

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 2841 of 1998

1. Herson, aged 35 years, S/o Sukhchain Singh;
 2. Yahava, aged 45 years, S/o Mayada Isai;
 3. Saradhu alias Ifrahim Isai, aged 25 years, S/o Sukhchain;
 4. Kanna alias Mureshan Sukhchain, aged 20 years;
 5. Jitu alias Jitendra, aged 25 years, S/o Masih Bhagat;
 6. Khuttu alias Jivan, aged 20 years, S/o Sukhchain;
 7. Jaswant Kumar, aged 30 years, S/o Masihcharan;
 8. Mainet, aged 27 years, S/o Masih Bhagat;
 9. Ballu alias Narendra Kumar, aged 23 years, S/o Masih Bhagat;
- All residents of Ganeshpur, P.S. Simga, District Raipur (M.P.)

--- Appellants

Versus

- The State of Madhya Pradesh (Now The State of Chhattisgarh)
- Respondent

For Appellants	:	Smt. Renu Kochar, Advocate
For Respondent / State	:	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Passed on : 04 /04/2016

- 1) This appeal is directed against the judgment of conviction & order of sentence dated 19.11.1998 passed by the IInd Additional Sessions Judge, Baloda Bazar in Sessions Trial No.155/89 convicting the accused/appellants under Sections 147, 323/149 & 323/149 of the Indian Penal Code (for short, 'the IPC') and sentencing them to undergo rigorous imprisonment for six months and rigorous imprisonment for one years & to pay fine of Rs.500/-each, in default of payment of fine, additional S.I. for three months each.

- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.
- 3) Brief facts of the case are that on 26.03.1989, Naresh Kumar, S/o complainant – Sosalbai and others have taken *Madar* to play it, accused Hesron has broken the said *Madar*, on which Brijkumar, husband of complainant, has demanded money from accused Hesron and some free fight took place between them. Brijkumar getting afraid and went to the house of Janwasan, thereafter, Hesron, Yahava, Saradhu and other accused persons had threatened him, knocked the door and threatened to set the house on fire. Complainant Sosalbai got afraid and had gone to her mother's house and at night at 9.00 p.m., when she was in her mother's house, accused Yahava, Saradhu and other accused persons were going towards her house, after sometime she saw that her house was burning and accused persons were fleeing away. FIR (Ex.P-4) was lodged by the complainant on the second day morning.
- 4) So as to hold the accused/appellants guilty, prosecution has examined as many as 12 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.
- 5) After providing an opportunity of hearing to the parties, the trial Court convicted & sentenced the appellant as aforementioned.

- 6) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 7) Learned counsel for the appellants submits that she is not pressing this appeal as far as it relates to conviction part of the impugned judgment and would confine his argument to the sentence part thereof only. According to her, the incident had taken place in the year 1989 i.e. about 26 years back, appellants have suffered a lot in facing the litigation for these 26 long years, no useful purpose would be served in sending them to jail and it would be in the interest of justice if the appellants are sentenced only by imposing fine amount. She submits that sentence of fine as imposed by the trial Court may be enhanced substantially.
- 8) On the other hand, learned Panel Lawyer for the State opposed these arguments and supported the judgment passed by the trial Court.
- 9) In the present case, the incident is of 26.03.1989 and in the peculiar facts of this case it may not be desirable to send the appellants to jail after lapse of about 26 years.
- 10) In the facts and circumstances of this case, this Court is of the considered view that ends of justice would meet if while maintaining the conviction of the appellants, instead of sending them to serve out one year of rigorous imprisonment, the sentence of fine is substantially increased.
- 11) In view of the above, the appeal is partly allowed. Conviction part of the impugned judgment is maintained. Instead of sending the

appellants to jail, the fine amount of Rs.500/- each, imposed by the trial Court is enhanced to Rs.1,000/- each. Appellants are directed to deposit this additional amount of Rs.1,000/- each, within a period of five months from the date of receipt of copy of this order and if this amount is not deposited within the said period, this order would not be of any avail to the accused and they will have to serve out the sentence as directed by the trial Court.

12) Appeal thus partly succeeds.

Sd/-
(I.S.Uboweja)
JUDGE