

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1379 of 2019

1. Jageshwar Nirmalkar S/o Parmod Nirmalkar, Aged About 19 Years,
2. Maheshwar Nirmalkar S/o Pramod Nirmalkar Aged About 23 Years

Both R/o Mahalpara, Police Station Pithaura, District Mahasamund (C.G.)

---- Appellants

Versus

1. State Of Chhattisgarh, Through The Station House Officer, Police Station Pithaura, District Mahasamund (C.G.).

---- Respondent

For Appellants	:	Mr. Roop Naik, Advocate.
For Respondent/State	:	Mr. Priyanshu Gupta, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

20/10/2021

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 16/05/2019 passed by Additional Session Judge (FTC) Mahasamund, District Mahasamund (C.G.) in Session Trial No. 26/2018; whereby the appellants stand convicted and sentenced as under:-

Conviction	Sentence
U/s. 307/34 of Indian Penal Code (in short "IPC")	R.I. for 5 years and fine of Rs. 2,000/-, in default of fine additional R.I. for 2 months.

- 2) As per the prosecution case, on 02/03/2018 around 19:30 Hours the accused appellants with common intention assaulted Ashok with knife and axe on his eyes and back in an attempt to commit his murder. On report being lodged by the complainant Khemin

Bai, mother of the victim, offence under Section 307/34 of IPC was registered. The injured was got medically examined, site plan was prepared, the Knife and Axe were seized vide Ex. P-6 & P-7, statements of the witnesses were recorded, the seized articles were sent for chemical examination to FSL vide Ex.P-14.

- 3) After completion of investigation, Charge Sheet was filed against the accused appellants under Section 307/34 of I.P.C. The Trial Court framed charge against the accused/appellants under Section 307/34 of I.P.C. which was abjured by the accused and they pleaded innocence and false implication.
- 4) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Khemin Bai Nirmalkar (complainant), PW-02 Ashok Nirmalkar (victim), PW-03 Dr. Mohan Singh Kanwar, PW-04 Parwati Nirmalkar, PW-05 Nilam Kumar Mishra (Constable), PW-06 Tikeshwar Hota (I.O.), PW-07 Pawan Prakash Baghel (Patwari), PW-08 Sunil Nirmalkar, PW-09 Agni Pradhan (Head Constable) and PW-10 Dr. Ninder Singh Chawla. The statements of the accused were also recorded under section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication. DW-01 Peeli Bai Nirmalkar was examined by the accused in their defence.
- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellants as mentioned above.
- 6) Learned counsel for the appellant submits that though he raised various grounds in the memo of appeal but he is not pressing all those grounds and is confining his arguments only to the sentence part. He submits that in the facts and circumstances of the case, the fact that the incident took place more than 3 and half years back, the appellants at that time were aged about 19 years and 23 years, they are young offenders having no criminal antecedents, the sentence of 5 years R.I. imposed on them by the Trial Court is harsh and the same may be reduced suitably.

Reliance has been placed on the decision of Hon'ble Supreme Court of ***Nasir Vs. State of Uttar Pradesh reported in 2010 (13), SCC 251*** wherein the Hon'ble Supreme Court considering the fact that the appellant was sentence to 5 years imprisonment under Sections 399 and 402 of IPC, occurrence took place 29 years ago, the appellant remained in custody for period of 6 months, appeal allowed in part and reduced the sentence to the period already undergone by the appellant.

- 7) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court.
- 8) Heard counsel for the parties and perused the material available on record.
- 9) Though the counsel for the appellants is not challenging the conviction of the appellants and is pressing the sentence part only but this Court deems it fit to examine whether the conviction of the appellants is based on proper appreciation of the evidence of record.
- 10) PW-02 Ashok Nirmalkar, victim, has categorically stated in his deposition that on 02/03/2018 at around 07:30 PM the appellants came to his house and beat him. He states that appellant Jageshwar Nirmalkar assaulted him on his left eye and back with knife whereas appellant Maheshwar Nirmalkar assaulted him with axe. The version of the victim has been duly supported by the evidence of other eye witnesses namely PW-01 Khemin Bai Nirmalkar, PW-04 Parwati Nirmalkar who are mother and wife of the victim. There is no major contradiction or omission in the statements of these witnesses. However, PW-08 Sunil Nirmalkar is the witness who took the victim immediately after the incident to Hospital on his motorcycle, states that the victim informed him that he was assaulted by the appellants.

- 11) PW-03 Dr. Mohan Singh Kanwar medically examined the victim Ashok Nirmalkar on 02/03/2018 vide Ex. P-3 and noticed that there were knife injuries over left eye and there were 03 stabbed injuries over back (lumber region). In his opinion the injuries caused on the back of the victim were grievous in nature and dangerous to life.
- 12) PW-10 Dr. Ninder Singh Chawla, Orthopedic medically examined the victim vide Ex. P-17 and noticed followings injuries :-

“Right large peri-renal haematoma of size 12.9x8.6x4.5cm approx. is seen, lateral and posterior to right kidney, causing anterior displacement of right kidney. Few small contusions are seen in right kidney lower pole region, largest of size 2.2x1.4cm approx. A lacerated of length 2.7cm approx. is also seen in right kidney lower pole region. Minimal hemoperitoneum is seen in abdomen in right side Minimal right lung lower lobe basal consolidation/contusion seen.”
- 13) PW-06 Tikeshwar Hota, the Investigating Officer, duly supported the prosecution case. PW-07 Pawan Prakash Baghel, Patwari prepared the spot map vide Ex. P-16. PW-09 Agni Pradhan, Head Constable took the victim Ashok Nirmalkar for medical examination to Government Hospital Pithora vide Ex. P-3A.
- 14) DW-01 Peeli Bai Nirmalkar, mother of the appellants has stated a new story that Ramdhari and victim Ashok Nirmalkar were beating appellant Maheshwar with club and when she alongwith her younger son appellant Jageshwar reached there, Ramdhari and victim Ashok Nirmalkar committed Marpeet with them also. However, no any report was lodged by her regarding the said incident and no any document was produced before the Trial Court regarding the injury sustained by them. Therefore, the evidence of the defence witness is of no help to the appellants.
- 15) Thus considering the overall facts and circumstances of the case, the unrebutted evidence of injured victim PW-02 Ashok

Nirmalkar which finds due corroboration from the eye witness account of PW-01 Khemin Bai Nirmalkar, PW-04 Parwati Nirmalkar as also from the evidence of PW-08 Sunil Nirmalkar, the promptly lodged FIR vide Ex. P-1 as also the medical evidence in the form of Ex. P-3 & Ex. P-17 and deposition of PW-03 Dr. Mohan Singh Kanwar and PW-10 Dr. Ninder Singh Chawla, it stands proved beyond reasonable doubt that it is appellants who assaulted the victim Ashok Nirmalkar PW-02 with knife and axe in an attempt to commit his murder. Therefore, conviction of the appellants under Section 307/34 of IPC recorded by the Trial Court cannot be faulted with.

- 16) As regards the sentence part, considering the fact and circumstances of the case, the fact that incident took place in the year 2018 at that time the accused appellants were aged about 19 & 23 years respectively, they are young offender having no criminal antecedents, keeping in view the judgment of Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone and the judgment of the Apex Court in **Nasir Vs. State of Uttar Pradesh (Supra)**, this Court is of the opinion that no fruitful purpose would be served if in keeping the appellants remained bars any longer and the ends of justice would be served if they are sentenced to the period already undergone by them which comes to about 3 years and 7 months, while enhancing the fine amount from Rs. 2,000/- and Rs. 5,000/- with default sentence.
- 17) In the result, the appeal is allowed in part. While maintaining the conviction of the appellants under Section 307/34 of IPC, their jail sentence is reduced to the period already undergone by them. Fine amount under Section 307/34 of IPC of Rs. 2,000/- imposed by the Trial Court is enhanced to Rs. 5,000/- **each**. In the event of failure of the appellants to pay fine amount, they shall have to suffer additional S.I. for 3 months each.

- 18) Total fine amount of Rs. 10,000/- being deposited by the appellants shall be payable to the injured victim PW-02 Ashok Nirmalkar as compensation under Section 357 of Cr.P.C. by the Trial court after due verification.
- 19) The fine amount, if any, already deposited by the appellants shall be adjusted accordingly.

Chandrakant

**-Sd/-
(Gautam Chourdiya)
Judge**