

(2019) 10 CHH CK 0131

Chhattisgarh High Court

Case No: Criminal Appeal No. 154 Of 2011

Devendra Prasad Thakur And
Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Oct. 18, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 307
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: Prafull N. Bharat, Smriti Shrivastava

Final Decision: Allowed

Judgement

Conviction,Sentence

Under Section 307 of the Indian Penal Code,"Rigorous Imprisonment for 7 years and fine of

Rs.500/- with default stipulation

11. Savita (PW4) and Saroj (PW5) are other eyewitnesses of the incident. They have not supported the case of the prosecution and have been, declared hostile.,

12. Alok (PW6) and Pyarelal (PW7) are the witnesses before whom memorandum statement (Ex.P5) of Appellant Devendra was recorded and,

seizure of a club was done from him vide Ex.P6. But, both these witnesses have also not supported the case of the prosecution and have been",

declared hostile.,

13. Renu Sahu (PW8) is mother of injured/Complainant Tilakraj. She has stated that at about 4:00 p.m., she was talking with Saroj (PW5). At that",
time, having heard shouts of assault, she came out and saw that Appellant Devendra was having a danda in his hand. Devendra had already given a",
danda blow to the Complainant and on her reaching there Devendra again tried to assault the Complainant with the said danda. She intervened and,
stopped Devendra. But, these facts are not mentioned in her case diary statement (Ex.D2). In paragraph 8 of her cross-examination, this witness has",
also admitted that Appellant Devendra had not assaulted the Complainant in her presence.,

14. Dr. A. Naidu (PW9) has deposed that on 18.4.2007 he had taken out x-ray of Complainant Tilakraj in which he found a fracture in right parietal,
bone. However, he has admitted that this injury could occur due to fall.",

15. Sub-Inspector S.S. Thakur (PW10) is the Investigating Officer of the offence in question. He has also admitted that in the treatment related,
medical documents of Complainant Tilakraj, reason of the injury is mentioned to be due to fall.",

16. Patwari Mohan Singh (PW11) prepared spot-map (Ex.P9).,

Inspector Kaushal Kishore Wasnik (PW12) recorded the FIR (Ex.P1) on 29.4.2007. He has also admitted that the dispute had taken place due to,
Laxmi.,

17. On a minute examination of the above evidence, it is clear that Complainant Tilakraj sustained only one injury on his right parietal bone and the",
injury was a fracture. The injury was suffered by the Complainant due to assault by Appellant Devendra has not been established because as stated,

by Laxmi (PW3), Complainant Tilakraj had caught her hand and on her shouting Appellant Devendra had reached at the spot and Complainant",

Tilakraj (PW1) has also admitted that Laxmi had also stated the same thing to the police in his presence. From the admission made by Complainant,

Tilakraj (PW1) and Investigating Officer S.S. Thakur (PW10), it is also clear that initially, soon after the incident, when the Complainant was",

examined at Bacheli Hospital, at that time also, he had told that he had suffered the injury due to his fall. If he had suffered the injury due to an",

assault, he would have stated so in the hospital and lodged a report immediately in this regard. Even if the statement of the Complainant is considered",

to be true that he was admitted in the hospital and was undergoing treatment for about 10-11 days and was not able to lodge any report, why his",

mother Renu Sahu (PW8), who claimed to be an eyewitness of the alleged incident, did not lodge any report regarding the alleged assault. Thus, delay",

in lodging the FIR (Ex.P1) has not been explained properly by the Complainant. From the evidence adduced by the prosecution, it seems that the",

Complainant had caught hand of Laxmi and to save her his brother Appellant Devendra had pushed the Complainant away and as a result of which,

the Complainant sustained the injury and, therefore, when the Complainant reached to Bachel Hospital, he told that he suffered the injury due to fall.",

The Complainant had caught hand of Laxmi, who is sister of the Appellants. Therefore, even if Appellant Devendra pushed the Complainant away to",

save Laxmi, this act of Appellant Devendra falls within the purview of right to private defence. For the reasons discussed above, in my considered",

opinion, no offence is proved beyond reasonable doubt.",

18. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge",

framed against them.,

19. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.,