

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 997 of 1999

- Dasru and Ors.

---- Appellants

Versus

- The State Of Madhya Pradesh (now CG)

---- Respondent

For appellants : Ms. C.K. Navrang, Adv.
For Respondent/State : Ms. Sangita Mishra, PL

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment

24/03/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 26-3-1999 passed by the 1st Additional Sessions Judge, Sessions Division, Bastar at Jagdalpur, (MP now CG) in Sessions Trial No. 520/96 whereby and whereunder learned trial Court after holding the appellants guilty for forming unlawful assembly for rioting and also at the time of incident members of such unlawful assembly armed with deadly weapon and several member of such unlawful assembly guilty of offence committed in furtherance of common object to cause voluntary hurt by dangerous weapon to Sukru, P.W. 5 and also for causing voluntary simple hurt to P.W. 7 Jamnabai and other injured Satnibai and also for voluntarily causing grievous hurt by dangerous weapon to P.W. 6 Sonu, convicted and sentenced them in the following manner with a direction to run all the substantive jail sentences concurrently:-

Sr. No.	Section	Name of appellants	Sentence
1	147	Budhu	6 months RI
2.	148	All appellants	1 year RI
3.	324/149	All appellants	2 years
4.	323/149	All appellants	6 months
5.	325/149	All appellants	2 years + fine of Rs. 200/- in default 2 months RI

All the sentences are directed to run concurrently.

2. Conviction is impugned on the ground that without there being an iota of

evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. Appeal of Appellant Budaru stood abated on his death vide order dated 13-12-2013 and his name was deleted from the array of parties.
4. Brief facts of the case are that on 23-5-1996 at about 8.30 pm at village Karpawand, Out Post Karpawand, PS Bhanpuri on account of previous enmity relating to old land dispute, all the accused formed unlawful assembly armed with deadly weapon axe, battle axe and stick, reached near the house of P.W. 4 Samaru and after verbal dual assaulted P.W. 6 Sonu, P.W. 5 Sukru, P.W. 7 Jamnabai and Satnibai by axe, battle axe, stick and by other means. Complainant P.W. 4 Samaru lodged FIR unnumbered at Out post Karpawand. Same was registered under Sections 307, 147, 148, 149, 323 and 506 of IPC against appellants. Subsequently, registered as Crime No. 66/96 vide Ex. P-5 at PS Bhanpuri. Injured were sent to Mini PHS, Karpawand for medical examination and treatment. P.W.1 Dr. Dinesh Sharma examined Satnibai and noticed swelling and pain at right side of head caused by hard and blunt object simple in nature vide report Ex. P-1. He also examined Jamnabai P.W. 7 and noticed one lacerated wound over upper part of left hand' palm .5 x.5" caused by hard and blunt object simple in nature. He gave report Ex. P-2. He also examined P.W. 5 Sukru and noticed one lacerated wound and swelling above right eyebrow 2 x 1/2", one incised wound below right eye 1". His report is Ex. P-3. He also examined P.W. 6 Sonu and noticed one incised wound over right side of forehead of 3", one incised wound over left eyebrow of 2", one swelling and one lacerated wound on left arm at lower end .5 x .5". As per doctor, the injury No. 1 was caused by sharp edged weapon and injury No. 3 was caused by hard and blunt object. The report is Ex. P-4. P.W. 3 Dr. Govind Singh took X-ray of left hand of P.W. 6 Sonu and noticed fracture over the left humerus bone at lower 1/3 region. He gave his report Ex. P-25. During investigation, accused Budaru (since deceased) gave disclosure statement Ex. P-10, on the basis of which a battle axe was seized vide seizure memo Ex. P-11. IO P.W. 2 R.S. Raghuvanshi also seized one axe by seizure memo Ex. P-13 on the basis of disclosure statement given by appellant Hari vide Ex. P-12. On the basis of disclosure statement of appellant Tingoli vide Ex. P-14, a bamboo stick was seized vide Ex. P-15. One bamboo stick was seized from appellant Dasru vide seizure memo Ex. P-15. An iron rod was seized at the instance of appellant Lokhu vide seizure memo Ex. P-17. An axe was seized from appellant Tibu vide seizure memo Ex. P-18. An axe was seized from

appellant Belku vide seizure memo Ex. P-19.

5. During investigation, the IO seized bed head ticket and X-ray plate vide seizure memo Ex. P-21. He prepared spot map vide Ex. P-22, arrested all the accused. Statement of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in brevity 'Code'). He sent the seized articles for chemical examination to FSL Raipur. The FSL gave its report regarding presence of blood vide Ex. P-24.
6. After completion of investigation, charge sheet was filed before the Chief Judicial Magistrate, Jagdalpur who in turn committed the case to the Court of Session. Learned 1st Additional Sessions Judge received the case on transfer and conducted trial. During trial, all the accused were charged for offence under Sections 147, 148, 307/149, 323/149, 506-II of IPC. All the accused denied the charges and prayed for trial.
7. Prosecution examined 8 witnesses to prove the guilt of the accused before the trial Court. Statements of all the accused were recorded under Section 313 of the Code in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication in the crime in question.
8. After providing opportunity of hearing to the parties, learned Addl. Sessions Judge acquitted the accused persons for the offence mentioned in para 22 and para 23 of the judgment and convicted and sentenced them as above mentioned.
9. Heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
10. Learned counsel for the appellants vehemently submitted that prosecution has failed to prove that the appellants formed unlawful assembly, also failed to prove that by forming unlawful assembly they were armed with deadly weapon and acted in furtherance of common object as a member of unlawful assembly. Witnesses have not seen each and every accused at the time of incident as there are material contradictions regarding names of the appellants present at the time of incident and as to who assaulted whom. There was old serious dispute regarding land. After this incident, the complainant party was also made accused in the FIR lodged against them and faced counter trial. By not proving forming of unlawful assembly and as per statement of witnesses, there was free fight, therefore every act of the appellants should be assessed individually. Main accused Budaru who as per witnesses assaulted PW 5 Sukru and PW 6 Sonu died. As prosecution has failed to prove its case beyond all probable doubt, benefit may be given

to the appellants and the appellants may be acquitted of the charges.

11. Per contra, learned counsel for the State respondents opposed the appeal filed on behalf of the appellants, supported the impugned judgment and argued that prosecution has duly proved forming of unlawful assembly, deadly weapon bamboo stick, axe, battle axe are seized from the members of the assembly. In the light of previous enmity, they assaulted the complainant party. Unlawful assembly is proved. Hence every member of the unlawful assembly is rightly convicted and sentenced for the offence under Sections 325, 324, 323 with the aid of Section 149, IPC. There is no scope for any interference in the impugned judgment. Hence the appeal may be dismissed.
12. In order to appreciate the arguments advanced on behalf of rival parties, I have perused the evidence adduced by the prosecution. Upon minute scrutiny of the statements of the witnesses, it is admitted by the witnesses that they were also facing counter case lodged on the basis of the incident in question. It is also surfaced that both the parties are having inimical terms and there is a serious dispute.
13. As per evidence of P.W. 1 Dr. Dinesh Sharma and radiologist P.W. 3 Govind Singh, injuries found over the body of P.W. 6 Sonu, P.W. 5 Sukru and P.W. 7 Jamnabai and one Satnibai are proved. The injuries are not substantially disputed on behalf of the appellants.
14. In view of the previous enmity and long land dispute, statements of the witnesses should be valued and assessed with great care. On appreciation of the evidence of the prosecution, it is emerged that P.W. 7 Jamnabai has not said anything regarding any injury caused to her, also this witness has not said anything regarding any injury inflicted over the body of Satnibai though the doctor noticed simple injuries over the body of P.W. 7 Jamnabai and Satnibai. This witness by not saying anything makes the case questionable so far as injuries of Jamnabai and Satnibai are concerned. Also when we examined the other facts narrated by the prosecution witnesses, as per P.W. 7 Jamnabai, she named only 7 persons and not named appellants Dasru, Budaru and Belku. As per this witness Sukru was assaulted by Budaru by battle axe. This witness has not said anything as to who assaulted Sonu. P.W. 6 Sonu also an injured witness named only Budaru, Lokhu and Hari. This witness has not said anything regarding presence of other six accused. No reason is explained as to why this witness who sustained grievous hurt is not in a position to mention the names of other six accused and their role. As per this witness P.W. 6 Budaru

assaulted at the head by battle axe and Lokhu assaulted him by rod in his hand. As per this witness P.W. 5 Sukru was assaulted by Hari by stick and battle axe. This witness surprisingly stated that complainant P.W. 4 Samaru was assaulted by Chaitu over his chest by axe but Samaru P.W. 4 has not said anything regarding any assault over him and P.W. 4 Samaru was not even medically examined by the doctor. As per this witness, Satnibai was assaulted by Chaitu, Jamnabai was assaulted by Tengoli. As per P.W. 5 Sukru, Satnibai was assaulted by appellant Tangoli by stick and Jamnabai was assaulted by Belku. As per statement of P.W. 4 Samaru both Jamnabai and Satnibai were assaulted only by Tangoli. If we read all the statements regarding assault to Satnibai and Jamnabai, it goes to show that there are material contradiction and with this set of evidence, it would not be safe to hold whether Satnibai and Jamnabai were ever assaulted by anybody because as discussed above, Jamnabai had not said anything regarding her injury or Jamnabai also has not said anything regarding any assault by any of the appellants to Satnibai.

15. P.W. 6 Sonu admitted in para 3 that there were large number of persons assembled and he had not seen who assaulted whom. This witness was injured eye-witness but as per this witness, he had not seen who assaulted whom. This is a material circumstance stated by P.W. 6 Sonu. As per P.W. 5 Sukru, also an injured witness, he was assaulted by Budru by battle axe. Budru also assaulted P.W. 6 Sonu by rod. This witness also surprisingly has stated that P.W. 4 Samaru assaulted him by axe on his chest. This is a very new and contradictory fact as Samaru is complainant in the present case. He is not accused in the trial but even then this witness stated that Samaru assaulted him by axe on chest. This witness also has not named 5 appellants. He only named 4 appellants. If he was present then why he had not said anything regarding presence and role of those 5 accused.
16. P.W. 4 Samaru, the complainant and eye-witness deposed that Budaru assaulted Sukru and Sonu by battle axe. Lokhu assaulted Sonu by rod on his hand and Budru also assaulted Samaru on his left side of chest. As discussed above, Samaru had not received any injury in the incident. This piece of evidence uncorroborated by medical evidence has to be looked into while appreciating the entire facts. This witness also has not named six other appellants. He only mentioned names of three appellants only out of them one co-appellant Budaru has expired.
17. If we minutely examine the entire evidence, in the opinion of this Court, formation of unlawful assembly with deadly weapon is not proved. There

were large number of people. Incident occurred at about 8 pm. There was dark. Nobody was in a position to see the entire incident and they categorically omitted the names from 3 to 6 appellants. Counter case is also registered against the complainant party and they have also faced trial. Since unlawful assembly is not proved then act of individual appellant has to be assessed as there was free fight.

18. As per some witnesses about 6 persons were not present. Budru assaulted as per evidence to PW 5 Sukru and PW 6 Sonu by battle axe. His appeal is abated. As the witnesses have said differently for the assault of Jamnabai and Satni, it would not be save to hold guilty any of the appellants for causing simple hurt to them. Appellants are entitled for benefit of doubt regarding assault of P.W. 7 Jamnabai and Satnibai.
19. So far as injuries caused on P.W. 6 Sonu is concerned, this witness has categorically deposed that Lokhu assaulted him on his hand by iron rod. The same was corroborated by P.W. 5 Samaru that Lokhu assaulted P.W. 6 Sonu by rod. P.W. 4 Samaru also said that Lokhu assaulted Sonu by rod on his hand. Sonu sustained fracture over left humerus bone on lower 1/3rd part. In view of X-ray report and medical report given by P.W. 3 Govind Singh and P.W. 1 Dr. Dinesh Sharma and by appreciating the entire facts and circumstances, prosecution proved that P.W. 6 Sonu was individually assaulted by appellant Lokhu for which no other appellant may be held guilty.
20. So far as the cut injuries noticed over the body of PW. 5 Sukru is concerned, as per all witnesses, he was assaulted by Budru by battle axe and his the appeal abated.
21. To part with, in the considered opinion of this Court, prosecution has utterly failed to prove any offence except against appellant Lokhu for causing grievous hurt to P.W. 6 Sonu. The judgment of trial Court against other appellants requires interference as no offence is made out against them.
22. Consequently, the appeal filed by appellants Dasru, Hari, Belku, Tibu, Budhu, Tingoli and Chaitu is allowed and they are acquitted of all the charges. Their conviction and sentence are set aside.
23. Appeal filed by Appellant Lokhu is partly allowed. He is convicted under Section 325 of I.P.C. only and he is acquitted of other offence.
24. So far as sentence for the offence under Section 325, IPC to Lokhu is concerned, the present incident is about 19 years old. No previous criminal history is shown in the charge sheet. As per submission on behalf of the appellant, this appellant has not involved himself in any of the criminal

activities after this incident. At the time of the incident, appellant Lokhu was of middle age of 32 years, presently he is + 50 years. There is no minimum sentence prescribed for the offence. Looking to the long passage of time, it would be appropriate to sentence the appellant for the period already undergone by him as he was in custody from 25-5-1996 to 28-5-1996 for 4 days with fine awarded by the trial Court. Therefore, appellant Lokhu is sentenced for offence under 325, IPC for the period already undergone by him. Fine sentence awarded by the trial Court to him is maintained. The fine amount deposited by the other appellants, in any, except appellant Lokhu be refunded to them.

25. Appellants are on bail. Their bail bonds shall continue for a further period of six months as per provisions of Section 437-A of the Code.

26. Appeal partly allowed.

Judge