

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1000 of 1997**

1. Bhagat Singh son of Gocharan Singh, aged about 29 years.
2. Ishwar Singh S/o Dilip Singh, aged about 39 years.
3. Atara Budhram S/o Guddi, aged about 39 years.
4. Kadati Budhram S/o Samlu Muriya, aged about 24 years.
5. Bhasm Kumar son of Yad Singh, aged about 23 years.
6. Jhagdu Singh son of Devi Singh, aged about 48 years.

All cultivators and residents of village Balud, Thana Dantewada, District Bastar, MP (now CG)

---- Appellants

Versus

1. State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellants:	Shri Keshav Dewangan, Advocate
For Respondent/State:	Shri vivek Sharma, GA

AND**CRA No. 262 of 2004**

1. State of Madhya Pradesh

---- Appellant

Versus

1. Bhagat Singh son of Gocharan Singh, aged about 29 years.
2. Ishwar Singh S/o Dilip Singh, aged about 39 years.
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All cultivators and residents of village Balud, Thana Dantewada, District Bastar, MP (now CG)

---- Respondents

For Appellant/State: Shri Vivek Sharma, GA
For Respondents: Shri Keshav Dewangan, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice CB Bajpai

Judgment on Board by Pritinker Diwaker, J

27/10/2015

As these two appeals arise out of the same judgment dated 8.5.1997 rendered by Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 195/1994, they are disposed of by this common judgment.

2. By the judgment impugned the Court below has convicted accused Bhagat Singh u/s 326,147; accused Ishwar Singh u/s 323, 147 and other remaining accused u/s 147 IPC. At the same time, the Court below has acquitted accused all the accused persons of the charge u/s 148; except accused Ishwar it acquitted all the accused persons of the charge u/s 323/149 and except accused Bhagat Singh, it acquitted all the accused of the charge u/s 326 IPC.

3. As per the case of the prosecution, there existed some land dispute between the accused persons of Sessions Trial No. 534/1993 and that of 195/1994 as allegedly on 7.7.1993 both the parties had a quarrel in the field which culminated in assault to each other with deadly weapons. FIR Ex. P-1 was lodged by Arun Singh (PW-1) vide Crime No. 71/1993 alleging that on that day at about 6 am the accused persons in Sessions Trial No. 195/1994 had caused injuries to him as well as to Nandu alias Nandlal (PW-2). Based on the FIR at crime No. 71/1993 the offences under Sections 147, 148, 149 and 326 IPC were registered against the accused persons of Sessions Trial No. 195/1994 followed by framing of charge under Sections 147, 148, 326, 323/ 149 IPC. Since both the sessions trials i.e. 534/93 and 195/1994 involve the case and the counter case, the trial thereof was carried out by the Additional Sessions Judge, Bastar at Jagdalpur leading to delivery of two separate judgments.

4. Being aggrieved by conviction part of the judgment impugned the accused persons have preferred Criminal Appeal No. 1000/1997 whereas the State has preferred appeal (Criminal Appeal 262/2004) against acquittal part thereof.

5. In order to prove its case the prosecution has examined 5 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they have denied their guilt and pleaded innocence and false implication in the case.

6. After hearing the parties and going through the record the Court below has convicted the accused Bhagat Singh u/s 326,147; accused Ishwar Singh u/s 323, 147 and other remaining accused u/s 147 IPC. At the same time, the Court below has acquitted all the accused persons of the charge u/s 148; except accused Ishwar, it acquitted all the accused persons of the charge u/s 323/149 and except accused Bhagat Singh, it acquitted all the accused of the charge u/s 326 IPC.

7. Counsel for the accused persons in Criminal Appeal No. 1000/1997 submits that considering the injuries sustained by Aran Singh (PW-1) and Nandu alias Nandlal (PW-2), at best the act of accused Bhagat Singh would fall under Section 324 IPC whereas the other remaining accused namely Ishwar, Atara Budhram, Kadati Budhram, Bhasm Kumar and Jhagdu Singh cannot be convicted for any offence as no specific role except their presence on the spot, has been attributed to them. Lastly, it is argued that the incident took place about 22 years back; that accused Bhagat Singh has already remained in jail for about 17 days; by convicting him under Section 324, he may be sentenced to the period already undergone by him. In relation to other accused persons, it is argued that keeping in mind the fact that they did not participate in the incident and they were merely standing there; and further that they are poor tribals hailing from critical financial background, their sentence may also be reduced to

the period already undergone by them as after such a long span of 22 years it would not serve any useful purpose to send them to jail again. It is argued that in the incident uncle of accused Bhagat Singh namely Yaad Singh was murdered and in the counter case the aggressor party has already been punished and therefore also the lenient view may be taken against accused persons. In support of his submission, reliance is placed on the decisions of the Apex Court in the matter of Aayub and others v. State of UP reported in **AIR 1994 SC 1064**, in the matter of **Manjappa v. State of Karnataka** reported in **2007 AIR SCW 3586** and in the matter of **George Pon Paul v. Kanagalet and others** reported in **2009 AIR SCW 6701**. According to him, so far as the appeal preferred by the State is concerned, there is no substance in the same as the acquittal of all the accused persons of the charge u/s 148; except accused Ishwar, acquittal of all the accused persons u/s 323/149 and except accused Bhagat Singh, acquittal of all the accused of the charge u/s 326 IPC is just and proper.

8. Counsel for the appellant/State in Criminal Appeal No. 262/2004 submits that considering the statements of the witnesses, the conviction of accused Bhagat Singh under Section 326 is in accordance with law. He however submits that the Court below has erred in law in acquitting the accused Ishwar, Atara Budhram, Kadati Budhram, Bhasm Kumar and Jhadu Singh of the charge under Section 326. In sum and substance it is argued on behalf of the State that Criminal Appeal No. 1000/1997 is liable to be dismissed whereas Criminal Appeal No. 262/2004 deserves to be allowed.

9. Heard counsel for the parties and perused the evidence of the witnesses available on record.

10. Aran Singh (PW-1) – an eyewitness to the incident and the lodger of FIR supporting the case of the prosecution has stated that on the date of incident when he was working in the field along with Charan Singh, accused Bhagat Singh along with other persons came there; accused Bhagat Singh was having axe and others were having clubs, and thereafter some quarrel took place

between them in which accused Bhagat assaulted him with axe as a result of which he received injuries in the left ear. According to him, when Nandu alias Nandlal (PW-2) came to his rescue, accused Ishwar assaulted him with club. Injured Nandu alias Nandlal (PW-2) has also supported the case of the prosecution and stated in his statement that in the incident accused Bhagat caused injury to him and Arun Singh (PW-1) as well. He has stated that the other accused persons had also beaten him. Kamlu Ram (PW-3) has not supported the case of the prosecution and has been declared hostile. Dr. B.K. Tirki (PW-4) is the witness who medically examined Arun Singh (PW-1) and gave his report Ex. P-3 stating that he noticed grievous injuries on his left ear. However, in the cross-examination he has admitted that in his report he has not mentioned as to on what basis he defined the injury No.1 as grievous one. He has stated that after the first date of medical examination, Arun Singh was never produced before him and therefore he cannot tell as to how much time the injuries would take to heal. He has stated that the injured could have sustained injury on account of fall on some sharp object also. S.N. Singh (PW-5) is the investigating officer who has duly supported the case of the prosecution.

11. Close scrutiny of the evidence of the witnesses makes it clear that on 7.7.1993 accused Bhagat Singh caused injury to Arun Singh whereas accused Ishwar caused injuries to Nandu alias Nandlal (PW-2). As per the evidence on record other accused persons also participated in the incident. However, from the statement of the doctor it is not clear as to how the injury sustained by Arun Singh was grievous in nature and being so the conviction of accused Bhagat Singh under Section 326 IPC is not sustainable in the eye of law and at best his act would entail conviction under Section 324 IPC. Conviction of accused Ishwar under Section 323 however appears to be fully justified as there is evidence to the effect that he caused some club injuries Nandu alias Nandlal. Likewise conviction of other accused persons under Section 147 IPC is also justified.

12. As regards sentence, keeping in mind the fact that it is a case and a counter case, that all the accused persons have remained in jail for more than 17 days; that the dispute arose on account of trivial matter; that the accused persons hail from tribal community having poor financial background, this Court is of the considered opinion that after such a long span of twenty two years when the incident had taken place, it would not be in the interest of justice to send them again to jail. Accordingly, the sentences imposed on the accused persons are reduced to the period already undergone by them.

13. In the result, the Criminal Appeal No. 1000/1997 filed by the accused persons is partly allowed to the extent is partly allowed and Criminal Appeal No. 262/2004 filed by the State is hereby dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(C.B. Bajpai)
Judge