

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 981 of 2007**

1. Phiran Lal, S/o. Netram, aged about : 52 years,
2. Prakash Chand, S/o. Phiran Lal, aged about 28 years,
3. Ramvilas, S/o. Phiran Lal, aged about 26 years.
4. Sobharam, S/o. Phiran Lal, aged about : 21 years.

From appellant No. 1 to 4 R/o. T.P.S. Darri, Distt. Korba (C.G.)

---- Appellants

Versus

- State Of Chhattisgarh Through : District Magistrate, Janjgir-Champa (C.G.)

---- Respondent

For appellants	: Mr. A.D. Kuldeep, Advocate on behalf of Shri C.R. Sahu, Advocate.
For Respondent/State	: Mr. Sameer Sharma, Deputy Advocate General

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

14/10/2020

01. Proceedings of the matter have been taken-up and heard through Video Conferencing.
02. This appeal arises out of the judgment of conviction and order of sentence dated 29th September, 2007 passed by Additional Sessions

Judge, Sessions Division, Janjgir-Champa in Sessions Trial No. 132/2006, whereby the appellants/accused persons stand convicted & sentenced as under:

Conviction	Sentence
Under Section 147 of the Indian Penal Code	Rigorous imprisonment for one month with fine of Rs.500/-, in default of payment of fine, to further undergo rigorous imprisonment for two months
Under Section 323/149 of Indian Penal Code. For causing hurt to Amritlal (PW02)	Rigorous imprisonment for one month with fine of Rs. 500, in default of payment of fine, to undergo rigorous imprisonment for two months.
Under Section 323/149 of Indian Penal Code. For causing hurt to Shivnath (PW03)	Rigorous imprisonment for one month with fine of Rs. 500, in default of payment of fine, to undergo rigorous imprisonment for two months. All the sentences were ordered to run concurrently.

03. Case of the prosecution, in brief, is that on the fateful day i.e. on 11.07.2005, at about 10.00 am when complainant Shivnath and his father- Amritlal were coming together on bicycle towards their home, on account of some previous enmity / dispute, son-in-law of Chaitibai namely Phiranlal, appellant No. 1 herein, and his sons namely Prakash Chand, Ramvilas & Shobharam, appellants No. 2 to 4 herein and another co-accused – D (Juvenile) assaulted the complainant (Shivnath) and his father Amritlal with the help of Axe (*Tangi*) & bamboo sticks, as a result thereof, they sustained multiple injuries.

Incident was witnessed by Kalabai, wife of Narottam (PW-1) and other witnesses. FIR (Ex.P-1) was lodged by Narottam (PW-1) on the same day of incident i.e. within 1 and ½ an hour of the incident. Spot map (Ex.P-3) was prepared by Investigating Officer – B.P. Singsariya (PW-9). One towel (*Ghamchha*) of complainant Shivnath and bloodstained full shirt of his father Amritlal were seized vide Ex.P-4. Memorandum statement of accused-Phiranlal Suryawanshi was recorded vide Ex.P/6 and memorandum statement of Prakash Chand Kariyare was recorded vide Ex.P/7. One bamboo stick was recovered from accused- Prakash Chand vide Ex.P-8 and one bamboo stick was recovered from accused – Ram Bilas Kariyare vide Ex.P/9, one bamboo stick was recovered from Shobharam Kariyare vide Ex.P/10 and one tangi was seized from accused Phiran Lal vide Ex.P-11. From the place of occurrence plain soil and bloodstained soil were seized vide Ex.P-12. Arrest memo of the accused persons were prepared vide Ex P-14 to P-18.

04. After usual investigation, chargesheet filed against the appellants/accused under Sections 147, 148, 149, 307 & 324. After filing of charge sheet, trial Court framed charges against all the accused persons under Sections 147, 148, 307 read with Section 149 & 323 read with Section 149 of the IPC. Accused persons denied the charges framed against them and prayed for trial. Another “D” being juvenile was charge sheeted and tried separately before the Juvenile Justice Board.

(05) So as to hold accused persons guilty, prosecution examined as many as. 10 witnesses namely Narottam Prasad (PW-1), Amritlal (PW-2), Shivnath (PW-3), Kala Bai (PW-4), Ashwani (PW-5), Ramnarayan

(PW-6), Dhaniram (PW-7), Badri (PW-8), B.P. Singsariya (PW-9) and Sonaram (PW-10). Statements of accused persons were recorded under Section 313 in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. They have taken a defence that due to previous enmity / dispute between them and the complainant party, they have been falsely implicated in the crime in question. However, no defence witness has been examined on behalf of the appellants/accused persons.

(06) Learned trial judge after due appreciation of the oral and documentary evidence available on record, acquitted one accused person namely-Chaitbai whereas convicted and sentenced the remaining accused persons namely Phiran Lal, Prakash Chand, Ramvilas & Sobharam as mentioned in paragraph two of this judgment.

(07) Learned counsel appearing for the accused/appellants submits that appellants have been falsely implicated in the crime in question as neither any independent witness has supported the case of the prosecution nor doctor was produced by the prosecution to prove the injuries sustained by the complainants/victims. He submits that due to previous land dispute between the accused/appellants & the complainant party, accused/appellants have been falsely implicated in this case. He also submits that learned trial Court has erred in not examining Dr. K.K. Thawait, who has treated the complainants, to prove the injuries sustained by the complainants and, therefore, injuries sustained by the complainants were not duly proved and the

prosecution has failed to prove its case beyond all reasonable doubts. The testimonies of prosecution witnesses are not reliable as there are various contradictions and omissions in the same and, therefore, the trial Court is absolutely unjustified in convicting and sentencing the accused/appellants as aforementioned.

(08). On the other hand, learned counsel for the State while supporting the impugned judgment submits that after properly appreciating the material available on record, the trial Court has rightly convicted and sentenced the accused/appellants as aforementioned, which does not call for any interference.

(09) I have heard learned counsel appearing for the parties and perused the record and the impugned judgment.

(10) It is not disputed by the prosecution that Dr. K. K. Thawait, who conducted the medical examination of the complainants, was not examined as prosecution witness before the trial Court. Now, I consider the evidence available on record. FIR (Ex. P/1) was lodged by Narottam Prasad (PW-1) but he is not the eyewitness to the incident. On the basis of information received from his wife- Kalabai about the incident that all accused persons assaulted the complainants, Narottam Prasad (PW-1) reached at the hospital where the complainants were treated by the doctors and lodged the FIR (Ex.P-1). He himself admitted before the Court that he is not the eyewitness to the incident and he has not seen the incident, as such, there are no contradictions and omissions were found in the FIR and his statement.

(11) Amritlal (PW-2) & Shivnath (PW-3) both are the injured witnesses they have stated that all accused persons assaulted them

when they were coming together on the bicycle with the help of club and *tangi*, as a result thereof, they sustained multiple injuries and became unconscious. There is no reason whatsoever to disbelieve the statements of the aforesaid witnesses.

(12) Kala Bai (PW-04) & Ashwani (PW-5) both are the eyewitnesses to the incident and supported the statements of complainants namely Amritlal (PW-2) & Shivnath (PW-3).

(13) Ramnarayan (PW-06) also reached the place of occurrence when his wife informed that Amritlal & Shivnath were beaten by Phiranlal and his four sons and, thereafter, when he reached the house of Amritlal, he saw Shivnath and Amritlal both were in badly injured condition and, thereafter, they were taken to the hospital for treatment. Thus, there is no reason to disbelieve the statements of all the above prosecution witnesses, which finds corroboration from the prompt FIR (Ex.P-1) lodged by Narottam Prasad (PW-1) immediately after the incident i.e. within 1 and ½ an hour of the incident.

(14) B.P. Singsariya (PW-9), Investigating Officer has proved all the documents such as Ex.P/1, P/4, P/6, P/7, P/8, P/10 and P/14 to P/18 and there is no reason to disbelieve on his statement.

(15) It is true that no medical evidence was adduced and proved by the prosecution establishing its case but all the prosecution eyewitnesses have stated in their statements that Amritlal (PW-2) & Shivnath (PW-3) were found in injured condition and blood was oozing, and thereafter they were taken for treatment in the hospital. Since the injured/complainants- Amritlal (PW-2) and Shivnath (PW-3) have categorically stated as to the manner in which they were assaulted by

the accused/appellants as a result of which they sustained injuries and the same has been duly proved by the eyewitnesses namely- Kalabai (PW04) and Ashwani (PW05), merely on the ground of non-examination of the treating doctor or non-production of the medical reports of the injured persons, the otherwise reliable and unrebutted popular evidence cannot be discarded.

(16) In this case it has come on record that the accused/appellants alongwith one juvenile accused "D" constituted unlawful assembly and in furtherance of their common objects the appellants assaulted Amritlal (PW-2) & Shivnath (PW-3) as a result of which they sustained simple injuries. Accused- Chetibai has been acquitted of all the charges by the trial Court and no appeal against her acquittal has been filed by the State.

(17) On the basis of aforesaid discussion this Court is of the opinion that the trial Court has rightly convicted and sentenced the appellants by the impugned judgment which needs no interference by this Court.

(18) In view of foregoing, the criminal appeal, being devoid of merit, is liable to be and is hereby dismissed.

(19) As per paragraph 21 of the impugned judgment, the appellants have already completed the jail sentence of one month during trial i.e. from 13.07.2005 to 12.08.2005 and since all the sentences were directed to run concurrently, they were not sent to jail. However, they were directed to pay total fine of Rs. 1,500/-each or else to suffer default sentence of two months of each count. From the order-sheet dated 29.09.2007 of the trial Court it reflects that each of the accused/appellants has deposited Rs. 300/- with the trial Court and

sought time for depositing the remaining fine amount of Rs. 1200/- each. Therefore, if the remaining amount has not been paid by the appellants, they are directed to deposit the same with the trial Court.

Sd/-

(Gautam Chourdiya)
Judge