

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 575 of 2014

Judgment reserved on 21.4.2017

Judgment delivered on 16.5.2017

1. Ved Prasad, aged about 28 years, S/o Shatrughan Kaushik
2. Rakesh Kumar, aged about 19 years, S/o Ramesh Kumar Kaushik

Both R/o Village Bhilauni, Police Station Takhatpur, District Bilaspur, CG

---- Appellants

Versus

1. State of Chhattisgarh through Police Station Takhatpur, District Bilaspur, CG

---- Respondent

For Appellants	:	Shri Sourabh Dangi and Ms. Aditi Singhvi, Advocates
For Respondent/State	:	Shri Ravindra Agrawal, PL

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Rajendra Chandra Singh Samant**

CAV Judgment

16/05/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 17.6.2014 passed by the Additional Sessions Judge Bilaspur, in Sessions Trial No. 105/2013 convicting the accused/appellants under Sections 326/34 and 324/34 IPC and sentencing each of them to undergo RI for five years with fine of Rs. 500/- u/s 326/34 and RI for three years with fine of Rs. 500/- u/s 324/34, plus default stipulations.

2. Case of the prosecution in brief is that on 31.7.2009 at about 11 AM FIR (Ex.P-1) was lodged by Dilesh Kumar (PW-1) alleging that on that day at about 8.45 AM he was working in his land along with

his father Mayaram and adjacent to his field, land of Shatrughan also situate where the accused persons were also working at the relevant time. When the accused persons started removing the barbed wire fencing, he asked them not to remove the same and advised to call the *Panchayat* meeting before that, but they did not listen to him and started abusing him and his father filthily. It is alleged that when he and his father asked them not to abuse, at the instance of accused Shatrughan, accused/appellant Ved Prasad opened assault on his father with axe as a result of which he fell down. Thereupon, he (this witness) also picked up the pick axe, chased the accused persons and inflicted blows to whoever came across. When accused Ramsharan started chasing him, he lifted his unconscious father and rushed home and disclosed the incident to his family members and then went to the police station and lodged the report against Rakesh Kaushik, Ved Prakash Kaushik, Shatrughan Kaushik (since deceased), Ramsharan Kaushik (since deceased) and others. Injured Mayaram (PW-2) was medically examined by Dr. Anil Kumar Gupta (PW-5) vide report Ex. P-6. Injured Dilesh was also medically examined by the same doctor vide report Ex.P-7. It is relevant to note that in the said incident, two persons namely Shatrughan and Ramsharan from the side of accused against whom also the FIR was lodged have died and one person namely Jaishankar got injured, and for the death of Ramsharan and Shatrughan, three persons namely Dilesh, Rajendra and Mayaram were tried in Sessions Trial No. 210/2009, whereas absconded accused Raj Kumar alias Bade Guddu was put to trial in same Sessions Trial after his arrest subsequently. By two separate judgments dated 17.6.2014 and 12.5.2015, all four accused persons in the counter case have been convicted under Sections

302/34 and 307/34 IPC.

3. In the present case, after filing of charge-sheet, the trial Court has framed the charge against the present appellants and one Rani Bai (since acquitted) for the offences punishable under Sections 294, 506-B and 326/34 IPC.

4. To hold the accused/appellants guilty the prosecution has examined 10 witnesses in support of its case. Statements of the accused/appellants have also been recorded under Section 313 of the Code of Criminal Procedure in which they denied the allegations made against them and pleaded innocence and false implication in the case. One Ved Prasad (DW-1) has also been examined by the defence in support of its case.

5. After hearing the parties the Court below acquitted accused Rani Bai of the charges levelled against her but has convicted and sentenced the accused/appellants herein as detailed in paragraph No.1 of this judgment.

6. Counsel for the accused/appellants submits as under:

(i) that on the date of incident it is the people of other group who assaulted the accused persons in which Ramsharan and Shatrughan died whereas one Jaishankar received grievous injuries;

(ii) that the accused/appellants did not do anything and they were simply trying to protect themselves and it appears that from the active participation of the other party, Mayaram and Dilesh suffered some injuries;

(iii) that the Court statement of Mayaram (PW-2) does not tally with his diary statement (Ex. D-2) and thus he does not appear to be a trustworthy witness;

(iv) that the statement of Dilesh (PW-1) being full of inconsistencies is also not reliable; and

(v) that even if the entire statements of these witnesses is taken to be correct, at best the accused/appellants can be convicted under Section 324 IPC only, and as they have already remained in jail for more than 50 days, their sentence may be reduced to the period already undergone.

7. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the Court below has been justified in recording the conviction on the basis of material available on record and there is no infirmity in the same.

8. Heard counsel for the parties and perused the material on record.

9. Mayaram (PW-2) has stated in his Court statement that there was some dispute between the members of two groups over removal of barbed wire fencing where accused persons assaulted him with axe causing injuries on head, ribs and shoulder as a result of which he fell down and became unconscious. However, in his diary statement Ex. D-2 he has stated that one Fullu assaulted him with pick-axe causing injury on head as a result of which he fell down, and was not aware as to when his son removed him. Diary statement of this witness does not contain any allegation of assault by the accused persons and the allegation in this regard is against some Fullu who has not been made accused. Dilesh (PW-1) – another injured witness has supported the case of the prosecution stating that there was some dispute between the members of two groups over removal of barbed wire fencing in which accused persons caused injuries to him and his father for which report Ex. P-

1 was lodged by him. In cross-examination this witness has remained firm except stating in paragraph No. 9 that after receiving injuries he was not aware as to who caused injuries to whom. Dr. Anil Kumar Gupta (PW-5) is the witness who medically examined Mayaram and Dilesh vide reports Ex. P-6 and P-7 respectively. Medical report of Mayaram contains two incised injuries, two lacerated injuries and one abrasion whereas medical report of Dilesh contains one incised wound and two bruises - all simple in nature. S.R. Chandra (PW-10) is the investigating officer who has duly supported the case of the prosecution.

10. We have gone through the material available on record including the evidence of the witnesses. Main prosecution witness appears to be Dilesh (PW-1) who is stated to have been assaulted by the accused persons with axe. Injuries received by him have been proved by the doctor (PW-5) who has opined the same to be simple in nature. If the Court statement of Mayaram (PW-2) is seen, the accused/appellants herein appear to have caused injuries to him but at the same time if his diary statement is seen, accused/appellants do not find place therein to be the offenders but one Fullu is shown to be the person who inflicted injury to him with pick axe. However, said Fullu has not been made accused. Thus the accused/appellants cannot be convicted for the injuries suffered by Mayaram.

Now the next question to be decided by this Court is as to what offence would be made out against accused/appellants for causing injuries to Dilesh (PW-1). Doctor (PW-5) has opined that all the three injuries suffered by Dilesh were simple in nature. Thus in the facts and circumstances of the case, act of the accused/appellants falls under Section 324/34 IPC and they are

held guilty accordingly. Their conviction under Section 326/34 IPC is hereby set aside. Since they have already remained in jail for more than 50 days and the incident had taken place about 8 years back, this Court is of the opinion to reduce their sentence to the period already undergone by them as at such a stage no useful purpose would be served to send them to jail again. Order accordingly. The accused/appellants however are required to pay Rs. 2000/- each (total Rs. 4,000/-) to be paid as compensation to injured Dilesh in terms of Section 357 Cr.P.C.

11. Appeal thus allowed in part.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge