



37

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1215 of 2003

1. Golu alias Mahboob Gori, son of Mahfuz Gori, aged about 24 years.
2. Afzal Khan, son of Inayat Khan, aged about 30 years.
3. Ikbal Khan, son of Inayat Khan, aged about 38 years.

All are residents of Juni Hathri, Rajnandgaon (Chhattisgarh)

---- Appellants

Versus

1. The State Of Chhattisgarh, through the District Magistrate, Rajnandgaon (Chhattisgarh)

---- Respondent

For Appellants:
For Respondent:

Smt. Fouzia Mirza, Advocate
Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement

Per P. Diwaker, J

22/08/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 7.11.2003 passed by the Additional Sessions Judge, Rajnandgaon in Sessions Trial No.38/2003 convicting the present accused/appellants under Sections 341/34 (on two counts), 294/34 (on two counts), 307/34 (on two counts), 506 (B)/34 (on two counts) of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for 1 month; R.I. for 3 months; R.I. for 3 months & R.I. for Life and RI for 7 years respectively.

2. Brief facts of the case are that on 7.1.2013 at 12.20 p.m. in the afternoon Abdul Rasheed (PW-1) lodged FIR (Ex.P-1) alleging in it that on that day at about 11.30 a.m. when he and his brother Abdul Kadir (PW-4) were passing by Bajrang Hotel, the accused persons stopped them, abused them in the filthy language and thereafter accused Abid Ali (since deceased) caused sword injury on the head of Abdul Kadir (PW-4). Abid Ali again made attempt to assault Abdul Kadir (PW-4) on his head by sword which was stopped by him from his left hand as a result of which he sustained injuries on his left hand. It is further alleged that had he not intervened in the matter, the accused persons would have killed Abdul Kadir (PW-4). Based on this information, offence under Sections 294, 506, 324, 307/34 & 341 of the IPC was registered against the accused persons. Abdul Rashid (PW-1) & Abdul Kadir (PW-4) were medically examined by Dr. V.K. Lohiya (PW-3) vide Ex.P-3 & P-4 and noticed following injuries on them:-

Abdul Rashid (PW-1):

- Linear abrasion over left hand of the size 6cm x 4cm caused by hard & pointed weapon.

Abdul Kadir (PW-4):

- Incised wound over left side of forehead of 6x ¼ x ¼ cm size.
- Incised wound over left parietal region of skull of 7x½ x ½ cm size.

As per the doctor, the injuries found on the body of Abdul Kadir (PW-4) were simple in nature.

3. After completion of investigation, charge sheet was filed against the accused persons under Sections 341/34 (on two counts), 294/34 (on two counts), 324/34 (on two counts), 307/34 (on two counts), 506 (Part-II) / 34 (on two counts) of IPC. Deceased accused Abid Ali has also been charged

under Sections 25 (1) (b) & 27 (1) of the Arms Act. The prosecution in order to substantiate its stand, examined 08 witnesses and exhibited a number of documents. Statements of the accused persons were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication in the crime in question.

4. After hearing counsel for the parties the trial Court by the impugned judgment convicted & sentenced the accused/appellants for the offences as mentioned above.
5. During the pendency of the instant appeal, main accused Abid Ali has expired and therefore his name has been deleted pursuant to the order dated 29.7.2016 passed by this Court and as such, this appeal is now confined to accused/appellants Golu @ Mehboob Gori; Afzal Khan & Ikbai Khan only.
6. Learned counsel for the accused/appellants submits that;
 - even if the entire prosecution case is taken as it is, but for accused Abid Ali (since deceased), no other appellants can be convicted for any offence because as per statements of Abdul Rasheed (PW-1) & Abdul Kadir (PW-4), it is accused Abid Ali alone who caused injury to Abdul Kadir (PW-4).
 - the present appellants cannot be convicted with the aid of Section 34 IPC because there is no evidence to show that present appellants had a common intention with deceased Abid Ali to cause injury either to Abdul Rasheed or Abdul Kadir (PW-4).
 - Even accepting the prosecution case as it is, at best the act of present accused/appellants would fall under Section 341 IPC where maximum sentence which has been provided is of one month,



whereas the appellants have already remained in jail for more than two months.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Abdul Rashid (PW-1) is the eyewitness of the incident. He has stated on the fateful day when he along with his brother Abdul Kadir (PW-4) was going to his bangles shop. On the way near Bajrang Hotel, they were stopped by the accused persons stopped by accused persons. They threatened them for life. Thereafter accused Abid Ali assaulted on the head of his brother Abdul Kadir (PW-4) by sword. When accused Abid Ali tried to again assault Abdul Kadir, he stopped said blow by his hand as a result of which he sustained injury on his left wrist. He has further stated that accused/appellant Iqbal & Afzal reside in front of his house and they used to make nuisance everyday after consuming liquor which they used to object and for this reason the accused persons have assaulted them. In the cross-examination also this witness has reiterated as to the manner in which he and Abdul Kadir (PW-4) were injured by accused Abid Ali, however, he has not stated anything incriminating against the present accused/appellants but for the fact that he and his brother were stopped by them.
9. Dr. V.K. Lohiya (PW-2) is the person who medically examined Abdul Rasheed (PW-1) & Abdul Kadir (PW-4) vide Ex.P-3 & Ex.P-4 respectively and opined that injuries sustained by them were caused by hard and sharp object and the same were simple in nature.
10. Mohd. Sapik (PW-3) has not supported the prosecution case and turned



hostile.

11. Abdul Kadir (PW-4) is the another injured eyewitness to the incident. This witness too has stated that he was assaulted by deceased accused Abid Ali. He has also not made any allegation against the present accused/appellants. However, from the Court statement of this witness it is apparent that he has improved a lot while deposing in the Court as his statement does not tall with his diary statement.

12. Abdul Razzak (PW-5) is the brother of Abdul Rasheed & Abdul Kadir. He has stated that on coming to know that accused persons are assaulting his brothers, he rushed to the spot and saw that accused Abid Ali was assaulting his brother Abdul Kadir (PW-4) by sword.

13. M.G. Choukey (PW-6) is the Assistant Sub Inspector who helped in the investigation.

14. Javed Ansari (PW-7) & Salim Khan (PW-8) have not supported the prosecution case and turned hostile.

15. Close scrutiny of the evidence makes it clear that on the fateful day when Abdul Rasheed (PW-1) & Abdul Kadir (PW-4) were going to their bangles shop, on the way near Bajrang Hotel they were wrongfully restrained by the accused persons, who were present in the said hotel at that time, and thereafter accused Abid Ali (deceased) assaulted on the head of Abdul Kadir (PW-4) by sword and caused injuries to him. According to Abdul Rasheed (PW-1) & Abdul Kadir (PW-2), it is accused Abid Ali who alone assaulted them by sword. Their evidence gets corroboration from the promptly lodged FIR (Ex.P-11) and medical evidence in which simple injuries caused by hard & sharp object were noticed on the body of Adul Kadir (PW-4). However, no specific role has been attributed by injured Abdul Rasheed (PW-1) & Abdul Kadir (PW-2) to any of present

accused/appellants except that they have obstructed them from going towards their bangles shop. This apart, the prosecution has not brought anything on record to show that present appellants despite having knowledge that deceased accused Abid Ali intended to cause bodily harm continued to be a participant thereof and in absence of such evidence it is difficult to hold that on the date of incident present accused/appellants were sharing common intention with accused Abid Ali to cause injuries either to Abdul Rasheed (PW-1) or Abdul Kadir (PW-4). In these circumstances, the trial Court should not have convicted and sentenced the present accused/appellants under Sections 294/34, 324/34, 307/34 & 506 (B)/34 IPC. However, the prosecution evidence justified the conviction of accused/appellants under Section 341/34 IPC.

16. In the result, the appeal is partly allowed. Conviction and sentence of accused/appellants under Sections 294/34, 324/34, 307/34 & 506 (B)/34 IPC are hereby set aside. Conviction and sentence of accused/appellants under Section 341/34 IPC are hereby maintained. Since the appellants have already served the maximum sentence of one month prescribed under Section 341 IPC, no order regarding their surrender etc. is required.

Sd/-
Pritinker Diwaker
Judge

Sd/-
C.B. Bajpai
Judge

roshan/-