

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 2680 OF 1999

1. Patakram, aged about 40 years, S/o Vishram.
2. Ishwari Bai, aged about 35 years, W/o Patakram.
Both R/o Village Dhekla, Godhadihi, Tahsil Kurud, District Dhamtari

... Appellants

Versus

- State of Madhya Pradesh (now Chhattisgarh), through Police Station Magarlod, District Dhamtari.

... Respondent

For Appellants	:	Mr. R.S. Patel, Advocate.
For Respondent-State	:	Mr. V.K. Netam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

25/10/2016

1. The present appeal has been preferred by the Appellants against the judgment dated 27.9.1999 passed by the Additional Sessions Judge, Dhamtari, District Dhamtari in Sessions Trial No. 174 of 1999, whereby the Appellants have been convicted and sentenced as follows :

Convicted under Sections	Sentenced to undergo
Appellant No.1	
325 read with Section 34 of IPC	R.I. for 1 year.
323 read with Section 34 of IPC	R.I. for 6 months.
Appellant No.2	
325 of IPC	R.I. for 1 year.
323 of IPC	R.I. for 6 months.

2. The Appellants in the instant case are said to have by now remained in custody for a period of a little less than one year.
3. Counsel for the Appellants at the outset submits that he does not intend to assail the judgment of conviction but prays that taking into consideration the peculiar facts and circumstances of the case and also the fact that the issue in the instant case has already been resolved between the injured person and the Appellants, the sentence imposed upon the Appellants may be reduced to the period already undergone.

According to the Counsel for the Appellants, the two injured persons in the instant case were closely related to the Appellants herein inasmuch as the Appellant No.1 is the brother of PW-4, Dashoda Bai, the injured witness, and PW-1 Gayaram is the husband of PW-4, the another injured witness. It is further averred by the Counsel for the Appellants that the issue between the Appellants and the injured persons was that of the house in which the two families were residing and that a civil suit in this regard was already pending before the Civil Court. Counsel for the Appellants further submits that since the appeal is of the year 1999 and one of the injured witness i.e., PW-1 Gayaram has expired in the year 2006 and the other injured witness PW-4 Dashoda Bai who is the sister of Appellant No.1 has in between settled the dispute between them and she has also filed an affidavit in this regard before this Court seeking for compounding of the offence and that she does not intend to further prosecute her brother and his wife and wants the matter to be settled once and for all, this Court may take a lenient view in this regard. With the aforesaid submissions Counsel for the Appellants prays that the Appellants in the instant case may be acquitted of the charges in the light of the affidavit filed by the surviving injured witness i.e., PW-4 Dashoda Bai or else at-least the sentence may be reduced to the period already undergone.

4. Counsel for the State however opposing the application for compounding the offence submits that taking into consideration the nature of offence committed by the Appellants where the Appellants have assaulted the real sister of Appellant No.1 and her husband, that is, PW-1 and PW-4 respectively, the offence does not deserve to be compounded nor does it call for a lenient view to be taken, and thus opposes the appeal. However, he does not dispute or doubt the veracity of the affidavit filed by PW-4, Dashoda Bai seeking for compounding the offence.

5. Having considered the rival contentions put forth on behalf of either side and on perusal of the records, some of the admitted facts in the instant case which would be relevant for the disposal of the appeal are that the incident in the instant case took place as early as 2.3.1999, that is, 17 ½ years ago. Further, the conviction of the Appellants is also almost 17 years ago and the Appellants were on bail all along except for the period of custody that they have undergone during the trial as well as after the judgment of conviction was passed, that is, for around 20-25 days. The Doctor who had examined both the injured persons is Dr. K.K. Sogh (PW-8). The deposition of the said Doctor reveals that except for one fracture that too on the internal waist of PW-1 all the other injuries caused on the two injured persons were simple in nature and the fracture injury also was on the non-vital part. From the evidence of the Doctor it also reveals that except for the slight fracture of medial near sacral bone of PW-1 all the injuries sustained by PW-1 and PW-4 were simple lacerated wounds, laces/contusions and were not grievous in any manner. Furthermore, the injured PW-4 Dashoda Bai is the real sister of Appellant No.1 and the Appellant No.2 is the wife of Appellant No.1 and the dispute being purely a private dispute arising out of property occupied by the two injured witnesses. In addition, pending the appeal before this Court the PW-4 Dashoda Bai sworn in an affidavit in favour of the Appellants stating that she has settled the dispute with her brother and his wife and that she does not intend to further prosecute the Appellants in any manner and wants the matter to be closed once and for all.

6. Considering the entire facts and circumstances of the case, this Court has no hesitation in reaching to the conclusion that in the given facts and circumstances this Court is not inclined to grant permission to the Appellants to compound the offence but in the factual matrix of the case

and also keeping in view of the affidavit filed by the injured PW-4 Dashoda Bai and also for the fact that she is the real sister of Appellant No.1, this Court upholds the conviction of the Appellants. However, the sentence imposed upon the Appellants is reduced to the period already undergone.

7. The Appellants are stated to be on bail. Therefore, their bail-bonds shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A of CrPC.

8. The appeal is dismissed with the aforesaid modification of sentence.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/