

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.910 of 2007

Ashwani Tiwari, son of Shri Vinod Tiwari, aged about 22 years, resident of Ambikapur, District Surguja, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Police Station Koni, District Bilaspur, Chhattisgarh

--- Respondent

Criminal Appeal No.973 of 2007

Amit Sharma, son of Badri Nath Sharma, aged about 25 years, resident of Village Koni, P.S. Koni, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through P.S. Koni, District Bilaspur, Chhattisgarh

--- Respondent

and

Criminal Appeal No.976 of 2007

Ramkrishna Tiwari, son of Shri Ramgopal Tiwari, aged about 23 years, resident of Village Koni, Police Stationn Koni, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Police Station Koni, District Bilaspur, Chhattisgarh

--- Respondent

For Appellants	:	Shri V.K. Pandey, Advocate
For State/Respondent	:	Shri H.S. Ahluwalia, Dy. Adv. Gen.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

4.1.2021

1. The instant appeals have been preferred against the judgment dated 5.10.2007 passed by the Additional Sessions Judge, Bilaspur in Sessions Trial No.355 of 2006, whereby each of the Appellants

have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 307/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.100/- with default stipulation

2. Case of the prosecution, in brief, is that on 11.7.2006 at about 10:30 p.m. Complainant Bahoran was returning on his motorcycle along with his brother Shatruhan. At that time, on the way, the Appellants pelted a big stone over them, as a result of which both of them fell down. Thereafter, the Appellants committed *marpeet* with them. The incident was reported by Complainant Bahoran. Offence was registered. On completion of the investigation, a charge-sheet was filed. Charge was framed against the Appellants.
3. To bring home the offence against the Appellants, the prosecution examined as many as 16 witnesses. The Appellants were also examined under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. 1 witness has been examined in their defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, these appeals.
5. Learned Counsel appearing for the Appellants submitted that the Appellants have wrongly been convicted without there being clinching and sufficient evidence on record. From the evidence adduced by the prosecution, it reveals that injured Shatruhan sustained only one injury over his right eye as a result of which he

lost his right eyesight permanently. None of the other injuries suffered by Shatruhan were found over any of the vital parts of his body. From the statement of Shatruhan, it also reveals that the Appellants, after the assault, had run away from the spot. Therefore, the Appellants did not have any intention to commit murder nor had they any knowledge that the injuries suffered by Shatruhan could cause his death. Therefore, the offence under Section 307 IPC is not made out. At the most, offence under Section 326 IPC is made out against the Appellants. Since the Appellants of Criminal Appeals No.973 and 976 of 2007 have already undergone for about 15 months and the Appellant of Criminal Appeal No.910 of 2007 has already undergone for about 4 months, none of the Appellants have any criminal antecedent, they are facing the */is* since the year 2006, both the parties have amicably settled their dispute and an application for compounding the offence has also been filed by them, the Appellants may be sentenced to the period already undergone by them.

6. On the contrary, Learned Counsel appearing for the State/Respondent supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the record. I have gone through the statements of Shatruhan (PW10), his brother/Complainant Bahoran (PW16), Dr. Mohd. Shahid (PW8) and Dr. Sujeet Pahadi (PW3). From their statements and the M.L.C. reports (Ex.P3 and P12) of Shatruhan (PW10), it reveals that Shatruhan (PW10) had sustained only one grievous injury over his right eye and as a result of which he lost his

right eyesight. No other injury was found over his body. From the statement of Complainant Bahoran (PW16), it also reveals that after the incident the Appellants had left Shatruhan alone at the spot in injured condition and fled from there. If the Appellants had any intention to commit his murder, they would have further committed *marpeet* with him. Thus, it is not established that the Appellants had any intention to commit murder of Shatruhan. The grievous injury suffered by Shatruhan was over his right eye only. Therefore, it is not established that the Appellants caused him this injury knowing that it will cause his death. Therefore, in my considered view, the offence under Section 307/34 IPC is not proved. Instead thereof, offence under Section 326/34 IPC is established against the Appellants. Therefore, offence of the Appellants is altered from Section 307/34 IPC to Section 326/34 IPC.

8. Considering the facts that during trial the Appellants of Criminal Appeals No.973 and 976 of 2007 have already undergone for about 15 months and the Appellant of Criminal Appeal No.910 of 2007 has already undergone for about 4 months, none of the Appellants have any criminal antecedent, they are facing the *l/s* since the year 2006, both the parties have amicably settled their dispute and an application for compounding the offence has also been filed by them, the Appellants, for the offence under Section 326/34 IPC, are sentenced to the period already undergone by them. They are also sentenced with fine of Rs.25,000/- each, payable within a period of three months from the date of receipt of a copy of this judgment. In default of payment of the fine, each of the Appellants shall be liable

to undergo simple imprisonment for six months. Fine, if any already paid, shall be adjusted in the amount of fine imposed today.

9. Consequently, the appeals are allowed in part to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge