

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 38 of 2015**

1. Bashan Bai W/o Late Baisakhu Ram, aged about 60 years.
 2. Shiv Prasad S/o Late Baisakhu Ram, aged about 60 years.
- Both Residence of village Bandha, Police Station Lalpur, Tahsil Lormi, District Mungeli, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Police Station Lalpur, District Mungeli, Chhattisgarh.
 2. Ram Sanahi, aged about 74 years S/o Shri Ram Adhin Kurmi.
 3. Amrit S/o Ram Sanahi Kurmi, Aged about 50 years.
- All resident of village Bandha, Police Station Lalpur, Tahsil Lormi, District Mungeli, Chhattisgarh.

---- Respondents

For Appellant	:	Shri A.K.Yadav, Advocate.
For Respondents/State	:	Shri Ashok Swarnakar, Panel Lawyer.
For Respondents No. 2 & 3	:	Shri Pallav Mishra, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****04/01/2016**

1. I.A. No. 1 of 2015 has filed to condone delay of 265 days. Considering the duration and the explanation, after hearing Learned Counsel for the parties, delay is condoned.
2. The appeal assails conviction of Respondent No. 2 and 3 under Section 325/34 IPC in Sessions Trial No. 485 of 2001 dated 28.6.2014 ordered by the Additional Sessions Judge, Mungeli, District Bilaspur. Earlier, by judgment dated 27.2.2003 of the 3rd Additional Sessions Judge (F.T.C.) Mungeli, District Bilaspur, Respondents No. 2 and 3 had been convicted under Section 323/34 IPC leading to the institution of Criminal Revision No. 153 of 2003 by the injured

Baisakhu pursuant to which the impugned judgment dated 28.6.2014 has been passed.

3. Learned Counsel for the Appellants submitted that they are the legal heirs of the injured, Late Baisakhu Ram Kashyap son of Chhotu Ram Kashyap who was assaulted by the Respondents No. 2 and 3 on 2.11.2000. Even though, the FIR was lodged under Section 307/34, 294/34 and 506-B/34 IPC, conviction was wrongly made only under Section 323/34 IPC leading to the matter being remanded to the Sessions Judge in Revision, limited to that aspect. The conviction under Section 323/34 IPC was till rising of the Court only alongwith fine of Rs. 1000/- each. In the fresh order, convicting Respondents No. 2 and 3 under Section 325/34 IPC for causing grievous hurt, maximum punishment for which was upto 7 years alongwith fine, the same conviction till rising of the Court has been maintained. The submission therefore was that not only there has been inadequate sentencing in the nature of the charge now found to be proved but also compensation awarded was highly inadequate in the nature of injuries rendering the injured Baisakhu Ram Kashyap incapacitated for several days. At least Rs. 50,000/- compensation should have been awarded.

4. Learned Counsel for the State pointed out that the victim Baisakhu Ram Kashyap has himself been subsequently deceased naturally on 10.8.2011.

5. Learned Counsel for Respondents No. 2 and 3 pointed out that Respondent No. 2 was 62 years of age in 2001 and would be today approximately 77 years of age and Respondent No. 3 would be approximately 50 years of age. The Trial Judge while sentencing has adequately considered matters such as pendency of the matter since 2001, the institution of a revision application, and in the facts and circumstances of the case recorded his satisfaction that no useful purpose would be served by sending Respondents No. 2 and 3 behind bars. For that reason, he considered it appropriate to enhance the fine amount from Rs. 1000/- to Rs. 5000/- each and out of which

Rs. 4000/- has been ordered to be paid as compensation to the victim under Section 357 CrPC.

6. We have considered the submissions on behalf of the parties and are satisfied that the order under appeal calls for no interference. The assault on Baisakhu Ram Kashyap took place on 2.11.2000. Conviction under Section 323/34 IPC was ordered on 27.2.2003. Criminal Revision No. 153 of 2003 was allowed on 26.3.2012. Baisakhu Ram Kashyap himself was deceased on 10.8.2011 pending the revision application. The Appellants are the legal heirs. They were not the victims of the crime. It is not a case of the injured having died because of the assault. The Trial Judge has rightly observed that there was only one injury on the head and in the entirety of the facts and circumstances, there appears to be no intention to kill. The fracture was on one rib only. Fracture of a rib does not automatically lead to death. From the evidence of the Doctor, the Trial Judge was satisfied to hold that there was no evidence to conclude that single injury on the head was sufficient in the ordinary course of nature to cause death. The conviction under Section 325/34 IPC therefore calls for no interference.

7. Sentencing is the most difficult part of a judgment. Prima facie, the argument that the same sentence would not apply in case of conviction under Section 323 IPC and Section 325 IPC appears attractive. But a deeper analysis of facts of each case would become relevant to decide what would be the adequate sentence in a given case. The Trial Judge has adequately discussed that the incident was of 2001. The matter had remained pending ever since then. It was carried to this Court in Revision. The conviction was enhanced to Section 325 IPC. At this belated stage on 28.6.2014, no useful purpose was going to be served by convicting Respondents No. 2 and 3 and sending them behind bars for a longer period of time considering the petty nature of the origin of the dispute with regard to the passage of a Tractor leading to abuses. In the circumstances,

the Trial Judge considered it proper to maintain the same sentence till the rising of the Court but enhanced the fine of Rs. 1000/- each ordered earlier to Rs. 5000/- each and out of the same, directed now additionally that compensation of Rs. 4000/- be paid to the victim under Section 357 CrPC. The injured has died subsequently and therefore the compensation amount has come as a bonanza to the Appellants. In the entirety of the facts and circumstances of the case, we find no reason to interfere except to clarify that the fine amount of Rs. 5000/- each (total Rs. 10,000/-) be paid to the Appellants as compensation under Section 357 CrPC.

8. With the aforesaid modification, the appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE