

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 117 OF 2001

1. Dharam S/o Baliram, aged about 38 years,
 2. Sukhru Ram S/o Baliram, aged about 28 years
 3. Chandarlal S/o Baliram, aged about 28 years
 4. Premlal S/o Itwari Klar, aged about 19 years
- All R/o village Barkari PS Farasgaon, Distt. Bastar (CG).

... Appellants

Versus

State of MP (Now State of Chhattisgarh) through PS Farasgaon, District Bastar (CG).

... Respondent

For Appellants	:	Shri Adil Minhaj, Advocate.
For Respondent/State	:	Shri Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

25.11.2016

1. The appellants stand convicted for the offence under Sections 148, 326/149, 324 and 323/149 IPC and have been sentenced to undergo RI for one year with fine of Rs.1000/-, RI for seven years with fine of Rs.5000/-, RI for three years with fine of Rs.2000/- and RI for six months with fine of Rs.500/- respectively with default stipulations to each of the appellants vide judgment dated 15.01.2001 passed by the Second Additional Sessions Judge, Jagdalpur (Bastar), in Sessions Trial No.83/1991.
2. The case of the prosecution in brief is that, the appellants were convicted for the offence under Section 326 IPC for the assault made on PW-2, Bhakchand, offence under Section 324 IPC was lodged for the assault made upon Sonabati, PW-3 and offence under Section 323

IPC was in respect of the injury caused upon PW-1, Ramcharan. An FIR was lodged by PW-1, Ramcharan on 08.06.1990. It is alleged that PW,1, Ramcharan, PW-2, Bhakchand and PW-3, Sonabati jointly have gone to the field belonging to one Sunder Lal in order to pluck the Jackfruit. According to the prosecution, when these persons were plucking the jackfruit from trees belonging to Sundar Lal, the appellants herein had objected and assaulted them resulting in their injuries. Initially case was lodged against seven persons i.e. Sundar Lal and his two sons and the present appellants. After completion of investigation, the matter was put to trial before the Second Additional Sessions Judge, Jagdalpur vide Sessions Trial No.83 of 1991. Offence under Sections 147, 148, 307, 323, 326 and 507-B read with Section 149 IPC were charged against the present appellants.

3. The prosecution, in all, has examined as many as 8 witnesses. There was only one witness i.e. DW-1, Ramlal Sethiya, examined on behalf of the defence.
4. The trial court finally found the appellants to be guilty of having committed an offence under Sections 148, 326, 324 and 323 IPC and sentenced them for the period as enumerated in the first paragraph of this judgment, leading to filing of this appeal.
5. Learned counsel appearing for the appellants assailing the judgment submits that pending the appeal before this court, the appellant No.5- Magneshwar has died which has also been ascertained by the State counsel and who also after verification states that appellant No.5-

Magneshwar died on 14.04.2009. Therefore, the appeal in so far as the appellant No.5 is concerned, stands abated.

6. So far as the other appellants are concerned, learned counsel for the appellants submitted that even if the entire case of the prosecution is accepted as it is, even then no case whatsoever is made against the present appellants. He contended that evidence which have come before the court below categorically establishes the fact that there was no any overt act to have been played by the present appellants in the course of assaulting the complainants. It is a case where the injured persons were trespassers to the property of Sundar Lal. It is the complainants i.e. PW-1, PW-2 and PW-3 who were the aggressors and it was they who were carrying the weapon in their hands as is proved during the course of evidence wherein it has been stated that the sole Tangia used in the assault was seized from the possession of PW-1, Ramcharan vide Ex. P/9 and there was no recovery of any weapon from the appellants.
7. It was also the contention of the counsel for the appellants that the proceedings which have come before the trial court clearly states that there was a long pending dispute between the assailant-Sundar Lal and the complainants i.e. PW-1, PW-2 and PW-3 and it was for this reason a false case has been made out against the present appellants with an object to put undue pressure.
8. Counsel for the appellants while arguing the appeal on merits submits that the admitted fact from the evidence which have come on record and the material which have been produced by the prosecution itself

establishes that whatever assault that have been made upon the injured persons i.e. PW-1, PW-2 and PW-3 have been caused with sharp edged weapon and the appellants No.1 to 4 were not having any sharp edged weapon in their hand and the only person who was having sharp edged weapon was the appellant No.5-Magneshwar who has since expired and against him the appeal stands abated. In the absence of any recovery made from the possession of the present appellants and in failure on the part of the prosecution to establish any unlawful assembly on the part of the present appellants, the offence under Sections 147,148 and 149 IPC cannot be attributed against the appellants and the conviction of the appellants for the said offence deserves to be quashed on this ground alone.

9. He further submits that in the light of the fact that the prosecution has failed to establish any overt act on the part of the appellants No.1 to 4 and the fact that there was no recovery of any sort of weapon from the possession of the present appellants, the conviction of the appellants deserves to be set aside/quashed as offence under Sections 147,148 and 149 IPC is not made out at all against the appellants herein. Referring to the statement of Doctor who had conducted MLC, categorically observing none of the injuries were caused upon the injured persons by the Lathi, he further submits that it establishes that the prosecution has not been able to establish any overt act on the part of the present appellants in the commission of the offence. Thus, in the light of the facts and circumstances of the case, counsel for the appellants prayed for quashing of impugned judgment of conviction and

also sought for acquittal of the appellants from the charges levelled against them.

10. Learned counsel appearing for the State however referring to the statements of three injured eyewitnesses i.e. PW-1, PW-2 and PW-3 submits that it is a case where statements of these three witnesses clearly reflect that the assault was made by the appellants, and therefore, they do not deserve to be provided with advantage of any sympathetic approach and the appeal deserves to be rejected.
11. Relying upon the medical evidences of Dr. J.S. Shende, PW-5, who had examined Bhakchand, PW-2, Sonabati, PW-3 and Dr. Sudhir Kumar Vyas, PW-6, who had examined Ramcharan, PW-1, and Magneshwar, counsel for the State submits that the evidence of both the doctors clearly establishes the case of the prosecution, and therefore, prayed for rejection of the appeal.
12. Having considered the rival contentions put forth on either side and on perusal of records, what clearly comes out is the fact that the admitted position from the records available and the evidence led before the court below, is that the place of incident in the instant case was in the fields of Sundar Lal where undisputedly the injured persons i.e. PW-1, PW-2 and PW-3 had trespassed upon and in the course of plucking jackfruit from the tree which stood in the premises of Sundar Lal, a dispute arose between the family members as both the appellants as well as the complainant's side are relatives. Another aspect which cannot be brushed aside is that none of the prosecution witnesses have spelt out any overt act on the part of the appellants No.1 to 4 in the

commission of the offence. It is also undisputed that the incised injury sustained by the witnesses and the injured persons are not caused by any hard and blunt object, but are the injuries sustained by a sharp edged weapon. None of the appellants were in possession of any weapon or even Lathi, much less, there is no seizure/recovery of Lathi in the course of investigation to show that the appellants were also carrying Lathies.

13. In order to prove the offence under Sections 147,148 and 149 IPC, the foremost requirement is meeting of mind between the appellants and the common intention of assaulting the injured persons which is missing in the case of prosecution. It is also pertinent to take note of the fact that the appellant No.5-Magneshwar has died as is proved from the report received from the office of the Advocate General stating that Magneshwar has died on 14.04.2009 pending the appeal before this court.
14. In the given facts and circumstances of the case, once when from the evidence which have come on record the prosecution has not been able to cogently establish the fact that there was a common intention on the part of the appellants jointly or there was any prior meeting of mind for the assault to be made upon the injured persons, offence under Sections 147,148 and 149 is not made out. In addition, what is also pertinent to mention is the fact that once offence under Sections 147,148 and 149 is not proved by the prosecution, the only issue remains is that what role has been played by the appellants in commission of the offence.

15. A perusal of the statement recorded during the course of the investigation, except for the statement of PW-3, Sonabati, there does not appear any overt act on the part of present appellants in the commission of the offence. Only PW-3, Sonabati, in her evidence has stated that the appellant No.2-Sukhru Ram had assaulted with Lathi, but this statement of PW-3 is not trustworthy for the reason that PW-3 has not received any injury caused by a Lathi nor was there any injuries which could suggest that she was assaulted with Lathi. The only injury sustained by her was the injuries on her head which definitely was not caused from a hard blunt object, but was from the sharp edged weapon which was in possession of Magneshwar only, who has expired now.
16. In the absence of any evidence to show any overt act on the part of the appellants in commission of the offence, this court has no hesitation in reaching to the conclusion that the prosecution has failed to establish the involvement of the appellants in the commission of the offence. Merely because the appellants are said to have been standing near the place of incident along with the appellant No.5-Magneshwar by itself cannot be a sufficient ground for drawing an adverse inference of the appellants also to have committed the offence. It is also pertinent to note that the place of incident was in the field of one of the accused Sundar Lal and where the complainants PW-1, PW-2 and PW-3 were trespassers and they were plucking jackfruit from the tree belonging to Sundar Lal and thereafter the incident had occurred. Therefore, inference can safely be drawn that it was the complainant's group who were the aggressors.

17. Another aspect which cannot be ignored is the fact that there was no seizure/recovery of any weapon from any of the appellants. The only weapon (i.e. Tangia) infact seized was from the possession of one of the injured witness Ramcharan, PW-1 himself which is alleged to have been used in the commission of said offence. This itself is another ground for reaching to the conclusion that there was no common intention or an unlawful assembly or meeting of mind of the appellants in respect of commission of the said offence.
18. Thus, for the foregoing reasons, this court is of the opinion that the offence charged against the appellants is not proved or established and the judgment of conviction passed by the court below is not proper, legal and justified.
19. Accordingly, the appeal is allowed. Judgment of conviction dated 15.01.2001 is set aside. The appellants are acquitted of the charges. The appellants are on bail. Their bail bonds shall remain in operation for a further period of six months under Sections 437-A CrPC.

sd/-
(P. Sam Koshy)
Judge