jail sentence to the period already undergone. Ordered so. No order regarding their release etc. is necessary as the appellants are already enjoying the bail.

7. With the observations made above the appeal succeeds in part.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/Ajay