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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1109 of 2003

1. Diksha Sharma, W/o Radheshyam Sharma, aged about 38 years, R/o Lal Tanki, Bahidarpara, Tehsil & District Raigarh (CG)
2. Deepmala Sharma, D/o Radheshyam Sharma, aged about 21 years, R/o Lal Tanki, Bahidarpara, Tehsil & District Raigarh (CG)
3. Radheshyam Sharma, S/o Ghanshyam Sharma, aged about 41 years, R/o Lal Tanki, Bahidarpara, Tehsil & District Raigarh (CG)

---- Appellants

Versus

1. State Of Chhattisgarh, through In-charge, City Kotwali, Tehsil & District Raigarh (CG)

---- Respondent

And

CRA No. 146 Of 2004

1. Jayant Bahidar, S/o Sharda Prasad Bahidar, R/o Lal Tanki, Bahidar Para, Raigarh, Teh. & Distt. Raigarh (CG)

---- Appellant

Vs

1. State Of Chhattisgarh, through In-charge, City Kotwali, Tehsil & District Raigarh (CG)

---- Respondent

And

CRR No. 439 Of 2003

1. Premdhar Sharma, S/o Heeradhar Sharma, aged about 67 years.
2. Nirmala Sharma, w/o Premdhar Sharma, aged about 60 years.
3. Rashmi Sharma, D/o Premdhar Sharma, aged about 27 years.

All residents of Qtr. No.127/2/1 Lal Tanki, Bohidarpara, Raigarh, District Raigarh (CG)

--- Applicants

Vs



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1. Diksha Sharma, W/o Radheshyam Sharma, aged about 38 years, R/o Lal Tanki, Bahidarpara, Tehsil & District Raigarh (CG)
2. Deepmala Sharma, D/o Radheshyam Sharma, aged about 21 years, R/o Lal Tanki, Bahidarpara, Tehsil & District Raigarh (CG)
3. Radheshyam Sharma, S/o Ghanshyam Sharma, aged about 41 years, R/o Lal Tanki, Bahidarpara, Tehsil & District Raigarh (CG)
4. State Of Chhattisgarh, through Station Officer Station House City Kotwali, Raigarh, Tehsil & District Raigarh (CG)

---- Respondents

And

CRR No. 528 Of 2003

1. Premdhar Sharma, S/o Heeradhar Sharma, aged about 67 years.
2. Nirmala Sharma, w/o Premdhar Sharma, aged about 60 years.
3. Rashmi Sharma, D/o Premdhar Sharma, aged about 27 years.

All residents of Qtr. No.127/2/1 Lal Tanki, Bohidarpara, Raigarh, District Raigarh (CG)

---- Applicants

Vs

1. Jayant Bahidar, S/o Sharda Prasad Bahidar, R/o Lal Tanki, Bahidar Para, Raigarh, Teh. & Distt. Raigarh (CG)
2. State Of Chhattisgarh, through Station Officer Station House City Kotwali, Raigarh, Tehsil & District Raigarh (CG)

---- Respondents

For Appellants:

Shri Vipin Punjabi, Advocate in Cr.A.
No.1109/03 & 146/04 & for respondents in
Cr. Revision Nos.439 & 528 of 2003.

For Applicants:

Shri Y.C. Sharma, Advocate with Shri
Govind Dewangan, Advocate in Cr. Rev.
Nos.439 & 528 of 2003

For Respondent:

Shri Vivek Sharma, Govt. Adv. With Shri
Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice C.B. Bajpai

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Judgement

Per P. Diwaker, J

21/06/2016

1. As the above appeals & revisions arise out of the same incident, they are being disposed of by this common judgment.
2. By filing Criminal Appeal No.1109/03 the accused/appellants have challenged the judgment of conviction and order of sentence dated 14.8.2003 passed by the 1st Additional Sessions Judge, Raigarh in Sessions Trial No.107/02 convicting the accused/appellants under Sections 148, 323/149, 452, 324 IPC and sentencing them to undergo RI for 1 year & fine of Rs.500/-; RI for 6 months & fine of Rs.200/-; RI for 1 year & fine of Rs.500/- and RI for 15 months & fine of Rs.500/-, with default stipulations, respectively. However, the trial Court considering the fact that accused/appellants Diksha Sharma & Deepmala Sharma are the first offenders, extended them benefit of the Probation of Offenders Act and not sent them to jail subject to their furnishing bond of Rs.7,000/- each and surety of good conduct for a period of three years.
3. Whereas, by filing Criminal Appeal No.146/04 accused/appellant Jayant Mahidar has challenged the judgment of conviction and order of sentence dated 1.10.2003 passed by the 1st Additional Sessions Judge, Raigarh in Sessions Trial No.107/02 convicting him under Sections 148, 323/149, 324, 324 & 452 IPC and sentencing him to undergo RI for 6 months & fine of Rs.200/-; RI for 6 months & fine of Rs.200/-; RI for 10 months & 20 days; RI for 10 months & 20 days; and RI for 6 months & fine of Rs.600/-, with default stipulations, respectively.
4. Noteworthy to mention here that when the trial was at the stage of recording of statement of accused persons, accused/appellant Jayant Bahidar absconded and surrendered before the Court below on 22.8.2013, therefore judgment in respect of accused/appellant Jayant Bahidar has been passed separately on 1.10.2003.
5. By filing Criminal Revisions, the victims/applicants have challenged the acquittal of accused/appellants of the charge under Section 307 IPC, reduction of sentences imposed on accused/appellant Jayant Bahidar & Radhe Shyam Sharma to the period already undergone and extension of benefit of the Probation of Offenders Act to accused/appellant Diksha

Sharma & Deepmala Sharma.

6. As per the prosecution case, on 27.4.2002 at 3.20 p.m. a FIR (Ex.P-5) was lodged by Rakesh Sharma, nephew of injured Premdhar Sharma, alleging in it that on that day at about 3.00 p.m. accused/appellants entered the house of Premdhar Sharma and assaulted Premdhar Sharma, Nirmala Sharma & Rashmi Sharma by iron rod and bamboo stick as a result of which they sustained injuries on various parts of the body. Based on this report, offence under Sections 147, 148, 149, 452, 307, 323 & 34 IPC was registered against the present accused/appellants and two minor accused namely Ranu Sharma & Dipak Sharma. Injured Premdas was medically examined by Dr. (Smt.) Ratna Manik Meshra (PW-14) vide Ex.P-12A and she noticed one lacerated wound of 8x1x1cm over right parieto occipital region of scalp with fresh bleeding. Injured Nirmala Sharma was medically examined by the doctor (PW-14) vide Ex.P-11A who noticed one contusion of 5x5cm over right parietal area of scalp and one lacerated wound of 1 ½ x ½ cm over right cheek with fresh bleeding. Dr. (Smt.) Ratna Manik Meshram had also examined injured Rashmi Sharma vide Ex.P-18 and noticed following injuries were noticed multiple minute abrasions (0.5mm) over left cheek, multiple minute abrasion over upper part of chest and backache.
7. After completion of investigation, charge sheet was filed against the accused persons under Sections 147, 148, 149, 452, 307, 323 of IPC. However, the trial Judge has framed the charges under Section 148, 307/149, 323/149 & 450 IPC against the accused persons.
8. So as to hold the accused/appellants guilty, the prosecution has examined 16 witnesses. Statements 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 and pleaded innocence & false implication.
9. After hearing counsel for the respective parties and considering the material available on record, the trial Court by the impugned judgements, while acquitting all the accused persons from the charge under Section 307/34 IPC, convicted and sentenced them as mentioned in Para-2 & 3 of this judgment.
10. Learned counsel for the appellants in both the appeals submits that:

- on account of civil dispute pending between the parties, the accused/appellants have been falsely implicated in the crime in question.
- Evidence of Rakesh Sharma (PW-3), Meena Diwan (PW-6), Rashmi Sharma (PW-7), Premdhar Sharma (PW-9) & Nirmala Sharma (PW-11) are full of embellishments and do not inspire confidence.
- The court below ought to have appreciated the fact that it is the complainant party who were aggressor and had caused injuries to appellant Radhe Shyam Sharma & Diksha Sharma.

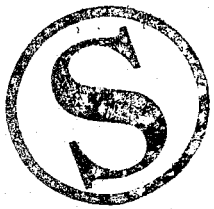
11. In reply to the criminal revisions filed by Premdhar Sharma & others, it has been argued that even if the entire prosecution case is taken as it is, the offence under Section 307 IPC is not made out against the present appellants. He further submits that reduction of sentence and extension of benefit of the Probation of Offenders Act to the respective accused/appellants by the trial Court is fully justified and need no interference in these revisions.

12. Counsel for the applicants in both the criminal revisions argued that considering the nature of injuries suffered by the applicants and weapon used in commission of crime, the court below ought to have convicted and sentenced all the accused persons under Section 307 IPC. He further submits that the court below erred in holding that the period of detention already suffered by the accused/appellants is sufficient punishment for the offence committed by them.

13. Supporting the impugned judgments, it has been argued by the State counsel that after due appreciation of evidence the trial Court has rightly convicted and sentenced the appellants. There is no illegality or infirmity in the judgments under challenge warranting interference by this Court. The State counsel has also duly assisted in disposal of the criminal

revisions filed by private parties.

14. We have heard learned counsel for the parties and perused the material available on record.
15. Umesh Kumar Tiwari (PW-1) is the Revenue Inspector who prepared the spot map (Ex.P-1) and inquest (Ex.P-2).
16. Dayaram (PW-2) is the witness of seizure memo of Ex.P-3 & Ex.P-4 by which certain articles were seized by the prosecution.
17. Rakesh Dhar Sharma (PW-3) is the lodger of the report. This witness has stated that upon hearing commotion, he came out of his house and saw that his uncle Premdhar Sharma was being pulled out from his house. Accused persons were also present there. Accused Jayant Bahidar & Radhe Shyam Sharma were carrying rod & stick respectively. Accused Jayant Bahidar assaulted Premdhar on his head by rod and thereafter accused Radhe Shyam Sharma assaulted Premdhar by stick on his head & waist. When Nirmala Sharma tried to intervene, she too was assaulted by both of them as a result of which she sustained injuries on her left shoulder & eye. He has further stated that Premdhar & Nirmala were taken to the hospital for treatment and on the same day in the evening, he has lodged the report Ex.P-5.
18. Rambai (PW-4) & Usha Gupta (PW-5), who are said to have been present on the spot at the time of incident, have not supported the prosecution case and declared hostile.
19. Veena Diwan (PW-6), an eyewitness of the incident, has stated that on hearing commotion, she came out of her house and saw that accused Jayant & Radheshyam were dragging Premdhar & Nirmala Sharma out of their house and thereafter assaulted them by iron rod & stick respectively on various parts of their body as a result of which they became unconscious. At that time accused Ranu Sharma, Dipak Sharma, Diksha



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Sharma & Deepmala Sharma were assaulting Rashmi by hands & fists. He has further stated that accused Jayant was carrying iron rod and accused Radhe Shyam was carrying club. They have assaulted Premdhar Sharma & Nirmala Sharma by iron rod & club. On account of assault, Premdhar became unconscious. This witness remained very firm in her lengthy cross-examination.

20. Rashmi Sharma (PW-7), an injured witness, has stated that the accused persons forcibly entered her house after breaking open the doors and assaulted them while abusing filthily. She has further stated that on hearing noise, when her parents, who were resting inside, came out and seeing them the accused persons started misbehaving with them. Accused Jayant & Radheshyam Sharma mercilessly assaulted her father Premdhar Sharma by stick & rod as a result of which he sustained injuries on various parts of the body. She has further stated that even after the fall of her father on the ground, the accused persons did not stop. This witness remained very firm in her lengthy cross-examination and the defence has not been able to elicit anything incriminating which makes her testimony unreliable.

21. Dr. Anil Kumar Tirkey (PW-8) is the doctor who provided treatment to the injured in the hospital at Raigarh.

22. Premdhar Sharma (PW-9) is another injured witness of the incident. While supporting the prosecution case, he has stated that accused persons forcibly entered his house, started hurling abuses and thereafter caused injuries to him, his wife & daughter. He has further stated that accused persons were asking him to vacate the house. This witness remained very firm in her lengthy cross-examination and the defence has not been able to elicit anything incriminating which makes her testimony unreliable.

23. Gajendra Prasad Tiwari (PW-10) is the person who registered FIR



(Ex.P-5) and sent the injured persons for treatment vide Ex.P-11, P-12 & P-13.

24. Nirmala Sharma (PW-11) is the another injured witness. She has stated that accused persons forcibly entered her house and caused injuries to her husband & daughter by iron rod & stick.
25. Balkrishna Mishra (PW-12) & Pintu @ Brajesh Patnaik (PW-13) have not supported the prosecution story and declared hostile.
26. Dr. (Smt.) Ratna Manik Meshra (PW-14) is the doctor who treated injured Premdhar Sharma, Nirmala Sharma & Rashmi Sharma vide Ex.P-11A, P-12A & P-18 and noticed the injuries as described above. This witness has opined the sustained by Nirmala Sharma & Premdhar Sharma to be dangerous to their life. However, in Para-14 of evidence this witness has stated that any injury on the head is treated fatal to life.
27. Rajeev Sharma (PW-15) is the investigating officer who did the investigation and has duly proved the prosecution case.
28. Smt. Aarti Nande (DW-1) is the doctor who medically examined accused/appellant Diksha Sharma. She noticed pain on her hand and lower limb.
29. Jai Singh (DW-2), Keshav Gupta (DW-4), Devesh Sharma (DW-5) & Yugal Bahidar (DW-6) have stated that it is the complainant party who were beating accused/appellant Diksha Sharma.
30. Accused Smt. Diksha Sharma has examined herself as DW-7 and stated that on the date of incident the complainant party forcibly entered my house and tried to pulled her out.
31. Minute examination of the evidence available on record makes it clear that on 27.4.2002 the accused/appellants armed with different weapons formed an unlawful assembly common object of which was to cause injuries to the victims and in order to prosecute said object they forcible

entered the house of victim Premdhar Sharma (PW-9) and voluntarily caused injuries to Premdhar Sharma (PW-9), Nirmala Sharma (PW-11) & Rashmi Sharma (PW-7). The injured witnesses have categorically stated as to in what manner the accused/appellants have assaulted them. Rakesh Dhar Sharma (PW-3) & Veena Diwan (PW-6), eyewitnesses of incident, have fully supported the prosecution case. According to them, upon hearing commotion when they reached on the spot, they saw the accused persons assaulting the injured witnesses by iron rod & stick. Statements of these witnesses have been duly supported by Dr. (Smt.) Ratna Manik Meshram (PW-14) who had medically examined the injured witnesses and found injuries as described in the report Ex.P-11A, P-12A & Ex.P-18. The injured witnesses were cross-examined at length but nothing favourable to the accused could come on record and therefore there is no evidence whatsoever before this Court to doubt the version given by them. Thus, we are of the considered opinion that on the basis of ocular & medical evidence, the prosecution has been able to establish that all the accused persons were guilty for the offences punishable under Sections 148, 323/149, 324 & 452 IPC.

32. As regards sentence, there is no evidence on record that the accused/appellants remained indulged in any other criminal act and this is probably the first offence alleged against them. Being so, the trial Court has been fully justified in taking a lenient view in reducing the sentence to the period already undergone by them and there appears to be no illegality in the same.

33. Similar is the situation with accused/appellant Diksha Sharma & Deepmala Sharma and they too appear to be the first offender having no past criminal history against them, the trial Court has been fully justified in extending them the benefit of the Probation of Offenders Act and not

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sending them to jail. This portion of the judgment impugned also does not appear to suffer from any illegality and being so, it is maintained.

34. In the result, the appeals & revisions mentioned above are hereby dismissed and the order under challenge therein stand affirmed.

Sd/-
Pritinker Diwaker
Judge

Sd/-
C.B. Bajpai
Judge

shan/-