

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 806 OF 2001

1. Ganga Prasad, aged about 45 years, S/o Chaitu.
2. Sriram, aged about 38 years, S/o Chaitu Satnami.
3. Budharu, aged about 28 years, S/o Ambika Prasad.
Cultivators, R/o Gunerbod, P.S. & Tah. Bemetara, Distt. Durg (C.G.)

... Appellants

Versus

State of Chhattisgarh

... Respondents

For Appellants	:	Mr. Arvind Dubey, Advocate
For Respondent-State	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

14/12/2016

1. Each of the Appellants stands convicted under Section 326/34 of IPC and sentenced to undergo R.I. for 3 years and to pay fine of Rs.1000/- and in default of payment of fine amount, to further undergo R.I. for 6 months, as ordered on 10.8.2001 by the Second Additional Sessions Judge (F.T.C.), Bemetara (Durg), in Sessions Case No. 337 of 1990.
2. Case of the prosecution in brief is that on 13.7.1990 (27 years back) at around 10:00 PM it is said that on account of a dispute arose because of the cutting of plough belonging to the Appellants, a fight ensued between the present appellants and the complainant party consisting of PW-20 Suddharam, the injured witness, and one Pahar Singh who too was injured, who pending the trial had expired. Dehati Nalishi, Exhibit P-15, was lodged on the same day, i.e., on 13.7.1990, at 1:30PM by PW-20 Suddharam and after investigation, FIR was registered. It is pertinent to mention that because of the fight between the two parties, a complaint case and an FIR was also lodged at the behest of the present Appellants at Police Station Bemetara, which was registered as Crime No.249 of

1990, wherein the present Appellants were the complainants and the injured in the present case were the accused persons. After investigation, the police authorities filed two separate charge-sheets and so far as the FIR lodged by the injured in the present case, Suddharam, is concerned the case was registered as Sessions Trial No. 337 of 1990 and so far as the complaint lodged by the present Appellants, i.e., Crime No. 249 of 1990, the same got registered as Sessions Trial No. 393 of 1990. Both the trials were ordered to be held as a joint trial and the Court below proceeded further.

3. During the course of the trial, 22 witnesses were examined on behalf of the prosecution and on behalf of the defence three witnesses were examined. After the conclusion of the trial, the Court below vide impugned judgment dated 10.8.2001, found the present Appellants to be guilty of having committed the offence under Section 326/34 of IPC and sentenced them to undergo R.I. for 3 years and to pay fine of Rs.1000/- with default stipulation. It is this judgment which is under challenge in the present appeal.

4. So far as the counter case is concerned, Sessions Trial No. 393 of 1990 resulted in the acquittal of the accused persons therein on the same date i.e., 10.8.2001. It is also informed by the Counsel for the Appellants that an acquittal appeal has also been preferred against the judgment of acquittal which is pending consideration before this Court.

5. Shri Dubey, learned Counsel appearing for the Appellants, submits that it is a case which arose because of a trivial dispute between the parties. He categorically submits that at this juncture he does not intend to contest the case on merits and prays that taking into consideration the total facts and circumstances of the case, he only intends to argue on the

question of reduction of the sentence part to the period already undergone by the Appellants. He submits that taking into consideration the period of time elapsed from the date of incident till now, i.e., 27 years, this Court may consider for the reduction only of the sentence part and the present Appellants may be let off with the sentence being reduced for the period already undergone.

6. Shri Dubey, submits that so far as Appellants No. 1 and 3 are concerned they have remained in jail for a period of more than 6 months, whereas Appellant No.2 has remained in custody for a period of about just over a month and taking into consideration the period of sentence already undergone, the sentence part may be reduced to that extent. He further arguing on the question of reduction of the sentence, submits that at the time of the occurrence the Appellants No.1 and 2 were middle aged except for Appellant No.3 who was 28 years of age at the time of incident, and by efflux of time, i.e., 27 years, all the Appellants have become too old and that no fruitful purpose would be served, if now after more than 27 years from the date of incident the Appellants are sent back to jail for serving the remaining period of sentence. He also submits that it is a case where both the injured persons, Pahar Singh and Suddhuram, by efflux of time have since expired and as such the complainant themselves are not alive for witnessing the Appellants undergoing the remaining part of sentence, and therefore he prays for the sentence being reduced to the period already undergone by the Appellants.

7. Shri Dubey, learned Counsel for the Appellant, refers to the decision of the Supreme Court rendered in the case of **Ashok Kumar v. State (Delhi Administration), 1980 AIR SC 636**, wherein, referring to the observations of Lord Soper, it was held under:

“It may be interesting to recall Lord Soper's observations in the House of Lords in a debate on British Prisons, where he said:

"Now as to reform. I was a prison chaplain for 30 years. I cannot remember a single man who was reformed by being in prison-not one. I can remember those who, serving very short sentences, were for a time, perhaps, brought to recognise something of the gravity of what they had been doing; but I am completely convinced that the longer a man stays in prison, the longer he stays in that kind of incarceration, the less is the prospect of reform and the more certain is the process of decay. That is why I have consistently tried to say that any man who is imprisoned in one particular set of circumstances for more than five years is probably dead for life. It is highly unlikely that those who have endured that kind of monotonous deadening will be able to recover in the real world what they have lost in the artificial element and environment of prison life. There has been, I think, in my time, a considerable increase in the amelioration of conditions in prison; but, to refer again for a moment to the artificiality of it, the longer a man stays in prison the less capable he will be of recovering his place and establishing his position back in the real world to which he is increasingly made alien by the very processes which he undergoes."

Moreover, the appellant has already suffered nearly six months' imprisonment and it is a well-known fact for criminologists that the initial few months of jail life are the most painful and, therefore, the most deterrent. In the present case the offender having served a term of nearly six months must well have realised that the game of crime does not pay."

8. In continuation of the aforesaid judgment, Shri Dubey also relies upon a decision of the Supreme Court rendered in the case of **Sharvan Kumar v. State of Uttar Pradesh, 1985 (3) SCC 658**, wherein the accused in the said case was convicted for the offence under Sections 467 and 471 of IPC and the Hon'ble Supreme Court taking into consideration the facts and circumstances of the case reduced the sentence part to the period already undergone. He further relies upon the recent decision of the Supreme Court in the case of **Vinay & Others v. State of Karnataka & Another**, reported in **2015 (11) SCC 612**, wherein the Hon'ble Supreme Court in respect of the offence under Sections 326, 427/34 of IPC reduced

the sentence to the period already undergone by the accused persons, by enhancing the fine amount.

9. Shri Dubey, in addition, also relies upon a decision of this Court in *Criminal Revision No. 546 of 2003 (Nanhe Singh v. State of Chhattisgarh)*, decided on 10.1.2014, which again was a revision against the judgment of conviction under Section 326 of IPC and this Court had affirmed the judgment of conviction however the sentence of three years rigorous imprisonment was reduced to the period for six months with fine of Rs.5000/- with default stipulation.

10. Shri Lav Sharma, learned Counsel for the State, at this juncture, opposing the appeal, submits that the gravity of the offence as such is not calling for any reduction of the sentence part. According to the State Counsel, the sentence imposed by the Court below as it is on the lower side, i.e., three years, and taking into consideration the nature of injuries and the gravity of offence it could not have been for a lesser period. He thus prayed for the rejection of the prayer made by the Counsel for the Appellants to reduce the sentence part.

11. Having considered the total facts and circumstances of the case what primarily reflects from the records is, first, the date of incident is 13.7.1990, i.e., about 27 years ago, secondly the judgment of the conviction in the instant case also is of 10.8.2001, which again is of more than 16 years ago. From the three Appellants in the instant case, Appellants No. 1 and 3 have already undergone the sentence of more than six months and the Appellant No.2 has remained in custody for a period of about one month. Further, if we look into the age of the Appellants, they were already in their middle age at the time of incident and for these 27 years down the line they might have now become quite old now. What is

also important to be seen is, that the offence which was charged against the Appellants was only under Section 326 of IPC. True it is, that the nature of injuries suffered by the two injured persons, Pahar Singh and Suddharam, were of serious nature, however, taking into consideration the observations of Justice Krishnaier in *Ashok Kumar* (supra) where he referred to the observations of Lord Soper, it would be trite to consider the practical aspect of the case also. All the three Appellants have now become quite old by efflux of time and have suffered sufficient trauma and agony in facing the trial initially and thereafter facing appeal for these 27 years. This itself is a punishment. No fruitful purpose would be served at this stage of their life if they are again sent back to jail for serving the remaining period of sentence.

12. Thus, considering the total facts and circumstances of the case particularly, taking into consideration the time elapsed from the date of incident till date, this Court is of the opinion that it is a fit case where the judgment of conviction though does not require any interference and the same is accordingly affirmed. However, the sentence part imposed upon each of the Appellants deserves to be and is accordingly reduced to the period already undergone by each of them. However, while reducing the substantive sentence, fine amount imposed upon each of the Appellants definitely deserves appreciation and therefore it stands enhanced and it is accordingly enhanced to Rs.20,000/- each to be paid by each of the Appellants, in default thereof they would be required to undergo additional R.I. for 6 months each. The enhanced fine amount shall be deposited by the Appellants within a period of 45 days from the date of receipt of the certified copy of this judgment. The fine amount shall be released to the legal heirs of the two injured persons, Pahar Singh and Suddharam.

13. With the aforesaid modification in the sentence part, the appeal stands dismissed.

Sd/-

(P. Sam Koshy)
Judge

/sharad/