

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1037 OF 2001

Mohammad Yunus Khan, S/o Shri Mohd. Yakub Khan, aged about 21 years, occupation- Studying, R/o Village Barejpara, Ambikapur, District Surguja (C.G.)

... Appellant

Versus

The State of Chhattisgarh, through P.S. Ambikapur, District Surguja (C.G.)

... Respondent

CRIMINAL APPEAL NO. 1023 OF 2001

Ravi Tamrakar, S/o Ramkeswar Tamrakar, aged about 23 years, R/o near Jora Pipal, Kedarpur, Ambikapur (Surguja) (C.G.)

... Appellant

Versus

State of Chhattisgarh

... Respondent

CRIMINAL APPEAL NO. 1063 OF 2001

Ajay Tamrakar, S/o Shiv Shankar Tamrakar, aged about 25 years, occupation- Student, R/o near Jodaipal, Kedarpur, Ambikapur, District Surguja (C.G.)

... Appellant

Versus

State of Chhattisgarh, through P.S. Ambikapur, District Surguja (C.G.)

... Respondent

CRIMINAL APPEAL NO. 1064 OF 2001

Prakash Tamrakar, aged about 24 years, S/o Ramlakhan Tamrakar, Student – B.Sc. 2Nd year, R/o Joda Pepal, Kedarpur, Ambikapur, Surguja.

... Appellant

Versus

State of Chhattisgarh

... Respondent

CRIMINAL APPEAL NO. 1067 OF 2001

Sudhir Kumar Singh, S/o Jaipal Singh, aged about 25 years, Permanent R/o Village Moolsam, District Meerat (U.P.), at present residing at Mohalla Kedarpur of Ambikapur Town, P.S. Ambikapur, District Surguja (C.G.)

... Appellant

Versus

The State of Chhattisgarh

... Respondent

CRIMINAL APPEAL NO. 1077 OF 2001

Santosh Kumar Agrawal, S/o Ramesh Kumar Agrawal, age about 23 years, Occupation- Businessman, R/o Kedarpur, Ambikapur, District Surguja (C.G.)

... Appellant

Versus

State of Chhattisgarh, through Station House Officer, P.S. Ambikapur.

... Respondent

CRIMINAL APPEAL NO. 1102 OF 2001

Bharatprasad Tamrakar, S/o Late Mathura Prasad Tamrakar, aged about 22 years, occupation Motor Mechanic, R/o Village- Barejpara, Ambikapur, District Surguja (C.G.)

... Appellant

Versus

The State of Chhattisgarh, through P.S. Ambikapur, District Surguja (C.G.)

... Respondent

Mr. Sushil Dubey, Advocate, for the Appellant in Criminal Appeals No. 1037 of 2001 and 1102 of 2001.

Mr. Vivek Pandey, Advocate, for the Appellant in Criminal Appeal No. 1023 of 2001.

Mr. T.R. Chandrakar, Advocate, for the Appellant in Criminal Appeal No. 1063 of 2001.

Ms. Savita Tiwari, Advocate, for the Appellant in Criminal Appeal No. 1064 of 2001.

Mr. Manoj Mishra, Advocate, for the Appellant in Criminal Appeal No. 1067 of 2001.

Mr. Raghvendra Verma, Advocate, for the Appellant in Criminal Appeal No. 1077 of 2001.

Mr. Ashish Shukla, Government Advocate, for the State.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

04/01/2017

1. These seven appeals arise out of the same impugned judgment dated 17.10.2001 passed by the First Additional Sessions Judge, Ambikapur, District Surguja, in Sessions Case No. 317 of 1998, whereby each of the Appellants stand convicted and sentenced to undergo rigorous imprisonment for 1 year and to pay fine of Rs.500/- with default sentence of 6 months rigorous imprisonment under Section 148 of IPC and also to undergo rigorous imprisonment for 3 years and to pay fine of Rs.1000/- with default sentence of 6 months rigorous imprisonment under Section 307/149 of IPC. Both the sentences were directed to run concurrently.

2. Case of the prosecution in brief is that on 14.4.1998 an FIR was lodged at around 8:40pm at Police Station Ambikapur by PW-4 Raghvendra Singh *alias* Sanjay Singh stating that the accused Appellants came to his house at State Bank Colony, Navapara and knocked at the door and when he came out and opened the door he saw the accused persons namely Ajay Tamrakar, Bharat Tamrakar, Sudhir Soni, Ravi Tamrakar standing in front of the door of his house

and the other accused persons were standing behind and they started using abusive language against him and immediately his father also came at the door along with his (PW-4) sister, Ratna Singh. After a brief hurling of abuses, one of the Appellants namely Prakash Tamrakar took out a country made pistol and fired at the complainant (PW-4) and as a result of the fire, the pellets hit the complainant on his left shoulder and also few of the pellets hit his sister Ratna Singh (PW-5). Meanwhile, the other accused persons standing behind also used abusive language against the complainant and his family members and all the accused Appellants is said to have threatened the complainant of dire consequences and thereafter they left the place.

3. In due course of time, after investigation, the matter was put to trial where the case after committal was placed before the Court of First Additional Sessions Judge, Ambikapur where the case was registered as Sessions Case No. 317 of 1998. In all, there were seven accused persons and after conclusion of the trial, based on the evidence which has come on record particularly the statement of the injured witnesses, the Court below vide impugned judgment dated 17.10.2001 reached to the conclusion that the prosecution has been able to establish its case beyond all reasonable doubts and accordingly convicting each of the Appellants under Sections 148 and 307/149 of IPC, sentenced them to the period as mentioned in the first paragraph of this judgment. It is this judgment which has been assailed by the respective Appellants in the present seven appeals being decided analogously by this common judgment.

4. At the outset, learned Counsels appearing for the respective Appellants submit that they do not intend to argue the case on its merits and pray that taking into consideration the fact that all the appeals being of the year 2001 are about 16 years old, and the incident being of the year 1998 is about 18 years old, the sentence part may be reduced to the period already undergone by each of the Appellants. In furtherance to their contention seeking for reduction in the sentence part, they submit that from the records which have been brought before the Court below and the evidence which has come on record, what reflects is the

fact that the offence under Section 307 of IPC has been charged on account of the use of a country made pistol and the same was used by only one of the accused persons namely Prakash Tamrakar who is the Appellant in Criminal Appeal No. 1064 of 2001. That, so far as the other accused persons are concerned, the only allegation against them is that of using abusive languages and giving threat to the complainant. It was also canvassed by the Counsels appearing for the respective Appellants that the injuries sustained by the injured persons i.e. PW-4 and PW-5, were simple in nature and could not have been proved fatal and, therefore, the offence under Section 307 of IPC could not have been charged against the present Appellants. It was also contended that the injuries sustained by the injured persons were also on the non-vital areas and for this reason also the sentence can be reduced to the period already undergone. According to them, it is also reflected from the evidence that on an earlier occasion there was a fight between some of the accused persons in the present appeals with the complainant (PW-4) and his friend and for which also, there was a report lodged with the police and which was the root cause for the present incident that took place on 14.4.1998. In view of the aforesaid factual matrix of the case, they pray for the modification of the sentence to the period already undergone by each of the Appellants.

5. Learned Counsel for the State however opposes the appeals on the ground that the prosecution in fact has proved its case beyond reasonable doubt inasmuch as use of the country made pistol by the accused, Prakash Tamrakar, the Appellant in Criminal Appeal No. 1064 of 2001, and the injuries sustained by the complainant (PW-4) and his sister (PW-5) and their evidence before the Court below, establishes the offence to have occurred and, therefore, considering the said facts the impugned judgment of conviction does not warrant interference and thus he prayed for the rejection of the appeals.

6. Having considered the rival contentions put forth on either side and on perusal of the evidence which has come on record, some of the admitted facts which are culled out are, that the incident occurred at around 8:00pm on

14.4.1998. All the Appellants were present in front of the house of the complainant when the incident took place. Undisputedly, the country made pistol was used by the accused Prakash Tamrakar. So far as the allegations against the other accused Appellants are concerned, they had only gathered together with a common intention of threatening the complainant of dire consequences and also have used abusive languages. The injuries sustained on PW-4 and PW-5, were on the shoulder and on the other non-vital parts of the body and that there was no immediate threat of the injuries proving to be fatal. The evidence which has come on record shows that the complainant (PW-4) a few days back had a fight with the accused Bharat Prasad Tamrakar, who is the Appellant in Criminal Appeal No. 1102 of 2001, and the present incident was in continuation to the said fight. Another fact which cannot be brushed aside is the fact that, all the accused Appellants at the time of incident were young, aged between 20 to 25 years old, and the incident had occurred about 18 years ago and by efflux of time all these Appellants might have settled down well in the mainstream of the society. It also reflects that the act on the part of the accused Appellants was more than account of the folly of youth which happened in the continuation to the fight that the complainant (PW-4) had with the accused Appellant Bharat Prasad Tamrakar a couple of days back. Another aspect which has to be looked into is the fact that, the accused Appellant Prakash Tamrakar who had used the country made pistol has already undergone the sentence of more than one year and three months and the other accused Appellants have remained in jail for a period between two to six months and that the only allegation against the other accused Appellants other than the Prakash Tamrakar, is that of making a unlawful assembly and using abusive languages and giving threat to the complainant.

7. In the light of all the aforesaid prevailing circumstances particularly, keeping in mind the reason which led to the incident, i.e., the previous fight between the complainant and one of the Appellants, this Court is of the opinion that so far as the incident is concerned, from the evidence which has come on record the same stands established and proved and, therefore, the conviction of

the Appellants for the offence does not warrant interference and the same is accordingly affirmed.

8. However, taking into consideration the overall factual matrix of the case, the impugned judgment being around 18 years old and the appeals also being about 16 years old and that all the Appellants at that time being young aged about 20-25 years old, further the fact that the injuries sustained by PW-4 and PW-5 also being at the non-vital areas and simple in nature, this Court is of the opinion at this juncture that it would not be proper for affirming the sentence imposed by the Court below and forcing the Appellants to undergo the remaining period of sentence. Accordingly, the sentence imposed upon the Appellants is reduced to the period already undergone by each of them.

9. The view of this Court for the reduction of the sentence to the period undergone, is also fortified from the decisions of the Supreme Court rendered in the cases of *State of Punjab v. Sanjiv Kumar alias Sanju & Ors.* [2007 (9) SCC 791] (See para 4, 8 & 9), *K.M. Ravi & Ors. v. State of Karnataka* [2009 (16) SCC 337] and *Nagesar v. State of Chhattisgarh* [2014 (1) Acquittal 619 (SC)].

10. With the aforesaid modification of the sentence, the appeals stand dismissed.

11. In view of above, the order dated 16.11.2016 passed by this Court in Criminal Appeal No. 1037 of 2001 whereby the bail granted to the Appellant namely Mohammad Yunus Khan on earlier occasion was cancelled and a warrant of arrest was ordered to be issued against him for taking him into custody, stands hereby recalled.

Sd/-
(P. Sam Koshy)
Judge