

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 107 of 2012**

1. Brijesh Sahu, S/o Kishore Sahu, aged about 21 years,
2. Sanjay Kumar @ Jayprakash, S/o Kishore Sahu, aged about 19 years.
3. Kishor Kumar @ Doman, S/o Bhuwan Lal Sahu, aged about 44 years.

All resident of village Bardwar, Police Station - Kota, District - Bilaspur, Chhattisgarh.

---- Appellants**Versus**

- State of Chhattisgarh Through the Police Station Balod, District Durg

---- Respondent

For Appellants	-	Shri Anand Mohan Tiwari, Advocate.
For Respondent/State	-	Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'bel Shri Justice Pritinker Diwaker**Judgment On Board****01/04/2016**

This appeal arises out of the judgment of conviction and order of sentence dated 12.01.2011 passed by the Vth Additional Sessions Judge, Bilaspur, in S.T. No.53/2010 convicting the accused/appellants under Sections 294, 506, 323/34 (on four counts) and 307/34 IPC & sentencing each of them to undergo S.I. for one month, S.I. for three months, S.I. for three months (four times) and R.I. for seven years with fine of Rs.100/-, in default of payment of fine amount to further undergo R.I. for three months.

02. Brief facts of the case are that on 11.06.2008 at 08.15 pm F.I.R. (Ex.P/1) was lodged by injured eye-witness Madanlal Sahu (PW/1) alleging in it that on that day at about 7.00 pm accused/appellant

Kishor Kumar started hurling abuses to Sarpanch and other villagers, on this he was asked not to do so, thereafter, he went to his house and after some time he came along with his two sons Brijesh Sahu and Sanjay Kumar who were carrying sword-cane and club. It is alleged that appellant Brijesh caused injuries by sword-cane to Chandanlal (PW/2), Kishor caused injuries by sword and Sanjay also beat everyone. It is further alleged that acquitted accused Raj Kumar and Ramesh also came there and the incident was witnessed by number of villagers. Based on this FIR, offences under Sections 307, 323/34, 294 and 506 (b) IPC were registered against the accused/appellants and acquitted accused persons namely Raj Kumar and Ramesh. Chandan @ Durga (PW/2) was medically examined by Dr. Awadheshwar Sai (PW/6) vide Ex.P/7 and found following injuries:-

- Stab wound of 4 x 1 cm over epigastric region.
- Stab wound of 4 x 2 cm over left side of chest.
- Multiple abrasions of various size over hand, chest and back.
- Stab wound of 2 x 1 cm over right side of chest.

Rajesh Sahu (PW/4) was medically examined by the Dr. Awadheshwar Sai (PW/6) vide Ex.P/8 and found one incised wound of 4 x 1 cm over right parietal region. Premchand Sahu (PW/7) was also medically examined by said Doctor vide Ex.P/9 and found stab wound of 2 x 2 cm over forehead. Madanlal (PW/1) was medically examined vide Ex.P/10 and found linear abrasion of 1 x 1 cm over right middle and ring finger & multiple contusion of various size over back side of chest and right arm. After investigation, charge sheet was filed against the accused/appellants under Sections 294, 323/34, 506 and 307/34IPC and accordingly charges were framed against them by the trial Court.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 16 witnesses and 02 defence witnesses. Statement of the accused/appellants were also 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused Raj Kumar and Ramesh, but convicted and sentenced accused/appellants as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) that he is not pressing this appeal in respect of accused/appellant Brijesh Sahu as he has already served the entire sentence imposed upon him and has been set free;

(ii) that in respect of remaining accused/appellants namely Sanjay Kumar and Kishor Kumar, it has been argued that considering the role played by them, at best they are liable to be convicted under Section 323 IPC;

(iii) that the accused/appellants have already remained in jail for more than three months.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellants is strictly in accordance law and no interference is called for.

07. I have heard learned counsel for the parties and perused the

material available on record.

08. Madanlal Sahu (PW/1) has stated in his evidence that on the date of incident at about 7.00 pm when he was sitting in-front of his house, he saw accused/appellant Kishor Kumar and Ramesh Kumar coming from the side of rivulet. At the same time, his brother-in-law (sister's husband) Shyam Lal Sahu asked appellant Kishor Kumar about his state of affairs and from where they were coming, thereafter, Kishor started abusing *Panch* and *Sarpanch* using filthy language. This witness asked Kishore not to do so and whatever he wanted to say, say at his home and thereafter both of them went to their house. He has further stated that after some time accused/appellant Kishor came along with his two sons namely Brijesh Kumar and Sanjay who were carrying sword-cane, chain and club. This witness has then clarified that appellant Brijesh Kumar was carrying sword-cane, appellant Sanjay was carrying chain whereas appellant Kishor was carrying club. The accused/appellants after abusing started beating him and upon hearing his cries, his son Rajesh (PW/4) and Premchand (PW/7) reached there, however, accused/appellant Brijesh caused injuries by sword-cane on the head of his son Rajesh (PW/4). Chandan - brother of this witness was also assaulted by appellant Brijesh by sword-cane on the vital part of his body i.e. chest and stomach and then he also caused injuries to his son Premchand. He also states that after assaulting him and other witnesses, appellant Brijesh fled from the spot, whereas remaining accused/appellants Kishor and Ramesh dragged him to the kitchen-garden and committed maarpeet with him. He has also stated that he and other injured were medically examined and on his report, FIR (Ex.P/1) was registered against the accused/appellants. In cross-

examination this witness stood very firm and there is no material deviation in the same.

09. Chandan Lal (PW/2) is brother of Madanlal (PW/1) and it is this witness who was brutally beaten by appellant Brijesh. He has stated that at the time of incident he was standing near his kirana shop, at the same time, he saw appellant Kishor and acquitted accused Ramesh coming from the side of rivulate, they started hurling abuses to Panch and Sarpanch using filthy language. As it was disgusting, the same was objected by his elder brother and he too was abused by these persons, thereafter, appellant Kishor went back to his house. He has further stated that after some time, appellant Brijesh and Kishor came on motorcycle followed by Jai Prakash, acquitted accused Raj Kumar and Ramesh Kumar. Appellant Brijesh was holding sword-cane in his hand, appellant Kishor was holding club and both of them started maarpeet. He also states that three blows were given to him by appellant Brijesh by sword-cane, as a result of which he sustained injuries on his chest and stomach and started bleeding profusely. He was initially taken to Kota Hospital and from there he was referred to CIMS, Bilaspur where he remained hospitalized for 23 days. In cross-examination this witness also stood very firm and there is no material deviation in the same. Ashok Kumar Bagchi (PW/3) is Patwari who prepared spot map vide Ex.P/2. Rajesh Sahu (PW/4) - son of Madanlal (PW/1) also suffered injury in the incident, supported the prosecution case and has described the manner in which he and his family members were assaulted by the accused persons. Tulsi Ram Sahu (PW/5) seizure witness of Ex.P/3 though has been declared hostile but admitted his signature on the document. Dr. Awadheshwar Sai (PW/6) had medically examined

Chandan @ Durga (PW/2), Rajesh Kumar (PW/4), Premchand (PW/7), Madanlal (PW/1) and gave his report Ex.P/7, Ex.P/8, Ex.P/9 and Ex.P/10 respectively. In relation to injuries sustained by Chandan (PW/2) vide Ex.P/7 he has stated that the same were grievous in nature and had he not been brought in the hospital in time, the same could have been fatal to his life. In relation to injuries sustained by other injured person, he has stated that all injured were referred to CIMS, Bilaspur for expert opinion. Premchand Sahu (PW/7) is also son of Madanlal (PW/1) and injured eye-witness to the incident who has supported the prosecution case and has stated as to the manner in which he and other injured were beaten by the accused/appellants. Dr. Ratnesh Kumar (PW/8) who did C.T. Scan of Rajesh (PW/4) has not stated anything specific against anyone. Shyamlal Sahu (PW/9) is seizure witness of certain clothes made under Ex.P/3 and Ex.P/6. Maniram (PW/10), father of injured Chandan (PW/2) and Madanlal (PW/1) and eye-witness to the incident, has duly supported the prosecution case. Dr.(Ms.) Nikita Sai (PW/11) had medically examined acquitted accused Raj Kumar and Ramesh and found no injury on their body. Santosh Yadav (PW/12), witness to seizure of club made under Ex.P/14, has been declared hostile. Bodhiram Sahu (PW/13) has been declared hostile. Madan Gond (PW/14) has been declared hostile. N.K. Goutam (PW/15)-Investigating Officer has duly supported the prosecution case. D.S. Diwan (PW/16) did part of investigation. Ganga Ram Porte (DW/1) has stated that at the time occurrence accused persons were present in other village attending death ceremony in the house of Tulsiram. Rajendra Prasad (DW/2) has almost made similar statement.

10. Close scrutiny of the evidence makes it clear that on 11.06.2008

accused/appellant Brijesh caused injuries to Chandan (PW/2), Rajesh (PW/4) and Premchand (PW/7) by sword-cane. Medical reports Ex.P/7, Ex.P/8 and Ex.P/9 of Chandan (PW/2), Rajesh (PW/4) and Premchand (PW/7) respectively also support the prosecution case. Statement of Chandan (PW/2) is also corroborated by the evidence of Madanlal (PW/1), Rajesh (PW/4) and Premchand (PW/7). This Court is of the considered opinion that the conviction of accused/appellant Brijesh under Sections 294, 506, 323/34 (four times) and 307/34 IPC is in accordance with law and there is no infirmity in the same and, therefore, the conviction of accused/appellant Brijesh is maintained.

11. So far as conviction of accused/appellant Sanjay Kumar and Kishor Kumar is concerned, considering the role played by them and injuries caused by them to the witnesses, they are liable to be convicted only under Sections 294, 506 and 323/34 (four times) of IPC and it will not be safe for this Court to uphold the conviction of these accused/appellants under Section 307/34 IPC.

12. Now the next which arises for consideration before this Court is as to what would be the appropriate sentence?

13. Counsel for the appellants has argued that the accused/appellants Sanjay Kumar and Kishor remained in jail for about two months, the incident had taken place about eight years back and, therefore, their sentence may be reduced to the period already undergone by them.

14. Considering the cumulative effect of the evidence and the role played by accused/appellants Sanjay Kumar and Kishor Kumar, the fact that the incident had taken place in the year 2008 i.e. about 8 years back, they are already on bail, have remained in jail for about two months, this Court is of the considered view that the ends of justice

would be served if their sentence is reduced to the period already suffered by them.

15. The appeal thus partly succeeds. Conviction and sentence of appellant No.1-Brijesh Sahu is maintained. Appellant No.1-Brijesh Sahu has already served the entire sentence imposed upon him and has been set free, therefore, no further order is required. While acquitting Sanjay Kumar (A-2) and Kishor Kumar (A-3) of the charge under Section 307/34 IPC, their conviction under Section 294, 506 and 323/34 (on four counts) IPC is maintained and they are sentenced to the period already undergone by them.

Sd/-

(Pritinker Diwaker)

JUDGE