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HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 86 OF 2011**

Judgment Reserved on: 22/11/2016

Judgment Delivered on: 17/01/2017

State of Chhattisgarh

---- Appellant

Versus

1. Manohar, aged about 36 years,
2. Prakash, aged about 26 years,
3. Chamru, aged about 25 years,
All S/o Buhuram Mahar, R/o Karvari, Police Station: Dongargarh, Distt. Rajnandgaon.
4. Buhuram Mahar, S/o Faguram Mahar, aged about 65 years, R/o Karvari, Thana: Dongargarh, Distt.: Rajnandgaon.

---- Respondents

And**Criminal Revision No. 390 OF 2001**

Chandra Bhan S/o Govinda aged about 30 years, R/o Village Karwari, P.S. Dongargarh, Distt. Rajnandgaon.

---- Applicant

Versus

1. Manohar S/o Buddhuram Mahar, aged about 36 years.
2. Prakash S/o Buddhuram Mahar, aged about 20 years
3. Chamaru S/o Buddhuram Mahar, aged about 25 years
4. Buddhuram Mahar S/o Faguram, aged about 65 years.
All 4 above are resident of village Karwari, PS Dongargarh, Distt. Rajnandgaon (C.G.)
5. State of Chhattisgarh through P.S. Dongargarh, Distt. Rajnandgaon.

---- Non-applicants

For State/Appellant	:	Shri Ravindra Agrawal, Panel Lawyer
For respondents No. 1 to 3/ (Accused persons)	:	Shri M.D. Dhote, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

C A V Judgment

Per Sanjay Agrawal, J.

1. This acquittal appeal has been filed by the State Government under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to 'CrPC') against the judgment and order dated 05/09/2001 passed by the Additional Sessions Judge, Rajnandgaon in Session Trial No. 20/2000 whereby all the accused persons/non-applicants No. 1 to 4 have been acquitted from the offence punishable under Section 307 of the Indian Penal Code (hereinafter referred to 'IPC') or in alternative under Section 307/34 of the IPC. The complainant-Chandra Bhan has also questioned the propriety of this judgment while filing the revision under Section 397/401 of the CrPC, which is registered as Criminal Revision No. 390 of 2001.
2. Since the common questions of law and facts are involved in both these matters, therefore, they are being heard together and disposed of by this common order.
3. Since respondent No. 4-Buddhram (Buhuram) Mahar has expired therefore, the acquittal appeal and criminal revision as regards respondent -Buddhram (Buhuram) Mahar, stand abated vide order dated 22/11/2016.
4. The prosecution story briefly stated is that on 29/07/1999 at about 8.00 am, a quarrel had taken place when complainant Chandra Bhan, his brother Rama and his wife Smt. Kalpana Bai were restrained by the accused persons from harvesting the crops sown by them. As a result of which, the accused persons/non-applicants No.1 to 4 have assaulted the complainant Chandra Bhan with Spade (*Rapa*) and Stick (*Lathi*).

5. Based upon the aforesaid incident, First Information Report (Exhibit P-1) was lodged by Smt. Kalpana Bai (PW-1) wife of younger brother of Chandra Bhan at Police Station Dongargarh on the date of incident itself at about 9.30 am against all the four accused persons, who all were the members of the same family with regard to the offence punishable under Section 307/34 of the IPC. The matter was investigated and the non-applicants No.1 to 4 were charged for having committed an offence under Section 307 of the IPC or in alternative under Section 307/34 of the IPC.

6. All the accused persons/non-applicants No.1 to 4 have denied the charges as framed and pleaded not guilty by submitting that they want to produce the defence witnesses in order to establish their evidence in the said crime.

7. In support, the prosecution has examined as many as ten witnesses while two defence witnesses were examined by the accused persons/non-applicants No.1 to 4 in order to establish their innocence in connection with the said crime.

8. After examining the statement adduced by both the parties, the trial Court by its impugned judgment dated 05/09/2001 has acquitted all the accused persons from the offence punishable under Section 307 of the IPC or in alternative under Section 307/34 of the IPC.

9. Being dissatisfied with the aforesaid acquittal, the complainant Chandra Bhan has filed this Criminal Revision No.390 of 2001 while exercising the powers enumerated under Section 397/401 of the CrPC and the State Government has filed the Acquittal Appeal No.86 of 2011 under Section 378 of the CrPC.

10. We have heard learned counsel appearing for the parties and have gone

through the entire records carefully.

11. Smt. Kalpana Bai (PW1), wife of Rama, who has lodged a First Information Report (Exhibit P-1), has deposed in her statement that the quarrel started when she, her husband and her brother-in-law (*Jeth*)-Chandra Bhan were prevented by the non-applicants No.1 to 4 from harvesting the crops sown by them. She stated further that her *Jeth*-Chandra Bhan was assaulted by accused Manohar and his brother Prakash with Spade (*Rapa*) while others, i.e. Chamru and Buddhuram have assaulted him with Stick (*Lathi*). She stated further that her *Jeth*- Chandra Bhan have received head injury and his leg was got fractured. The said incident was witnessed by Manikdas (PW-2) and Nand Kumar (PW-4).

12. Manikdas (PW-2), the eyewitness of the incident has deposed that after returning from call of nature, he has seen that all the accused persons were ran away. He stated further that they all were armed with weapons and assaulted complainant Chandra Bhan. This witness has stated further that he is unable to explain what kind of weapons they were armed at that particular time.

13. Other eyewitness, namely Nand Kumar (PW-4) has stated that all the accused persons were assaulting the complainant Chandra Bhan. He stated further that the accused Manohar and Prakash were armed with Spade (*Rapa*) while others i.e. Chamru and Buddhuram were armed with Stick (*Lathi*). He stated further that the accused Buddhuram, the father of all the accused persons, was just standing by holding a Stick (*Lathi*) and had not assaulted the injured/complainant Chandra Bhan.

14. Complainant/Injured-Chandra Bhan (PW-6) in his evidence stated that accused Prakash and Manohar have assaulted him with Spade (*Rapa*) while

others i.e. Chamru and Buddhuram have assaulted him with Stick (*Lathi*).

15. Dr. N. Sachdev (PW-9), who has examined injured Chandra Bhan while submitting MLC Report (Exhibit P-14), has stated that the Injuries No. 7 to 12 are simple in nature while others i.e. injuries No. 1 to 6 are head injuries and therefore opined for its X-Ray.

16. From perusal of the aforesaid prosecution witnesses, it is clear that the alleged incident had taken place on 29/07/1999 in the morning when injured Chandra Bhan and his family members were restrained by accused persons from harvesting the crops sown by them. The First Information Report lodged by Smt. Kalpana Bai (PW-1) would reveal that the accused Prakash was holding Spade (*Rapa*) while others were holding Stick (*Lathi*) and her statement recorded in the Court would reveal further that the injured Chandra Bhan was assaulted by Manohar and Prakash with Spade (*Rapa*) while others i.e. Chamru and Buddhuram have assaulted him with Stick (*Lathi*).

17. The statement of independent eyewitness Manikdas (PW-2) would show that he was unable to demonstrate that what kind of weapon the accused persons were held at the time of said occurrence. The statement of another eyewitness Nand Kumar (PW-4) would show that injured Chandra Bhan was assaulted by Manohar and Prakash with Spade (*Rapa*) while Buddhuram other accused person was just standing while holding a Stick (*Lathi*). The evidence of injured (Chandra Bhan) would show that he was assaulted by Prakash and Manohar with Spade (*Rapa*) while others i.e. Chamru and Buddhuram have assaulted him with Stick (*Lathi*).

18. Thus, in view of the examination of the aforesaid witnesses, it is clear that though there are some discrepancies in their evidence with regard to the use of weapon, but it is emerged from their evidence that injured Chandra

Bhan was assaulted either with Spade (*Rapa*) or Stick (*Lathi*) by all the accused persons, except accused Buddhuram as he was just standing at that particular time by holding a Stick (*Lathi*). Their intentions, except Buddhuram, as gathered and emerged from the record, was certainly not to murder the injured Chandra Bhan. Consequently, the considered opinion of this Court is that the non-applicants, except Buddhuram (non-applicant No.4), have committed the offence punishable under Section 324 of the IPC and not under Section 307/34 of the IPC.

19. We, therefore, modify the findings recorded by the trial Court by holding that the non-applicants No. 1 to 3 i.e. Manohar, Prakash and Chamru have committed an offence punishable under Section 324 of I.P.C. Since, the incident had occurred in the year 1999 and, therefore, by taking into consideration the fact that more than the period of 17 years have already elapsed and, under such circumstances, no purpose would be served to punish them for imprisonment. Consequently, we punish with fine amount only. Accordingly, we direct all these accused persons/non-applicants No. 1 to 3 to pay a fine of Rs.25,000/- each, in total Rs.75,000/-, to the injured Chandra Bhan within a period of two months from the date of passing of this judgment. In default for payment of fine amount, they shall have to undergo for rigorous imprisonment for a period of one year each.

20. As far as the findings of the trial Court with regard to acquittal of non-applicant No. 4- Buddhuram (Buhuram) Mahar is concerned, the same is hereby affirmed. Even otherwise the matter has already been abated against him vide order dated 22/11/2016.

21. Resultantly, both these matters, i.e. Acquittal Appeal No. 86 of 2011 as well as Criminal Revision No. 390 of 2001 are disposed of in view of what has

been discussed in the preceding paragraphs with the above mentioned modification in the judgment of the trial Court.

22. A copy of this judgment be placed on record of Criminal Revision No. 390 of 2001.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE