

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 33 OF 2000

1. Bhokh Singh, S/o Ramdhani Singh, Gond, aged about 36 years, occupation Agriculture.
 2. Deo Singh, S/o Shri Kunwar Sai, Gond, aged about 46 years, occupation Agriculture.
 3. Ramkeshwar, S/o Kharak Sai, Gond, aged about 46 years, occupation Agriculture.
- All resident of Village Bhathanpara Kerju, P.S. Sitapur, District Surguja (C.G.)

... Appellants

Versus

- State of Chhattisgarh, through P.S. Sitapur, District Surguja (C.G.)

... Respondent

For Appellants	:	Mr. Shakti Raj Sinha, Advocate.
For Respondent-State	:	Mr. S.R.J. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

28/11/2016

1. The present appeal has been preferred by the Appellants assailing the judgment dated 14.11.2000 passed by the Second Additional Sessions Judge, Ambikapur, District Surguja in Sessions Case No. 90 of 1999, whereby each of the Appellants has been convicted and sentenced to undergo R.I. for 3 years and to pay fine of Rs.100/- with default sentence of additional R.I. for 6 months under Section 325/34 of IPC and also to undergo R.I. for 6 months under Section 323/34 of IPC.
2. Learned Counsel for the Appellants at the outset submits that pending the appeal before this Court, Appellant No.3 Ramkeshwar has since died and in this regard he has submitted the death certificate of Appellant No.3, Ramkeshwar.
3. The death certificate of Appellant No.3 Ramkeshwar is taken on record. The present appeal so far as Appellant No.3 Ramkeshwar is concerned stands abated.

4. Learned Counsel for the Appellants assailing the impugned judgment submits that the entire case of the prosecution is not trustworthy for the reason that there are material contradictions in the statements of the two injured witnesses themselves, i.e., Hemsai (PW-5) and Aaseen Gond (PW-2). According to him, the injured witness, Hemsai (PW-5) has made a statement that it were the Appellants Nos. 1 and 2 who assaulted him, whereas the another injured witness, Aaseen Gond (PW-2), who is son of Hemsai (PW-5), has not been able to state as to who had assaulted his father (PW-5). Likewise, Tilaksai (PW-3), also the son of Hemsai (PW-5), has not been able to name as to who had inflicted which blow upon the injured persons and therefore the case of the prosecution has not been properly appreciated by the Court below and the benefit of which should be given to the accused persons.

5. Learned Counsel for the Appellants further assailing the impugned judgment submits that even otherwise perusal of the medical evidence which has come on record would also reflect that the offence under Section 325 of IPC would not be made out against the Appellants inasmuch as the injuries sustained by the two injured witnesses i.e., PW-5 and PW-2, were simple in nature and therefore the conviction of the Appellants for the offence under Section 325 of IPS is not proper and at best if at all if the Appellant would be convicted they could be convicted for the offence under Section 323 only and not under Section 325 of IPC. It was further assailed by the Counsel for the Appellants that the record would evidently show that the Appellants were not the aggressors but it were the injured persons who were the aggressors and that they had come to the house of Appellants and took upon a fight and during which the two persons got injuries. He also submits that the fight took place between the parties for some trivial family dispute as the injured persons were related to deceased Appellant,

Ramkeshwar and there was a previous family dispute between the two groups which had occurred some days ago.

6. Counsel for the Appellants lastly submits that in the instant case the date of incident was 26.12.1998, that is, almost 18 years have passed from the date of incident and that the date of conviction is of 14th November, 2000, that is, even after the judgment being passed it is more than 16 years of time that has elapsed. That, the Appellant No.1, Bhokh Singh has remained in custody for about 4 months and Appellant No.2, Deo Singh has remained in custody for a period of about 20 days of time. Considering the peculiar facts and circumstances of the case, Counsel for the Appellants prayed for the interference with the sentence to the extent of it being converted to the period already undergone.

7. Learned Counsel for the State however opposes the appeal on the ground that the prosecution in the instant case has proved its case beyond all reasonable doubts. According to the State Counsel, the prosecution has led both ocular evidence of the injured witness as well as the medical evidence of the Doctor (PW-4) who had conducted the treatment of the injured witnesses and based upon these two strong evidences, the case of the prosecution stands proved beyond all reasonable doubts and the matter does not warrant any interference neither do the Appellants deserve for any sympathy for interfering with the quantum of sentence.

8. Having heard the rival contentions put forth on behalf of either side and on perusal of the record, it is reflected that the date of incident in the instant case is of 18 years ago and the date of conviction of the Appellants was 16 years ago and further that one of the Appellants, i.e., Appellant No.3 Ramkeshwar pending the appeal has since expired. Another aspect which cannot be brushed aside is the fact that the two Appellants were in their

middle age at the time of lodging of the prosecution and down the line for all these 18 years they have already reached the advance stage of their life of roughly 55 and 65 years of age respectively.

9. It is also necessary to take into consideration the medical evidence which has come on record. So far as the injured witness, Aaseen Gond (PW-2) is considered admittedly the injury sustained by him was very simple in nature and that he was not even hospitalized at all. So far as the other injured witness, Hemsai (PW-5) is concerned, the injury was one on his left thigh which was not serious at all and was simple in nature. The only injury which appears to have been serious is the second injury of Hemsai which was below his left eye inflicted by a club used by the Appellants and the evidence of Dr. M.K. Jain (PW-4) suggests that there was a fracture also. But, what cannot be lost sight is the fact that the area where the injury sustained was not the vital part of the body but true it is that there was a fracture which in due course of time got healed up and that the record does not show a prolonged treatment of Hemsai (PW-5). PW-12, Dr. Pramod Malviya has however stated that the nature of injuries sustained by Hemsai was simple in nature. PW-12 is the Doctor Pramod Malviya who had given treatment to Hemsai and also conducted the MLC. Another aspect which would also require consideration is the fact that the deceased Appellant, Ramkeshwar was in fact related to the injured-complainant, Hemsai (PW-5), and Aaseen Gond (PW-2) is son of Hemsai (PW-5) and thus there were all related to each other.

10. Taking into consideration the total facts and circumstances of the case, particularly the trivial nature of dispute between the parties which led to the fight and also considering the nature of injuries and the duration of time passed from the date of incident and the date of conviction, this Court is of the opinion that ends of justice would meet if the conviction of the

Appellant for the offence under Sections 323, 325/34 of IPC is maintained and it is ordered accordingly.

11. However, taking into consideration the reasons assigned in the preceding paragraphs and also considering the present day age of the Appellants and the fact that the incident had occurred about 18 years of time, ends of justice would meet if the sentence is reduced and is accordingly reduced to the period already undergone. However, the fine of Rs.100/- which has been imposed upon each the Appellants by the Court below for the offence under Section 325 of IPC deserves to be and is accordingly enhanced to Rs.2500/- each which the Appellants shall deposit within two months. In the event of default of payment of fine amount, each of the Appellants shall undergo R.I. for six months.

12. 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.

13. With the aforesaid modification of sentence, the appeal is dismissed.

Sd/-
(P. Sam Koshy)
Judge