

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 684 of 2003**

- Murlidhar, S./o. Shri Kanhailal Patel, Aged about 34 years, Occupation Agriculture, R/o. Village Tilaipali, Police Station and Tahsil Saraipali, District Mahasamund (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Saraipali, District Mahasamund (CG)

---- Respondent

For Appellant	: Shri Abhishek Pandey, Advocate
For Respondent/State	: Shri Ishwar Jaiswal, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board By Virtual Hearing****08/07/2021**

This appeal arises out of judgment and order dated 14.05.2003 passed by the First Additional Sessions Judge, Mahasamund (CG) in S.T. No. 451/2002 convicting the accused/appellants under Sections 341 and 326/34 IPC and sentencing them to undergo SI for one month and RI for five years and fine of Rs. 500/- respectively with default stipulations.

2. As the prosecution story unfurls, earlier the complainant was the Sarpanch of Village Bijatipali. Accused/appellant Muralidhar used to quarrel with his wife and often use to throw her away from the house upon which, the complainant used to make him understand as he was the Sarpanch of the village at that time, but the appellant did not liked

and on account of which, the appellant and his father were having enmity with him. On the date of incident i.e. 31.08.2002, at about 6.45 a.m. when the complainant was going towards his field, on the way the appellants were standing holding *lathi* and *axe* in their hand. On seeing him, they started abusing and assaulted with club and axe on his head. When he shouted for help, some of the villagers intervened and thereafter report was lodged at police station Saraipali and he was taken for medical examination to Community Health Centre, Saraipali where the doctor has examined and found lacerated wounds on the head and forearm. He was then referred to Medical College Hospital, Raipur. After investigation, charge sheet was filed against the appellants under Sections 341 294 and 307/34 IPC.

3. In support of its case, prosecution has examined 10 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, considering the entire evidence on record, by acquitting the appellants under Section 307 of IPC altered their conviction under Sections 341 and 326/34 IPC and sentenced each of them to undergo 1 month simple imprisonment and 5 years rigorous imprisonment with fine of Rs.500/-. Hence the present appeal. It is stated that during pendency of the appeal, appellant No.2 has died.

5. Counsel for the appellant submits that injured Bhojram has sustained one fracture of mandible bone on the left side and except the

said injury all others were simple in nature. He submits that the statement of Rajendra Kumar Patel (PW-1) son of the injured as well as the doctor (PW-8) has stated that the injuries were simple in nature. the accused/appellant has been falsely implicated in the crime in question. He submits that the incident took place about 19 years back, appellant has already remained in jail for about 11 months and therefore his sentence be reduced to the period already undergone by him.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Close scrutiny of the evidence makes it clear that on the date of incident, accused/appellants with an intention to kill the injured, waiting for him and when he was on the way to his fields, they assaulted with club and axe as a result of which he sustained injuries over his body. Though from the statement of the witnesses, it is clear that the injuries were grievous in nature but were caused by the appellant No.2 (since dead) with axe on his head whereas the appellant No.1 has caused injury with club. Considering the nature of injuries sustained by the injured and also considering the facts and circumstances of the case, I am of the view that the complicity of the accused/appellant in the commission of the offence has been duly proved by the prosecution and thus looking to the act of appellant and the evidence adduced by the prosecution, his conviction under Sections 341 and 326/34 IPC appears to be justified. However, looking to the facts and circumstances

of the case and keeping in mind the fact that the incident occurred in the year 2002, appellant by now must be a middle aged person, he remained in jail for about 11 months, I am of the view that ends of justice would be served if the sentence imposed on him is reduced to the period undergone by him.

9. Consequently, the appeal is partly allowed. Accused/appellant is reported to be on bail and therefore no further order is required. His bail bond stands discharged.

Sd/-

(Rajani Dubey)
Judge