



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1108 of 2000**

1. Bali Lodhi, S/o Abhayram Lodhi, Aged 50 years,
2. Ghasia Lodhi, S/o Baliram Lodhi, Aged 25 years,
3. Daluram Lodhi, S/o Baliram Lodhi, Aged 45 years,

All Agriculturists, R/o Village Ghotwani, Police Station Saja, District Durg (M.P.)
(Now C.G.).

---- Appellants

Versus

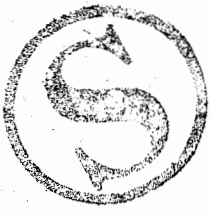
State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant(s)	:-	Shri Vishnu Koshta, Advocate.
For Respondent/State	:-	Shri Vijay Bahadur, P.L.

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgement on Board****07-02-2017**

1. This appeal has been preferred against the judgement of conviction and order of sentence dated 11-04-2000 passed by Additional Sessions Judge, Bemetara, District Durg in S.T. No.165 of 1990 whereby and whereunder the learned Additional Sessions Judge has convicted the appellants under Sections 325 of the IPC and sentenced to undergo RI for 3 years and to pay fine of Rs.500/-, in default of payment of fine to further undergo RI for two months on two counts and also convicted under Section 323 of IPC and sentenced to undergo RI 6 months and to pay fine of Rs.100/-, in default thereof to further undergo RI for one month and the appellant **Baliram Lodhi** also convicted under Section 325/34 of IPC and sentenced to undergo RI for one year and to pay fine of Rs.100/- in default of payment of fine to further undergo RI for one month on two counts and also convicted under Section



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323/34 of IPC and sentenced to undergo RI for six months and to pay fine of Rs.100/-, in default thereof to further undergo RI for one month with a direction to run all the sentences concurrently.

2. The case of the prosecution, in brief, is that complainant Immanlal (PW-1) and the appellants/accused persons had a previous dispute regarding agricultural land. On the date of incident i.e. 29-10-1988 at about 7.00 a.m. Immanlal (PW-1) along with his father Nathu @ Uderam Sahu (PW-4), Brother Neturam (PW-3) and Servant Khiyaram (PW-2) went to the disputed land and was plowing the fields. Appellant No.2 Ghasia came on the spot and objected that the matter was before the Court, hence, why they are plowing the field and then used filthy abusing words. At the same time, appellant No.1 Bali and appellant No.3 Daluram and acquitted accused Sukariyabai came to the spot. Appellants and co-accused caught hold Nathuram @ Uderam (PW-4) by pinning him on the ground assaulted with clubs, fists and feet causing injuries to him. When complainant Immanlal (PW-1) tried to intervene, he was also assaulted by the appellants and co-accused, causing injuries on his body. FIR (Ex. P-1) was lodged on the same day at 11.00 a.m. in the Police Station Saja. Offence under Sections 325 and 294 of IPC was registered. Injured Nathuram @ Uderam (PW-4) and Immanlal (PW-1) were medically examined. On the advice of the doctor Radiological test on Nathuram @ Uderam was conducted. Grievous injuries of fractures were found on his both legs (Ex. P-9). Immanlal (PW-1) was also found to have suffered one fracture on skull vide report Ex.P-10. During investigation, one bamboo club was seized from the possession of appellant No.1 Baliram vide Ex.P-5, one bamboo club was seized from appellant No.2 Ghasia vide Ex. P-6 and a club was seized from appellant No.3 Daluram vide Ex. P-7. Statement of witnesses were recorded under Section 161 of Cr.P.C.



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3. On completion of investigation, charge-sheet has been filed against the appellants and other co-accused Sukariyabai under Sections 307/34, 325 and 323 of IPC and they denied charges levelled against them and demanded for trial. The prosecution examined as many as 11 witnesses. On examination under Section 313 of Cr.P.C., the appellants and co-accused denied all the incriminating evidence against them brought by the prosecution, pleaded innocence and false implication in the crime in question. Appellant Ghasi examined himself as defence witness. On completion of trial, impugned judgement was passed by which co-accused Sukriyabai was acquitted of all the charges. Appellants were acquitted of the main charge under Section 307 of IPC but convicted and sentenced under the remaining charges as mentioned in first paragraph of this judgement.

4. The grounds in this appeal are that the trial Court has erroneously passed the judgement of conviction against the appellants. There had been no reliable and legally admissible evidence against the appellants/accused persons. Injuries caused by the accused persons have not been explained by the prosecution. The incident occurred because the complainant party trespassed the disputed land which was in possession of the appellants and the appellants had right to prevent the complainant party. There had been delay in lodging the FIR which was not explained, on this ground acquittal of appellants is prayed for.

5. It is submitted by learned counsel for the appellants that statement of Immanlal (PW-1) is full of contradictions and omissions. Interested witnesses Neturam (PW-3) is brother of complainant and Nathuram @ Uderam (PW-4) is father of the complainant who have not clearly supported the version of Immanlal (PW-1). Remaining witnesses on the spot Khiyaram (PW-2), Dilip



Kumar (PW-6) and Shyamlal (PW-7) have turned hostile who have not supported the case of prosecution. For these reasons, the appellants had been entitled to be given benefit of doubt. In the alternative, it is argued that the appellants have undergone a period of two months and twenty days in jail. The incident is of 29 years old, since then, the appellants are facing trial and prosecuting this appeal which has been sufficient hardship for them. It would serve no purpose, if the appellants are sent back to jail. Now the appellants have become senior citizens after passing of 29 years since the date of incident. Reliance has been placed on the judgements of Apex Court in the matter of ***Ayub and others vs. State of U.P., reported in AIR 1994 SC 1064***, in which it was held that conviction was for offence causing grievous hurt. The incident occurred about 17 years back. Looking to the advanced age of the accused persons, it was not found fit to send the accused persons back to jail and sentence was reduced to the period already undergone with fine. Similar view was taken by the Supreme Court in the matter of ***Manjappa vs. State of Karnataka, reported in 2007 AIR SCW 3586***, in the case of conviction for offence under Section 325 of IPC by reducing the sentence because of the lapse of time after the date of incident.

6. State counsel has opposed the grounds raised in this appeal and arguments submitted by learned counsel for the appellants submitted that case is proved beyond reasonable doubt and there is no scope for interference in the impugned judgment.

7. I have heard learned counsel for the parties, perused the judgement impugned and record of the Court below.

8. Considering the grounds raised in the appeal and arguments submitted from both sides, the question for determination before this Court is whether the



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conviction against the appellants is supported by the evidence of prosecution beyond all reasonable doubt?

9. Immanlal (PW-1) has stated that on the date of incident, he along with Nathu @ Uderam Sahu (PW-4), Brother Neturam (PW-3) and Servant Khiyaram (PW-2) were present on the disputed field. Appellant Ghasia came on the spot and then called the other appellants and co-accused Sukariyabai, who came and objected to the presence of complainant and others on the spot, assaulted Nathuram @ Uderam (PW-4) with clubs and axe. Neturam (PW-3) went to intervene, was also assaulted by clubs and injured. He stated about the recording of FIR (Ex. P-1). In cross-examination, he has denied that the field was in possession and cultivation of accused persons. He admitted that one report was lodged against him and other 5 accused persons but stated that he has been acquitted from the prosecution. There is no other statement in his cross-examination to affect or contradict the statement in examination-in-Chief.

10. Neturam (PW-3) and Nathuram (PW-4) have also supported the version of complainant and there is no statement in their cross-examination to affect and rebut the statement in examination-in-chief. Khiyaram (PW-2) has not supported the prosecution case and declared hostile. Similarly, Guharam (PW-5) and Dilip Kumar (PW-6) have also not supported the prosecution case and declared hostile.

11. Statement of Immanlal (PW-1), Neturam (PW-3), Nathuram @ Uderam (PW-4) have supported by the medical evidence. Dr. R.K. Tamrakar (PW-9) examined Neturam on 29-10-1988 and found lacerated wound below left ear, on right side of occipital region along with another injury nearby, giving advice for X-ray examination, he submitted his report vide Ex. P-12. On the same day, Dr. R.K. Tamrakar (PW-9) also examined Immanlal and found lacerated



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wounds on the back side of the head in the occipital region on the centre of the head, swelling on left thigh and right forearm and contusion on right scapular region and has reported the injuries vide Ex. P-13. On the same day, he examined Neturam (PW-3) and found lacerated wound on lower part of the left leg coupled with another injury below the 1st injury, fracture on the lower 1/3rd part of the left leg, one lacerated wound on the lower part of the right leg, swelling on left scapular region and swelling on the elbow of the right hand and reported vide Ex. P-14. According to him, injuries to all the persons were caused by hard and blunt object.

12. Dr. G.N. Tiwari (PW-8) has conducted X-ray test on Nathuram @ Uderam (PW-4) and found bony injuries of fracture on both the legs vide his report Ex. P-9. One fracture was found on the parietal region of skull of Immanlal (PW-1) vide his report Ex. P-10. No bony injury was found in the X-ray test of Neturam (PW-3).

13. After closely scrutinizing and analysing the evidence of prosecution witnesses, which are found supported by medical evidence, the conviction of appellants under Section 325/34 and 323/34 of IPC does not seem to suffer from any infirmity and is based on evidence of prosecution which can be regarded as proof beyond reasonable doubt.

14. Prayer in the alternative made by the appellants that the incident took place on 29-10-1988 and today it is almost more than 28 years have elapsed when this appeal is being decided by this Court. Definitely, it shows that the appellants have advanced 28 years in age by passing of this time. The genesis of incident had been the land dispute between the parties and there is admission by Immanlal (PW-1) that there had been one counter case in which he and others have been acquitted. In view of the judgements of the Apex



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Court in the matters of **Ayub and others** and **Manjappa** (supra), this is also a fit case in which it appears that after passing of so much time, it would serve no purpose if the appellants are sent back to jail for serving remaining part of the jail sentence. Hence, after due consideration, this appeal is allowed in part and the conviction of appellants in the impugned judgement is upheld. The sentences awarded by the trial Court is set aside instead of that appellants are sentenced with imprisonment of a period of custody already undergone by them in jail along with fine of Rs.5000/- each to them, in default of payment of fine the appellants shall be required to further undergo RI for six months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

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