

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1128 of 2000**

1. Balla Satnami, S/o Manglu Satnami aged 55 years, R/o village Sinogha P.S.-Bhathapara Gramin Distt- Raipur.
2. Munna Satnami S/o Manglu Satnami, aged 70 years, R/o village Sinogha P.S.-Bhathapara Gramin Distt-Raipur.
3. Budhelal Satnami, S/o Balla Satnami, aged 19 years, R/o village Sinogha P.S.-Bhathapara Gramin Distt-Raipur.
4. Mangaldas Satnami, S/o Balla Satnami, aged 22 years, R/o village Sinogha P.S.-Bhathapara Gramin Distt-Raipur.

---- Appellants**Versus**

- State of Madhya Pradesh(now Chhattisgarh), through P.S. Bhatapara Gramin District-Raipur.

--- Respondent

For the Appellants : Shri M.D. Dhote, Advocate.

For the State/Respondent : Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on board****21/02/2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the learned IInd Additional Sessions Judge, Balodabazar, District-Raipur in Sessions Trial No.434/1997 on 08.04.2000, whereby convicted the appellants under Section 148 of Indian Penal Code (for short 'IPC') and sentenced to undergo R.I. for 2 years to each appellant. Further they convicted under Section 307/149

of IPC and sentenced to undergo R.I. for 7 years to pay fine of Rs.1000/-, in default of payment of fine, to further undergo imprisonment for two months respectively, with a direction to run the sentences concurrently.

2. The case of prosecution in brief is this, that complainant Parwati Bai PW/12 is an agriculturist. On the date of incident, on 14.08.1997, she along with her husband Purushottam PW/10 and her son Trilochan PW/11 were on field doing some cultivation work then the appellants Mangal, Balla, Munna and Budhelal accompanied with juvenile Mahesh armed with battle axe, axe and clubs arrived on the spot and objected saying that the fields belongs to them. Further appellant Munna assaulted Trilochan PW/11 with a spear, Mangal used a battle axe and Budhelal used a club and Mahesh using an axe assaulted Trilochan PW/11, who got injured and fell down. Appellant Mangal assaulted Parwati Bai PW/12 with a club causing injuries to her. There had been a dispute regarding partition of family property. At the instance of Parwati Bai PW/12, one unnumbered FIR Ex.P/39 was recorded in P.S.-Bhatapara Gramin, in which offences under Sections 147, 148 and 307/149 of IPC were registered. On the basis of this, a numbered FIR was registered against the named appellants and juvenile Mahesh on the same date.
3. Trilochan PW/11 and Parwati Bai PW/12 were medically examined by Dr. A.K. Soni PW/6 vide Ex.P/19 and Ex.P/20. Similarly, he also examined Purushottam PW/10 vide Ex.P/21, X-ray examination was also conducted in which bony injury was reported with respect to

Parwati Bai PW/12. At the instance of Budhelal vide Ex.P/2 one battle axe was recovered and seized vide Ex.P/6. At the instance of appellant Munna Satnami vide Ex.P/3 one spear was seized from his possession vide Ex.P/7. At the instance of appellant Mangaldas vide memorandum Ex.P/4 a club was seized vide Ex.P/8. At the instance of appellant Balla Satnami vide memorandum Ex.P/5 one axe was seized from his possession vide Ex.P/9. Blood stained clothes of appellants were seized vide Ex.P/11 and Ex.P/12, blood stained and plain soil were seized vide seizure memo Ex.P/13 from the spot where Parwati Bai PW/12 was lying injured. Blood stained and plain soil was seized vide Ex.P/18 from the spot where injured Trilochan PW/11 was lying. Blood stained clothes of Parwati Bai PW/12 was seized vide Ex.P/2. Similarly, blood stained clothes were seized of Purusottam PW/10 vide Ex.P/33 and the clothes of Trilochan PW/11 were seized vide Ex.P/34. Copy of revenue map and entry were obtained from the revenue department with respect to the disputed land. Spot map Ex.P/38 was prepared. In the investigation, seized articles were sent for examination by the doctor conducted medical examination of the injured persons, reports obtained accordingly, seized articles were also sent for FSL examination. Statement of witnesses were reordered under Section 161 of Cr.P.C. On completion of investigation, appellants were charge-sheeted for trial under Section 147, 148, 307/49 and 325 of IPC.

4. Appellants were charge sheeted under Section 147, 148 and 307/149 of IPC, appellants denied the charges and demanded for trial. Prosecution has examined 17 witnesses. On examination under

Section 313 of Cr.P.C., appellants denied all the incriminating circumstances against them in the prosecution evidence and pleaded innocence and false implication. It was submitted by the appellants that the disputed land belonged to the accused persons. Purushottam PW/10 and others came on the disputed land for the purposes of cultivating it, three witnesses were examined in defence. The impugned judgment was passed by which the appellants have been convicted and sentenced as mentioned in the first paragraph.

5. The grounds in this appeal are these, the trial Court has erroneously passed the judgment of conviction against the appellants. There had been lots of discrepancies, omissions, contradictions and improvements in the statement of the prosecution witnesses. The medical evidence produced by the prosecution also does not corroborate the statement of the injured eyewitnesses. There had been no case of prosecution under Section 307 of IPC, at the most the conviction could have been made under Section 326 of IPC. Thus, the learned trial Court failed to appreciate all these grounds in favour of the appellants and the acquittal of the appellants is prayed for.
6. It is submitted by the learned counsel for the appellants, that in the statement of Dr. A.K. Soni PW/6 there is clear admission that injuries caused to all the injured of complainant side were simple in nature. There is no statement of the prosecution witnesses to indicate that appellants intended to cause death of any of the injured in this incident, hence, appellants could have been convicted in a lesser offence and not under Section 307 of IPC. In the alternative, it is prayed that

appellants have undergone period of custody of almost 11 months in jail. Considering this fact, that this incident is almost 20 years old and presently the appellant and the complainant party have amicably settled disputes between themselves for these reasons, if this Court is not inclined to acquit the appellants/accused persons from the charges against them atleast the sentence awarded by the trial Court may be modified and reduced to the period of custody period undergone by them in jail.

7. Learned counsel for the State has opposed the arguments.
8. It is submitted that prosecution witnesses has amply supported the case and it is clearly made out, that appellants intended to cause death of the injured complainants, hence, there is no ground for interfere of the impugned judgment.
9. Considering the material on record and the arguments submitted from both the sides the question in this appeal is, whether the conviction against the appellants is supported by evidence of prosecution beyond all reasonable doubts ?
10. Parvati Bai PW/12 has stated that on the date of incident when she was on her agricultural field doing some agriculture work with her husband and son, all the appellants arrived there and started beating them. Trilochan PW/11 was assaulted by Munna Satnami with a spear then he was assaulted by Mangaldas with battle axe and then by Ballaram with an axe and also by appellant Budhelal with a club, all of them assaulted her and causing injuries on her head. Mangaldas with a

club and Budhelal with battle axe caused injury to her. She went unconscious on the spot, later on, when she came to consciousness she was in the presence of Police Officer and on her information Ex.P/37 was recorded. In cross examination, there is admission about the dispute regarding the land with appellant. There is no other statement in her cross examination to effect the credibility of her statement in examination-in-chief. Purrushottam PW/10 and Trilochan PW/11 has supported the version of Parvati Bai PW/12.

11. Markhande PW/1 was examined as eyewitness, he has not supported the case and declared hostile. Jethudas PW/2 was informed by Trilochan PW/11 about the incident. Karundas PW/3 saw the injured persons after the incident had taken place, he has not stated anything against the appellants, hence, declared hostile by the prosecution. Latel PW/4 has stated that Trilochan PW/11 came to his place of residence in blood stained condition and asked to save him, when he came out in the street he saw appellant Ballaram, Budhelal and Mangaldas and one boy armed with one axe and clubs. The appellants asked him to hand over the person in his house but he refused. Further, he has not given any statement against the appellants as to who was the person having caused injury to Trilochan PW/11. Ganesh Ram PW/5 was also examined as witness of the spot but he has not supported the case and declared hostile by the prosecution. Similarly, Jwala Prasad PW/13 has stated that Purushottam PW/10 came running to him and asked for help, he has not made any other statement. Jethu Das PW/14 has not supported the prosecution and

declared hostile.

12. Considering on the evidence of injured witnesses and other witnesses on the spot, it is clear that the other witnesses have not made a clear statement in support of prosecution but their statement indirectly support the prosecution as they have witnessed the injured Purosottam PW/10 and Trilochan PW/11 coming to them and asking for help. Further one of the witness Markhande PW/1 has also stated, that he saw three of the appellants in the street who were asking him to turn out the person inside his house. This is sufficient corroboration to this statement that appellants were assailants who assaulted the injured witnesses and caused injuries to them.
13. Dr. A.K. Soni PW/6 examined Parwati Bai PW/12 and stated in his report Ex.P/19 that she had diffuse swelling on right hip joint with tenderness, diffused swelling with tenderness around left forearm at mid portion, bruise over right scapula and lacerated wound on right parieto temporal region of scalp. Suspecting bony injuries, he advised for X-ray examination. Further he examined Trilochan PW/11 vide report Ex.P/20 and found injury one lacerated wound on frontal area, one lacerated wound on left parietal area, another lacerated wound on left parietal area, another lacerated wound on right occipital region, lacerated wound on back of the head, one incised wound on left eyebrow, another incised wound on left knee and lastly one incised wound on left scapular region. No bony injuries were found after X-ray examination, he opined that the injuries caused to Trilochan PW/11 were of simple in nature.

14. Dr. A.K. PW6 also examined Purrushotam PW/10 and found vide his report Ex.P/21 one incised wound on his left scapula region, one incised wound on left waist, one incised wound on left hand above a wrist, one incised wound on left forearm, swelling and pain on left wrist, incised wound on below left collar bone, incised wound on right elbow, incised wound on right knee, one bruise in the middle of right hand, incised wound on left temple and one incised wound on left side of the head. No bony injuries were found after X-ray examination. He further opined that the injury caused to him were of simple in nature, he has not made any clear statement regarding the result Ex.P/7. Examination of Parwati Bai PW/12 though the X-ray report Ex.P/22 is on record. On the contrary, he has made a statement that on the basis of X-ray plates the injury caused to all the injured persons were of simple in nature. No efforts were made by the prosecution in this respect to clarify the statement in this regard, in cross examination as well.
15. As per the statement of Dr. A.K. Soni PW/6, Parwati Bai PW/12 had suffered fracture on right ulna bone, radial bone on left hand and the left collar bone. In cross examination, he has stated that none of the injuries caused to Parwati Bai PW/12 were fatal in nature, thus, the medical evidence supports the version of injured witnesses.
16. There is need to examine the witnesses of investigative procedure, seizure of articles etc. for this reason that it was observed and there is ocular evidence in this respect that appellants were armed with clubs, axe and battle axe at the time of incident, which is an evidence of more

significance then the evidence of finding possession of such articles on later part of time. All the submission on behalf of appellants that on the basis of prosecution evidence, it is not made out that appellants intended to cause death any of the injured persons. This argument has some weight, the main injured witness Pursottam PW/10, Trilochan PW/11 and Parwati Bai PW/12 have not stated in any manner that appellants assaulted them with intention to cause their death. Further the medical evidence as well is in support of these arguments, as the Dr. A.K. Soni PW/6 has opined that the injuries caused to Pursottam PW/10 and Trilochan PW/11 whereof simple in nature whereas Parwati Bai PW/12 though suffered grievous injury in the form of bony injury, her injuries were not sufficient to cause death in ordinary course of nature. Thus, subjectively and objectively both, there is no evidence to indicate that appellants had intention to cause death of the injured persons, thus, this argument on behalf of the appellants succeeds.

17. As per the medical report Ex.P/19 of Parwati Bai PW/12 the injuries were caused to her by hard and blunt object, hence, with respect to the grievous injuries caused to her, the only offence made out in this case is under Section 325 of IPC and regarding the injuries caused to Purushottam PW/10 and Trilochan PW/11 the offence under Section 323 of IPC is made out.

18. On the basis of this finding, the evidence is available that juvenile delinquent Mahesh was accompanied of the appellants during the whole incident. Thus, offence made out against the appellants is under Section 148, 323/149 and 325/149 of IPC. On the basis of these

findings, conviction by the trial Court is found to be erroneous which is required to be interfered with. Hence, this appeal partly succeeds.

19. In view of above discussions, this appeal is allowed in part. The conviction of the appellants under Section 307/149 of IPC by the trial Court and the sentence awarded in this respect is set aside, instead the appellants are sentenced with offence under Sections 323/149 and 325/149 of IPC. The statement of the appellants in this behalf, that they may be sentenced with period of custody already undergone needs consideration. Looking to the facts and circumstances, especially the time elapsed from the date of incident till the conclusion of trial and prosecution of this appeal, further the statement of learned counsel for the appellants that appellant party and complainant party are relative to each other, who have in this span of time, amicably settled the disputes between them, hence, considering these factors appellants are sentenced with imprisonment of period of custody already undergone by them in jail during the trial and appeal of this case for conviction under both the offences.

Sd/-
(Rajendra Chandra Singh Samant)
Judge