

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.207 of 2009**

1. Ankalha Ram S/o Fuddu Ram Sahu, aged about 52 years, R/o Village Mohbhattha, P.S. Saja, Tehsil Berla, District Durg CG
2. Ramsahay Sahu, S/o Aagu Ram Sahu, aged about 36 years, R/o Village Mohbhattha, P.S. Saja, Tehsil Berla, District Durg CG
3. Shankarlal, S/o Dhanuk Sahu, aged about 46 years, R/o Village Mohbhattha, P.S. Saja, Tehsil Berla, District Durg CG

---- Applicants**Versus**

1. Makhan Ram Sahu S/o Khamman Sahu, aged about 59 years, Occupation-Cultivation, R/o Village Mohbhattha, P.S. Saja, Distt.-Durg Cg
2. Puhup Ram Sahu S/o Khamman Sahu, aged about 38 years, Occupation-Cultivation, R/o Village Mohbhattha, P.S. Saja, Distt.-Durg Cg
3. Dular Sahu, S/o Makhan Sahu, aged about 33 years, Occupation-Cultivation, R/o Village Mohbhattha, P.S. Saja, Distt.-Durg Cg
4. Shobharam Sahu S/o Makhan Lal Sahu, aged about 31 years, Occupation-Cultivation, R/o Village Mohbhattha, P.S. Saja, Distt.-Durg Cg
5. State of Chhattisgarh through the Police Station Saja, District Durg (CG)

---- Respondents**Present:-**

None for the petitioner, even in the second round.

Shri Sudhir Verma, counsel for respondents No.1 to 4.

Shri Anurag Verma, Panel Lawyer for State/respondent No.5.

**Division Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Shri Justice Narendra Kumar Vyas**

Order on board**Per Manindra Mohan Shrivastava, J.****26/03/2021**

1. This revision petition arises out of order dated 28-02-2009 passed by the Additional Sessions Judge (FTC), Bemetara, District Durg in Sessions Trial No.32/2007, by which, the learned trial Court, while convicting the appellants-

Makhan, Shobharam and Dular under Section 323 of IPC, has acquitted all the accused from the allegations of commission of offence under Section 147, 148, 307/149 of the IPC.

2. According to the prosecution case, on the date of incident, 02-07-2007, in Village Parpoda, the respondents-accused came together forming unlawful assembly with the common object to assault the complainant-Ankalaha, Ram Prasad and others and in furtherance of that common object, they assaulted with the dangerous weapon like club, Rupli (agriculture equipment) with such intention that if death would have been caused, the accused would have been liable for commission of offence of murder. In the incident, as alleged by the prosecution, injuries were caused to some of the victims, which led to filing of FIR and thereafter, the Investigating Authority filed charge sheet against the respondents-accused for alleged commission of offence. The learned trial Court examined number of witnesses including eye-witnesses, who were injured in the incident of assault. After collection of necessary evidence including medical evidence and scrutinizing the evidence available on record, the learned trial Court held that the allegations of commission of offence under Section 147, 148, 307/149 of the IPC is not made out against the respondents-accused. Even against one of the co-accused, he is not liable for commission of offence alleged against him and he was acquitted. However, the accused namely Makhan, Shobha Ram and Dular were found guilty of commission of offence under Section 323 of the IPC and they were accordingly convicted. Aggrieved by the impugned judgment of conviction and order of sentence, as above, the accused namely Makhan, Shobha Ram and Dular have filed Criminal Appeal No.238 of 2009, which is also listed for hearing before this Court today along with the present revision petition.

3. The revision petition has been filed by the applicants namely Ankalha Ram, Ramsahay Sahu and Shankar Lal against the accused namely Makhan

Ram Sahu, Puhupram Sahu, Dular Sahu and Shobha Ram Sahu. Though, no one appeared on behalf of the applicants, we find that the main ground, on which, the impugned judgment to the extent it acquits the accused from the allegations of commission of offence under Section 147, 148 and 307/149 of the IPC, in the present case is that the injured witnesses namely Ankalha, Ram Sahay, Shankar, Umed and other witnesses have clearly stated that at the spot, when respondents-accused was asked to open the water way, they refused and when they were insisted and also advised by the Panchas, they got enraged and opened assault on the victims so much so that each of them sustained number of injuries. According to the revision petition and the grounds raised therein, as Ram Sahay sustained injuries on his head, notwithstanding that all of them sustained injuries which are simple in nature, repeated assault on the head has clear intention to kill the victim-Ram Sahay. The incident of assault and marpeet by the respondents-accused was in close association with each other, which clearly proves that all of them formed unlawful assembly with the common object in furtherance of which, injuries were repeatedly inflicted on all the victims and also on the head of Ram Sahay.

4. Learned State counsel supports the case of the revision petitioners by submitting that the State had led cogent evidence of the injured witness and other witnesses regarding repeated assaults given on the head of Ram Sahay by Rapli (agriculture equipment), which had sharp edge, the trial Court was swayed only by the circumstance that the dispute arose all off a sudden on a trivial matter at the spot and therefore, it could not be said that there was intention to cause death and it was only to desist.

5. Learned counsel for the respondents-accused would argue that the judgment passed by the Court below in ordering acquittal from the charges of commission of offence under Section 147, 148 & 307/149 of the IPC is concerned, is based on minute scrutiny of evidence of each and every

prosecution witnesses, who claim to be eye-witness as also witnesses, who are injured and after taking into consideration the totality of the evidence, the learned trial Court has come to the conclusion that the offence under Section 323 of the IPC, as alleged, would be made out. For taking this view, it is argued that the Court below taken into consideration that the incident happened all of a sudden at the spot in the agriculture field, when the injured party were insisting on the accused to open the water way and it is not a case that the accused of their own had come to form unlawful assembly at the spot with the common object and for that reason, the learned trial Court held that the offence under Section 147, 148 & 307/149 of the IPC are not made out. As far as allegation of commission of offence under Section 307 of the IPC is concerned, it is contended, though it is proved that Ram Sahay had sustained about four injuries in different parts of the head, the weapon said to be used i.e. agriculture equipment -Rapli, which was held by one of the accused in one hand, but at the time of incident, in view of the opposition of Ram Sahay to open the water way, that all off a sudden, assault was opened. It was submitted in this background, presence of simple injuries prompted the Court below to draw an inference of fact that there was no intention to cause death.

6. Having considered the submissions of learned counsel for the parties and the facts and circumstances of the present case, we have perused the records.

7. Case of the prosecution rests mainly on the evidence of injured witness namely Ankalha Sahu, PW-1, Shankar Lal Sahu, PW-2, Unmed Sahu, PW-3, injured witness-Ram Sahay Sahu, PW-4, Aaju Ram Sahu, PW-5, Subal Sahu, PW-6, Dukhau Sahu, PW-7 and Maniram Sahu, PW-8. The genesis of dispute in the evidence of eye-witnesses, particularly the injured witnesses namely Unmed Sahu, PW-3 and Ram Sahay Sahu, PW-4 is that the dispute between the parties had arisen on account of stoppage of water flow from the agriculture field to that of the other. The witnesses stated that the dispute arose when

panchas arrived at the spot and advised that the water should be allowed to be flown into the agriculture field of Ankalha and when this was opposed by the four accused persons by stating that they will not allow to flow water, even if we loose our life. The evidence of all the witnesses show that at this stage, the accused persons started assaulting. The evidence of these witnesses did not show that long after this dispute at the spot and much later part of the day or on some other date, all the accused gathered all around the place of presence of victims, armed with weapon and opened assault without anything else. The beginning of the dispute was because of the objections with regard to obstructions of water flow from one agriculture field to other agriculture field. Taking into consideration this common thread in the evidence of the prosecution witnesses, the learned trial Court has recorded a finding that the dispute arose at the spot all of a sudden and presence of the accused at the spot was not pre-planned, but incidentally and therefore, the offence under Section 147, 148 could not be made out against the accused persons and they have been acquitted.

8. We find that one of the injured witnesses namely Ram Sahay, PW-4 sustained incised wound in different parts of the head, which is also proved from the evidence of the doctor, who has proved the injury, however all these injuries are said to be simple in nature and no fractures were found. Moreover, the prosecution came out with the case that the weapon used for assault on the head of Ram Sahay was axe, but, no axe was seized, but only a small shovel (Rupli) is said to have been seized. The opinion of the doctor is that the injuries could have been caused by this article. It is clear that this was only an agriculture equipment and the dispute arose at the spot, when both the parties were working on agriculture field. It is not the case that while victims were standing outside the agriculture field or at home, then the accused persons arrived there, armed with this agriculture equipment with an intention to use the

same for assaulting. Assaults were spontaneous at the spot with whatever was held by the accused in their hand. Obviously, the agriculture equipment, whatever was in their hand, used for giving assault. With this background, despite there being more than one injury, the learned trial Court came to the conclusion that the prosecution has led evidence beyond reasonable doubt that the injuries were simple in nature insufficient to cause death

9. It is well settled legal position that in order to convict the accused on the allegations of commission of offence under Section 307 of the IPC, the prosecution is required to prove the intention. Even in case, no injuries were found, yet on the totality of the evidence, the Court may come to the conclusion that there was intention to cause death and conviction may follow. In case, where accused persons have intention to cause death, the accused-offender may be convicted for the commission of offence and sentenced imprisonment for life. As far as question as to whether there was intention to kill, is concerned, is essentially a question of fact and not one of law and it will depend on the facts of the given case and for that purpose, the totality of the evidence is required to be examined. Neither number of injuries nor nature of injuries by itself are decisive to arrive at conclusion on facts as to whether there was intention to cause death. Yet, the place of body, which were chosen to assault and nature of injuries and the weapon used coupled with the other evidence, particularly the genesis of dispute and the manner, in which, the criminal overt act was committed, the Court may come to the conclusion that the assault was with an intention to cause death. Notwithstanding multiple injuries, in a given case, in the totality of the evidence, the Court may come to the conclusion that there was no intention to cause death.

10. What prompted the learned trial Court to acquit the accused from the allegation of commission of offence under Section 307 of the IPC, is that the dispute arose all of a sudden. The evidence recorded on the part of the victims

to open water way and only when, this was repeatedly opposed and the accused persons were pressurized, they opened assault. For giving assault, agriculture weapons, which otherwise the accused were holding in the field, were only used. The learned trial Court has, after taking into consideration that injuries sustained by the victim were multiple, none of them was grievous in nature and all the injuries were simple in nature, the view, which has been taken by the learned trial Court, cannot be said to be suffering from grave illegality or against the settled principles applicable in the matter of taking decision where the offence under Section 307 of the IPC would be made out or not.

11. Therefore, in our considered opinion, the view taken by the learned trial Court is plausible and possible view and acquittal of the accused against charges of commission of offences under Section 307 read with Section 149 of the IPC could not be invalidated. Another view is possible on the similar evidence, particularly we do not find that while arriving at the conclusion, the learned trial Court failed to look into the settled principles of law with regard to appreciation of evidence. It is not a case where any particular piece of evidence has been completely ignored from evidence. The learned trial Court has taken into consideration the nature and number of injuries both and yet upon taking into consideration other attending circumstances, proved from the prosecution witnesses themselves, has come to the conclusion. The learned trial Court found, in view of the simple injuries, the accused were liable for commission of offence under Section 323 of the IPC only.

12. We do not find any ground to interfere with the impugned judgment passed by the learned trial Court, in so far as acquittal of the accused from the charges of commission of offence under Section 147, 148 & 307/149 of the IPC is concerned.

13. In the result, the revision petition is dismissed. Before parting with the case, it is made clear that the respondents-accused have been acquitted from

the charges of commission of offence under Section 147, 148 & 307 read with Section 149 of the IPC and convicted under Section 323 of the IPC only, against which, they have filed a separate appeal, which will be considered separately.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E

SD/-
(**Narendra Kumar Vyas**)
J U D G E