

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.752 of 2001**

1. Sadram Sinha S/o Manaram Sinha, aged 42 years, occupation, labourer.
2. Lal Singh Sinha, S/o Manaram Sinha, aged 34 years, occupation Kirana Shop.
3. Gaya Ram @ Bahudha S/o Budhram Kalar, aged about 50 years, occupation Cultivation.
4. Daya Ram @ Tetaku S/o Budhram Kalar, aged about 39 years, occupation cultivation.

Sl. No.1 & 2 are resident of village Arand, PS Pithora, Tahsil and Distt. Mahasamund.

Sl. No.3 and 4 are resident of village Khuteri, Thana, Pithora, Tehsil and District Mahasamund.

---- Appellants

Versus

The State of Chhattisgarh, through the District Magistrate, Mahasamund.

---- Respondent

For Appellants

Shri Rishi Rahul Soni, Advocate through Legal Aid Department.

For respondent/State

Shri SRJ Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

03.01.2017

1. The appellants stand convicted for the offence under Sections 307/34 and 323/34 IPC and have been sentenced to undergo RI for 7 years with fine of Rs.1000/- under Section 307/34 IPC and RI for one year with fine of Rs.1000/- under Section 323/34 IPC with default stipulations, vide judgment dated 09.08.2001 passed by the 1st Additional Sessions Judge in Sessions Trial No. 151 of 1995.
2. As per prosecution story, on 06.09.1994 the appellants with common

intention of committing murder of PW-8, Inder Chand Agrawal and PW-9, Anil Agrawal, at around 10 am in the morning have assaulted them with Lathi and Bahenga resulting in grievous injuries to them. An FIR, Ex. P/23 was lodge on 06.09.1994 at 6 pm by PW-8. The injured persons PW-8 and PW-9 were sent for medical examination.

3. Thereafter, investigation was conducted and based on the investigation, a case was registered against the appellants and they were subjected to trial before the court below for the offence under Sections 307/34 and 323/34 IPC for the injuries caused by them to the injured persons and the matter was put to trial.
4. The prosecution, in all, has examined as many as 22 witnesses and on behalf of defence, two witnesses were examined.
5. After conclusion of trial, the court below finally found the appellants to be guilty of having committed an offence and reached to the conclusion that the prosecution has been able to establish its case beyond reasonable doubt and have sentenced them for the period as enumerated in the first paragraph of this judgment leading to filing of this appeal.
6. Learned counsel appearing for the appellants assailing the judgment submits that the entire judgment of court below is totally bad in law for the reason that the court below has not appreciated the evidence in its proper perspective. It is a case where infact the injured persons were the aggressors as they had gone to the place where the appellant Sadram resides and where the incident had occurred. According to him, it is a case where the entire dispute revolves around a house, which is

in possession of appellant Sadram at village Arand. According to appellant, the said house originally belonged to Singhan Prasad, PW-7, who had sold the said premises to appellant Sadram and who had taken possession over it also. Later on Singhan Prasad again sold the said property to PW-9, Anil Agrawal. When Anil Agrawal went to take possession, it was learnt that the appellant Sadram had already purchased the said property from Singhan Prasad and is in possession of the same. Therefore, PW-9, Anil Agrawal is said to have asked PW-7 to get the property evicted and he be granted possession of the property. When PW-7 expressed his inability, PW-9, Anil Agrawal along with a group of other persons went to the house of Sadram and there they ransacked the house and also had thrown the articles out. PW-9 is also said to have misbehaved with the wife of Sadram and this had led to the attack made by the appellants on the injured persons.

7. According to appellants, the place of incident itself clearly establishes that it was the injured persons who had gone to the house of the appellant Sadram and created a ruckus. It is a case where PW-8 had received only minor injuries i.e. lacerated wounds and contusions and which were on non vital areas and also simple in nature. As far as PW-9, Anil Agrawal is concerned, MLC report, Ex. P/18 shows that except for one injury which he sustained on the right side of his head that too a lacerated wound, all the other injuries were again on non vital areas and were simple in nature. Thus, the conviction of the appellants for the offence under Sections 307/34 and 323/34 was uncalled for and is not sustainable. At best, it could had been only an offence under Section

324 or 325 IPC.

8. Counsel for the appellants also contended that if we take into consideration the factual matrix of the case and the reasons which forced the appellants to attack the injured persons, it would clearly reflect that the appellants is said to have exercised their right to private defence, and therefore, the conviction of the appellants for the offence under Sections 307/34 and 323/34 IPC was bad in law. According to him, it is a natural that if a group of persons entered into the house and created a ruckus and at the same time also misbehaved with the lady members in the house i.e. wife of the appellant-Sadram in this case, the natural reaction would be that inmates of the house would react and revolt and if in the spur of the moment or because of rude behavior of the aggressors the reaction of inmates of the house have caused some injuries, the same cannot be said to be with deliberate intention, but was purely in exercise of their private defence. Therefore, the impugned judgment deserves to be interfered with.
9. Counsel for the appellants referring to statements of PW-1, Bheemsingh and PW-2, Bishe Singh, who have turned hostile but in the course of evidence before the court below they have accepted the fact that it was the injured persons who were the aggressors and who had created riotous behavior at the residence of Sadram and also tried to misbehave with the wife of appellant Sadram which led to the commission of the offence. Referring to the statement of these two witnesses, it is submitted that both the witnesses have accepted the fact that injured PW-9 is said to have slapped and assaulted appellant Sadram first and

also misbehaved with his wife. Likewise, PW-4, Ramnarayan, PW-5, Brijlal and PW-10, Fagulal, also have turned hostile and have not supported the case of prosecution. Further, PW-5, Brijlal has also accepted the fact that incident did occur in the house of the appellant-Sadram.

10. Thus, for the foregoing reasons, the appellants prayed for acquittal of the appellants from the offences they have charged. In alternative, it is prayed that since the appellants have exercised their right to private defence, the court may consider the case of the appellants in its correct perspective and reach to the conclusion that the appellants have not committed offence under Section 307/34 IPC and that at best it is only an offence under Sections 324 or 325 IPC is made out and the court may also consider the overall factual matrix of the case and the sentence may be reduced to the period already undergone after convicting the appellants for the offence either under Section 324 IPC or under Section 325 IPC.
11. On the other hand, learned counsel appearing for the State opposes the appeal on the ground that it is a case where the appellants had deliberately and intentionally assaulted the injured persons and that PW-9, Anil Agrawal has received grievous injuries inasmuch as there is injury on the head which has been caused at the hands of the appellants. Therefore, taking into consideration the injuries and the assault made by the appellants jointly, the impugned judgment cannot be said to be bad in law which requires any interference.
12. Having heard the rival contentions put forth on either side and on

perusal of records, some of the undisputed facts which led to the fight between the two groups is that, the property involved in the dispute was originally owned by one Singhan Prasad. It is not in dispute that said Singhan Prasad had sold the said property initially to appellant No.1 Sadram and subsequently to PW-9, Anil Agawal. The appellant No.1 Sadram immediately on account of sale deed executed in his favour, had taken possession of the said property. Subsequently, PW-9, Anil Agrawal made efforts for taking possession over the suit property but could not succeed.

13. From the evidence which have come on record, it is also proved that on the date of incident i.e. 06.09.1994, PW-8 and PW-9 along with some other persons had gone to the house of the appellant No.1-Sadram with an intention of forcing him to vacate the premises. From the evidence it has also come that PW-8 and PW-9 had initially ransacked the house of the appellant No.1, assaulted him and had misbehaved with his wife. The assault made by the present appellants were in retaliation to the act which has been committed by PW-8 and PW-9 and other persons who had accompanied them. From the evidence that the injuries sustained by PW-8 were all found to be of simple in nature as they were only lacerated wounds and contusions. So far as PW-9 is concerned, the MLC Report, Ex. P/18 shows that there was only one injury on the right side of the head which was a lacerated wound and except this, all other injuries were again on the non vital part and simple in nature.
14. From the nature of evidence which have come on record, it reflects that the appellants at no point of time had any premeditation for assaulting

the injured PW-8 and PW-9 neither did the appellants at any point of time had any intention of causing death of PW-8 and PW-9. On the contrary, what appears from the record is that, PW-8 and PW-9 and few other persons accompanying them had gone to the house of the appellant No.1, Sadram and had ransacked his house, assaulted Sadram and also misbehaved with the wife of appellant No.1 and it is only in retaliation that the appellants are said to have assaulted them. Thus, the act which has been committed by the appellants is clear which could be said to have been done on account of heat of passion and spur of the moment with no intention of causing death or causing serious injuries to PW-8 and PW-9.

- 15.** It also appears that only one of the injury which has been sustained by PW-9 was on his right side of head which is a vital part, but the nature of injury, the period that he was hospitalized not being much, clearly gives sufficient indication for inferring that the same was not very serious in nature. Therefore, in the opinion of this court, the injury sustained by PW-9 would not be one which would fall under Section 307 IPC, but can be only one under Section 325 IPC.
- 16.** In view of the same, the present appeal is allowed in part to the extent that conviction of the appellants for the offence under Section 307/34 IPC is not sustainable and is therefore set aside. However, they are found guilty of having committed the offence under Sections 325/34 IPC and 323/34 IPC.
- 17.** It has been stated at the bar that the appellants in the instant case have remained in custody for a period of more than two months. Now

considering the date of incident in the instant case being of the year, 1994 i.e. almost 22 years old; the impugned judgment being of the year 2001 again appeal being 16 years old; the appellants at the relevant period of time were in their middle age and by efflux of time they have almost crossed and reached the stage of senior citizen and also in the peculiar factual backdrop of the case, in the opinion of this court, it is a fit case where the sentence part can be modified and is accordingly modified to the period already undergone.

- 18.** In view of the same, the appeal is allowed in part. The conviction of the appellants for the offence under Section 307/34 is set aside and they stand convicted for the offence under Section 325/34 IPC and are sentenced for the period already undergone. Bail bonds granted to the appellants shall remain in operation for further six months in view of provisions contained in Section 437-A CrPC.

Sd/-
(P.Sam Koshy)
Judge