

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 13/04/2017****Judgement Delivered on: 31/05/2017****Criminal Appeal No. 2641 of 1998**

1. Raghu Ram, S/o Boloram Chouk, Aged about 21 years, R/o Kosamghat, District Raigarh (M.P.) (Now C.G.)
2. Uchit Ram, S/o Nanhiram Chouk, Aged about 31 years, R/o Village Raimer, P.S. Kapoo, District Raigarh (M.P.) (Now C.G.).

--- Appellants**Versus**

State of M.P. Through S.O. Gharghoda, District Raigarh (M.P.) (Now C.G.)

---- Respondent

For Appellants	:-	Smt. Indira Tripathi, Advocate.
For Respondent/State	:-	Shri Ravindra Agrtawal, P.L.

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant
(C.A.V.) Judgement

1. This appeal has been preferred against the judgement of conviction and order of sentence dated 29-10-1998 passed by Second Additional Sessions Judge, Raigarh in S.T. No.122 of 1995 whereby and whereunder the learned Additional Sessions Judge has convicted the appellants and Co-accused Chhatram under Sections 326 read with Section 34 of the IPC and sentenced to undergo RI for 5 years with fine of Rs.500/- and under Section 307 read with Section 34 of the IPC and sentenced to undergo RI for 10 years with fine of Rs.1000/- each respectively with default stipulations with a direction to run both the sentences separately.

2. Co-accused Chhatram has not filed any appeal against the judgement. One application was filed by him with a prayer to order concurrent running of

both the sentences. An M.Cr.C. No.315 of 2002 was registered by this Court which has been disposed of on 22-12-2016 on the basis of information received from Jail Superintendent, District Jail, Raigarh that appellant Chhatram has paid the fine amount and has been released from jail, after receiving the benefit of remission in sentences by the State Government.

3. The case of the prosecution, in brief, is that the appellants and Co-accused Chhatram met with Maharam (Complainant) (PW-7) on his agricultural field at about 7-00 p.m., co-accused Chhatram had an objection that Maharam (PW-7) furnished bail for Bodhi Kanwar in a case, quarrelling on this subject, co-accused Chhatram assaulted Maharam with an axe causing him grievous injury and a simple injury vide Ex. P-1. Later on, all the accused persons assaulted Sadhuram (PW-8) with axe causing him grievous injury and simple injury vide Ex. P-2 and Ex. P-7. Immediately, a report was lodged in police station, which was recorded in Station House Diary on 07-04-1995. After medical examination of the injured persons, FIR (Ex. P-10) was lodged on 07-04-1995, registering the offence under Sections 326 against co-accused Chhatram.

4. After completion of investigation, appellants and co-accused Chhatram was charge-sheeted for trial of offence under Sections 326 and 307/34 of IPC, in which co-accused Chhatram was mentioned as main accused. Co-accused was charged under Section 326 and 307 of IPC whereas the appellants were charged under Sections 326 read with Section 34 and 307 read with Section 34 of IPC. On denial of charges, prosecution examined as many as 14 witnesses. On examination under Section 313 of Cr.P.C. the appellants and co-accused denied all the incriminating evidence against them brought by the prosecution, pleaded innocence and false implication in the crime in question. No witness has been examined in defence. The impugned judgement was passed in

which appellants were convicted under Sections 326/34 and 307/34 of the IPC and were sentenced as aforementioned.

5. The grounds in this appeal are that the trial Court has wrongly appreciated the evidence of prosecution and convicted the appellants. There is no evidence of prosecution to establish intention of the appellants. There is no evidence of any overt act attributed to the appellants. The appellants had no enmity with the complainant and no motive to assault him, hence the conviction against them is based on evidence which is not acceptable legally, on this ground acquittal of the appellants is prayed for.

6. It is submitted by learned counsel for the appellants that as per statement of prosecution, it is clear that co-accused Chhatram was the only assailant. First information given by complainant Maharam (PW-7) which has been recorded in Station House Diary as Ex. P-5 and FIR (Ex. P-10) very clearly mention that co-accused Chhatram was the only assailant in the matter of both the injured persons in the incident and the offence was registered only against co-accused Chhatram. Maharam (PW-7) has stated that only accused Chhatram assaulted him and had stated that he had no quarrel and enmity with the appellants. Sadharam (PW-8) has also stated similarly to the statement of Maharam (PW-7). There is no clear statement of the witness as to any participation made and encouragement given or activity shown by the appellants, hence for these reasons, there had been no evidence of prosecution to establish that the appellants were present on the spot as offenders, hence, the appellants are entitled for acquittal.

7. State counsel has opposed the grounds raised in this appeal and arguments submitted by learned counsel for the appellants, it is submitted that

case is proved beyond reasonable doubt and there is no scope for interference in the impugned judgement.

8. I have heard learned counsel for the parties, perused the judgement impugned and record of the Court below.

9. Considering the grounds raised in the appeal and arguments submitted from both sides, the question for determination before this Court is whether the conviction against the appellants is supported by the evidence of prosecution beyond all reasonable doubt?

10. Maharam (PW-7) has stated that when he was present at his agricultural field at the time of incident, the appellants and co-accused came to him and quarrelled with him and it was Chhatram who assaulted with axe causing injury. In cross-examination, he has stated that no quarrel took place with the appellants/accused persons. This statement contradicted his statement of examination-in-chief in which said that appellants came to the field and quarrelled with the complainant. Although there is no rebuttal that Chhatram assaulted Maharam (PW-7) and Sadharam (PW-8), at his place of residence, he has reiterated that co-accused Chhatram assaulted him. Though he has stated that appellant Raghu came to place along with Chhatram but he has not made clear as to the participation or the intention of appellant Raghu while he was assaulted by co-accused Chhatram as assailant.

11. There is no need to examine the evidence of Dr. S.N. Kesari (PW-1) regarding injuries caused to Maharam (PW-7) and Sadharam (PW-8), Bashir Mohammad (PW-2) Patwari who prepared the spot map vide Ex. P-4, Head Constable Jagalraj Singh (PW-3) who recorded first information in his Station House Diary as Ex. P-5, Maniram (PW-4), Narayan Singh (PW-5), Bhajoram

(PW-10) and Mayaram (PW-12), all the witnesses who received information from others regarding incident.

12. S.H.O. Balvir Singh (PW-14) has given statement that investigation was conducted by him in examination-in-chief and in cross-examination, he has stated that offence under Section 326 of IPC was registered only against Co-accused Chhatram. No question has been put to him regarding statement of complainant Maharam (PW-7) and Sadharam (PW-8) and further he has given no explanation as to for what reasons, the appellants were incorporated as accused in this case. No question has been put to Maharam (PW-7) and Sadharam (PW-8) as to why they did not inform the police that appellants were also the assailants in the incident. Although there are some lapses in investigation, even then it is apparent from the face of record that the information of complainant Maharam (PW-7) on the date of incident was given only against co-accused Chhatram. It was the development in investigation which has incorporated the name of appellants as co-accused in this prosecution case.

13. As has been examined, the statement of Maharam (PW-7) and Sadharam (PW-8), no clear and overt act can be attributed to the appellants in the incident.

14. After closely and minutely scrutinizing and analysing the evidence of prosecution witnesses, it appears that the prosecution has failed to bring home to prove regarding common intention of the appellants in the incident of assault by co-accused Chhatram to Maharam (PW-7) and Sadharam (PW-8), some stray statements given by Maharam (PW-7) and Sadharam (PW-8) alone cannot be considered as sufficient proof beyond reasonable doubt. On the basis of these findings as afore-given reasons, it appears that the conviction

and sentence of the appellants in the judgement is not in conformity with the principles of law laid down, evidence of prosecution is not legally acceptable against the appellants, hence the impugned judgement of conviction and sentence against the appellants is found to be erroneous which needs interference in this case.

15. In the result, the appeal is allowed. Both the appellants are acquitted of the charges levelled against them and their conviction and sentence in the impugned judgement is hereby set aside.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge