

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 513 of 2005

- Padman Patel And Ors.

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

Post for pronouncement of the judgment on 07.10.2021

____Sd/-____

JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved pm 08.09.2021****Judgement Delivered on 07.10.2021****CRA No. 513 of 2005**

1. Padman Patel, S/o. Muralidhar Patel, Aged About 27 Years, Occupation: Agriculturist,
2. Indra Kumar @ Indramani Patel, S/o. Muralidhar Patel, Aged about 24 years, Occuaption Agriculturist
3. Guddu @ Damodar Patel, S/o. Rameshwar Patel, Aged about 23 years, Occupation Agriculturist

All R/o. Village Kanchanpur, PS Baramkela, District Raigarh (CG)

---- Appellants**Versus**

- State Of Chhattisgarh, Through Police Station Baramkela, District Raigarh CG

---- Respondent

For Appellants	: Shri M.P.S.Bhatia, Advocate
For Respondent/State	: Shri Ishwar Jaiswal, PL
For Complainant	: Shri Aditya Khare, Advocate

Hon'ble Smt. Justice Rajani Dubey**C A V Order****07/10/2021**

This appeal arises out of a common judgment dated 12.05.05 passed by the Fourth Additional Sessions Judge (FTC) Raigarh in Sessions Trial No. 05/05 whereby the appellants have been held guilty of commission of the offence under Section 307/34 IPC and sentenced each of them to undergo rigorous imprisonment for seven years and to pay fine of Rs. 200/- with default stipulation.

2. Prosecution story as revealed from the records of the case is that on the date of incident i.e. 21.10.2004, at about 10.00 p.m. when the complainant Dayanidhi Patel was coming out of his store house (Kothaar) after bringing food for the workers who were milling the paddy, at that time, accused Padman, Indramani Patel and Damodar @ Gudda without saying anything, assaulted him with hands and fists and threw him on the ground as a result of which he sustained injuries on his body and the tooth were broken. Report was lodged at the police station against the appellants under Sections 325 and 307/34 IPC. After completion of usual investigation and recording diary statements, investigation was completed and charge sheet was filed before the Judicial Magistrate First Class Sarangarh who, in turn, committed for trial and the appellants were tried for commission of alleged offence under Section 307/34 IPC.

3. Prosecution, in order to prove its case, examined as many as 12 witnesses. The appellants were examined under Section 313 Cr.PC and they denied having committed any offence and said that they have been falsely implicated.

4. Learned trial court relying upon the oral and documentary evidence has held the appellants guilty of commission of the offence and sentence as described above. Hence the present appeal.

5. Assailing correctness and validity of the impugned judgment of conviction and sentence, counsel for the appellants argued that the prosecution has failed to bring home the charges by reliable and

clinging evidence. It is argued that the impugned judgment of the trial court is contrary to law and facts of the case therefore it deserves to be set aside. The prosecution has failed to prove the ingredients of Section 307 IPC and as the prosecution has not been able to prove its case beyond reasonable doubt the appellants be acquitted in the present case. The so called eyewitness Madhuri Patel has turned hostile and has not supported the prosecution case. The other prosecution witness have also supported the prosecution case fully and it is not a case under Section 307 IPC and at the most, Section 325 IPC is made out against the appellants which is compoundable in nature and ought to be compounded in the ends of justice.

6. During the pendency of this appeal, complainant filed application under Section 320(5) Cr.P.C. supported by affidavit and has stated that the appellants 1 & 2 are close relatives and therefore prayer has been made to this Court to accept the compromise and terminate the appellate proceedings in the present appeal.

7. Complainant and appellants 1 & 2 are willing to compromise the matter as they have settled the dispute outside the Court. Reliance has been placed in the matter of this Court in **Cr.A. No. 1745 of 2017 (Montu Singh @ Honey Singh Vs. State of CG)** vide order dated **14.12.2018**; in the matter of **Gulab Das and Others Vs. State of M.P.** reported in **Supreme Court of India Cr.A. No. 2126 of 2011** vide order dated **16.11.2011** and in the matter of **Umashankar @ Babloo Vs. State of Chhattisgarh** in **Cr.A. No. 988 of 2004** vide order dated **23.03.2006**.

8. Learned State counsel, on the other hand supported the impugned judgment and submits that the complainant has filed application only on behalf of appellants 1 and 2 and not for appellant No.3 and the offence under Section 307 IPC is not compoundable, therefore the compromise between the parties cannot be entertained at this stage and the appeal be dismissed.

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

10. Shamsheer Singh Yadav (PW-1), Phoolchand Patel (PW-3), Sitaram Patel (PW-8) and Madhuri (PW-11) have not supported the prosecution case before the trial court. Complainant Dayanidhi Patel has stated that all the accused persons started assaulting him at once with club. Dr. Jai Kumari (PW-4) has treated the complainant and found following injuries:

i) multiple bruises of about 7 x 3 cm. On right arm lateral aspect and back over right scapula

ii) irregular swelling of right forearm

iii) irregular swelling of left palm (dorsal aspect)

iv) multiple bruises of about 7 x 3 cm. On left scapular region and left arm (lateral aspect)

v) abrasion of 2 x 1 cm. Left leg (dorsal aspect)

vi) contusion of 5 x 3 cm left thigh

vii) abrasion of right knee (2 x 2 cm.) and 1 x 1 cm. Right leg (skin of tibia)

viii) skull depressed over forehead (left frontal area) about 2x1cm.

11. She has opined that there were no bony injuries or fracture on skull. She has stated that death may be caused due to the above injuries if not treated immediately and gave her report Exs.P-6 & 7. It is clear from the X-ray plates that one fracture was found on the radius bone and no fracture was there on the skull or vital part of the body. As per medical report, it is clear that offence under Section 307 IPC is not made out and only Section 325 IPC is made out against the appellants. Accordingly, the conviction of the appellants under Section 307 IPC is altered to that under Section 325 IPC.

12. The complainant has already filed application under Section 320(5) Cr.P.C. for compounding the offence against the appellants 1 and 2. He did not file application on behalf of appellant No.3. Section 325 IPC is a compoundable offence therefore, the obligation of filing I.A. No. 02/2020, application under Section 320(5) Cr.P.C. is allowed.

13. In the result, appellants No.1 and 2 are acquitted of the charges under Section 325 IPC. So far as appellant No.3 is concerned, his conviction under Section 307 IPC is altered to that under Section 325 IPC. As the appellant No.3 has remained in custody for more than 5 months, he is sentenced to the period already undergone by him. Appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Rajani Dubey)
Judge