

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 538 of 2002**

1. Aurangzeb, S/o Mohammed Ashiq aged about 22 years.
 2. Mohammed Isa alias Isaq, S/o Akbar Ali, aged about 30 years.
- Both are R/o Village Pratappur, Distt. Surguja.

---- Appellants

Versus

- State of Chhattisgarh

---- Respondent

For Appellants : Mr. Ashok Shukla, Advocate.
For Respondent/State: Mr. Suryakant Mishra, P.L.

Hon'ble Shri Justice Inder Singh Uboweja**C A V Judgment****Pronounced on 14 /07/2015**

By this appeal, the appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 30.04.2002 passed by the 6th Additional Sessions Judge (F.T.C.), Surajpur, Dist. Surguja, in Sessions Trial No.281 of 1996 whereby and whereunder after holding the appellants guilty for commission of offence punishable under Section 326/34 of the I.P.C., the Court below sentenced the appellants to undergo rigorous imprisonment for three years with fine of Rs.7,500/- each and in default to further undergo RI for six months each.

2. As per case of the prosecution, on 23.07.1996, upon a demand raised by Israr with regard to share in the property of his grandfather, the appellants along with co-accused persons assaulted him with knife and

caused grievous injuries on his head and chest, on account of which, Israr fell down and could immediately get up. Thereafter, appellant – Mohammed Isa dragged him by tightening the rope, due to which, Israr again fell on the ground. Israr cried for help whereupon Abdul Rahman, Shajahan, Nanka and Munva came there and the appellants left him. Israr, on account of grievous hurt, fell unconscious. Incident was reported by Shahjahan at Police Station Pratappur.

3. F.I.R. was lodged on 23.07.1996 at Police Station Pratappur Dist. Surguja, by P.W.1 Shajahan. Thereafter, Israr was admitted in Community Health Center, Pratappur. Police of Pratappur registered a case bearing Crime No. 94/96 for an offence punishable under Section 307 read with Section 34 of the I.P.C. against the appellants. During the course of investigation, victim Israr was examined by Dr.S.S.Paikra and found following injuries:

1. Stab wound of 4 cm x 1 ½ cms x lung deep placed over right side chest which is just above the right nipple. Clotted blood was present.
2. Incised wound of 4 cm x 1 ½ cm over head which is 3" above from right ear. Clotted blood was present.
3. Multiple incised wounds over face. Clotted blood was present.
4. Likewise, Mohd. Isa was also examined by Dr. S.P.Pakra and found (i) incised wound of 1 cm x ¼ cm x ¼ cm over right middle finger and (ii) incised wound of 1 cm x ¼ cm x ¼ cm over right ring finger and over both injuries clotted blood was present. Doctor opined that injuries caused to

Mohd. Isa were simple in nature whereas injury No.1 caused to victim Israr is grievous in nature and remaining two injuries are simple in nature.

5. Finally, charge sheet was filed. In order to prove the guilt of the accused persons, prosecution has examined as many as 14 witnesses. The accused persons were examined under Section 313 of the Code of Criminal Procedure in which they abjured the guilt and pleaded innocence and false implication.

6. After providing an opportunity of hearing to the parties, learned Additional Sessions Judge, Jagdalpur, convicted and sentenced the appellants under Section 326/24 of the I.P.C.

7. I have heard the learned counsel for the parties and perused the record of trial Court and the judgment impugned.

8. Mr. Ashok Shukla, learned counsel for the appellants, submits that in the present case, appellants were in custody since 23.06.96 to 28.10.1996 thereby they have served more than 4 months imprisonment and now they are on bail, therefore, instead of again sending the appellants to jail, which will not serve any purpose of criminal justice, they may be adequately sentenced by enhancing the fine amount, if the Court thinks it fit. He further submits that the appellants have been facing prosecution since 1996.

9. On the other hand, Mr. Suryakant Mishra, learned counsel for the State, opposed the appeal and submits that the appellants have committed criminal offence and the Court below has rightly convicted and sentenced the appellants.

10. Considering the entire evidence adduced on behalf the prosecution is sufficient and acceptable. The prosecution duly proved the guilt of both the appellants. I am of the view that the trial Court has rightly convicted the appellants under Section 326/34 of the I.P.C. and I hereby affirm the judgment of conviction against the appellants.

11. So far as the quantum of sentence is concerned, the appellants served for more than 4 months jail sentence awarded to them. The appellants are facing the criminal trial and contesting the litigation for the last more than 19 years, therefore, it would be proper and just to reduce the sentence of imprisonment imposed to the appellants.

12. Looking to the totality of the circumstances appeared before this Court, I am of the view that no purpose would be served in sending the appellants back to jail as the object of criminal justice would be served in awarding the sentence already undergone by them.

13. Consequently, the appeal is partly allowed. Conviction of the appellants awarded by the trial Court is hereby affirmed, but, their sentence awarded by the trial Court is modified and instead of RI for three years, they are sentenced to undergo imprisonment for the period already

undergone by them. However, as regards sentence of fine, they were adequately sentenced with fine of Rs.7,500/- each by the trial Court, which would meet the ends of justice. The fine amount paid by the appellants shall be paid to the victim Israr.

14. The appellants are on bail. Their bail bonds shall continue for a period of 6 months as per requirement of Section 437-A of the Cr.P.C.

Sd/-
(I.S.Uboweja)
Judge

