

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 323 of 2012**

1. Balmukund Agariya, S/o Alam Sai Agariya aged about 45 years;
3. Deep Sai Gond S/o Asharam Gond, aged about 70 years;
5. Sohan Agariya S/o Rajan Agariya, aged about 50 years;
4. Suresh Agariya S/o Sohan Agariya, aged about 25 years;

All R/o Village Bilaro, P.S. Patana , Distt. Korea C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through District Magistrate Korea by PS-Incharge Patana District Korea, Chhattisgarh

---- Respondent

For the Appellants : Smt. Laxmin Tondey, Advocate.

For the State/Respondent : Smt. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on board**

16/09/2017

1. This appeal has been preferred against the judgment dated 7.12.2011 passed by the Learned First Additional Sessions Judge, Mandendragarh at Baikunthpur, District-Koriya, Chhattisgarh in Session Trial No.84/2008, whereby appellant has been convicted under Sections 323/34 & 324/34 of Indian Penal Code (for short 'IPC') and sentenced to undergo RI for 3 months with a fine of Rs.1,000/- and RI for 10 days with fine of Rs.5,000/- with default stipulations, respectively.

2. Facts of the case, in brief, are that on 22.3.2008 i.e. on the day of Holy Festival at about 2 p.m. in the afternoon, appellants sharing common intention assaulted Rajni Bai PW-1 & Geeta Bai PW-12 with sword and other objects like club & stick and injured. On the basis of information given by Rajni Bai (PW-1), FIR Ex.P/1 was registered for the offences under Sections 294, 450, 307 and 323/34 of the IPC.
3. After completion of investigation, charge sheet against the accused/appellants was filed. The trial Court framed charges under Sections 294, 450, 307 and 323/34 of IPC and Section 25 (1b) (b) of Arms Act, 1959. On completion of trial, impugned judgment has been passed, in which, appellants have been convicted and sentenced as aforesaid. However, they have been acquitted of the remaining charges levelled against them.
4. It is submitted by the counsel for appellants that the trial Court has erroneously passed the judgment of conviction against the appellants. The evidence of prosecution witnesses are not reliable and therefore could not be made basis of conviction. Defence version was wrongly disbelieved by the trial Court. Hence, prayed that the appeal be allowed and appellants be acquitted of all the charges.
5. Learned counsel for the State has opposed the grounds and submissions made. It is submitted that the prosecution has proved its case beyond reasonable doubt and there is no reason to interfere with the judgment impugned.
6. Heard both the parties and perused the documents on record.

7. Question for determination in this appeal is whether the judgment of conviction passed against the appellant is sustainable in law?
8. Rajni Bai PW-1 has stated that on the date, time and place of incident appellants came to her residence, used abusive words and assaulted her with clubs. Appellant Balmukund assaulted her with sword causing injuries to her. She has further stated about lodging of FIR Ex.P/1. In cross-examination, this witness remained firm and nothing could be elicited by the defence which suggests that this witness is making false statement before the Court. Similarly, Geeta Bai PW-12 has given statement before the Court that the appellants were assaulting Rajni Bai PW-1 and when she intervened in the matter, she too was assaulted by the appellants with clubs. Her statement remained un-rebutted in cross-examination and nothing could be elicited by the defence which suggests that this witness is making false statement before the Court.
9. Pawan Singh PW-2 is an eyewitness of the incident, though he has been declared hostile on the point of seizure made in his presence, but he supports the statement of Rajni Bai PW-1 on the point of occurrence of incident.
10. Mangli Bai PW-3 has partly supported the prosecution version.
11. Dinesh @ Vishwanath PW-5 is hear say witness who reached on the spot soon after the incident and was informed about the incident.
12. Statements of injured witness Rajni Bai PW-1 and Geeta Bai PW-12

stand corroborated from the medical evidence of Dr. S.S. Gupta who examined the injured witnesses on 23.3.2008 vide Ex.P/28. He has stated that on examining Geeta Bai PW-12, he found one lacerated wound on her head, she was complaining pain on her left ear and he also noticed one abrasion on her left wrist. All the injuries were of simple in nature. He also examined Rajni Bai PW-1 on 22.3.2008 vide Ex.P/20 and found one incised wound on left side of her head near the forehead, swelling with pain on the left wrist and one abrasion on right knee. He opined that the injury on forehead was caused by some hard and sharp object and rest of the injuries were caused by some hard and blunt object. All the injuries were simple in nature. Statements based on these reports remain unrebutted.

13. Tej Nath Singh PW-15 is the Investigating Officer, he has investigated the case.

14. On scrutinizing and considering the statements given by these witnesses, it appears that conviction of the appellants under Sections 323/34 and 324/34 of IPC is based on cogent and reliable evidence which needs no interference by this Court.

15. In view of foregoing reasons, this appeal has no merit and the same is accordingly dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge