

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 11-9-2018****Delivered on 8-10-2018****CRIMINAL APPEAL No. 948/2002**

(Arising out of judgment of conviction and order of sentence dated 26-08-2002 passed by 1st Additional Sessions Judge. Durg (CG) in S.T. No. 97/2002)

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1. Shivkumar son of Dhanesh Kenwat, aged 28 years
2. Dhanesh son of Sakharam Kenwat, aged 51 years
3. Hanuman son of Virnath, aged 30 years
4. Dayalu, son of Dhansingh Kenwat, aged 35 years
5. Chaitibai wife of Dhanesh Kenwat, aged 45 years
6. Raimunbai wife of Hanuman Kenwat, aged 30 years
7. **Dhan Singh (since deceased)**
8. Motinbai wife of Dhansingh Kenwat, aged 45 years
9. Jageshwar son of Dhanesh Kenwat, aged 24 years.

All resident of village Shivkokadi, Police Chouki Bori, Thana Dhamdha, Distt. Durg.

-Versus-

State of Chhattisgarh through Chouki In-charge Police Counci Bori, Thana Dhamdha, Distt. Durg.

----Respondent

For appellant : Shri H.B. Agrawal, Sr. Adv. With Smt. Prabha
Sharma, Adv.

For State : Shri Vinod Tekam, PL.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 26-08-2002 passed by 1st Additional Sessions Judge. Durg (CG) in S.T. No. 97/2002 whereby and whereunder he convicted and sentenced

the appellants No. 1 to 6, 8 and 9 and deceased appellant No. 7 Dhansingh, whose appeal stood abated on his death during the pendency of this appeal, as under :-

Under Section	Sentence	Fine
147, IPC	RI for six months	---
148, IPC	RI for six months	---
324/149, IPC	RI for one year	---

All the sentences are directed to run concurrently.

2. In brief, case of the prosecution is that on 17-11-2001 at about 3.00 pm at village Shiv Kokdi, a dispute arose between complainant Gariba and appellant Jageshwar Kewat on account of grazing by bull in the field of appellant Jageshwar Kewat. On 18-11-2001 at about 7 am aforesaid appellants, reached near court of Lachchhi Ram along with club stick and crow bar and beaten complainants Smt. Mankunwar, Gariba and Smt. Mathura Bai with intention to kill them. On very day Sheshnarayan gave the information in outpost Bori where unnumbered nalishi was lodged. After completing investigation, a charge sheet was filed against aforesaid appellants. Trial Court framed charges against them under Sections 147, 148, 307/149 of the IPC. Aforesaid appellants abjured the charges and faced trial. After conclusion of the trial, Trial Court convicted them as aforesaid.

3. Shri H.B. Agrawal, Sr. Adv. for the appellants No. 1 to 6, 8 and 9 argued that the Trial Court has not appreciated the evidence in proper perspective. The conviction and the sentences of the appellants No. 1 to 6, 8 and 9 are bad in eyes of law. Thus, the appellants No. 1 to 6, 8 and 9 may be acquitted of the aforesaid charges.

4. Counsel for the State argued that the conviction and the sentences of the appellants No. 1 to 6, 8 and 9 are based on clinching evidence. The conviction and sentences of the appellants No. 1 to 6, 8 and 9 do not call for interference by this Court.

5. As per the MLC report Ex. P-5-A, P.W. 5 Dr. Nivedita Daini had examined complainant Gariba and found one lacerated wound, two swelling, one abrasion on his body, she opined that injuries were caused by hard and blunt object.

6. There is no such evidence on record on the strength of which it can be said that Ex. P-5-A is not believable. Thus, this Court believes upon Ex. P-5-A.

7. As per MLC report, Ex. P-6-A , P.W. 5 Dr. Nivedita Daini had examined complainant Mankunwar and found one abrasion, 3 swellings, one incised wound which was present on lateral aspect of right hand size 3 cm x 1 cm x ½ cm, she opined that injuries No. 2 to 5 could be caused by hard and blunt object, injury No. 1 could be caused by hard and sharp object.

8. There is no evidence on record on the strength of which can be said that Ex. P-6-A is not believable. Thus, this Court believes on Ex. P-6-A.

9. As per the MLC report Ex. P-7-A, P.W. 5 Dr. Nivedita Daini had examined complainant Mathura and found two swellings, one abrasion on her body, she opined that injuries were caused by hard and blunt object.

10. There is no such evidence on record on the strength of which it can be said that Ex. P-7-A is not believable. Thus, this

Court believes upon Ex. P-7-A.

11. As per the query report Ex. P-8-A P.W. 5 Dr. Nivedita Daini stated that injuries of the complainant Smt. Mankunwar, Gariba and Smt. Mathura Bai are simple in nature because no fracture was found in X-ray.

12. There is no such evidence on record, on the strength of which it can be said that Ex. P-8-A is not believable. Thus, this Court believes on Ex. P-8-A.

13. As per the query report Ex. P-9-A P.W. 5 Dr. Nivedita Daini stated that injuries sustained by the aforesaid complainants were not sufficient to cause death.

14. There is no such evidence on record on strength of which it can be said that Ex. P-9-A is not believable. Thus, this Court believes on Ex. P-9-A.

15. P.W. 1 Sheshnarayan says in para 1 of his statement given on oath that near the Court the aforesaid appellants had beaten his brother Gariba, his sister Mathura Bai, his paternal aunt Mankunwar Bai by clubs, crowbar.

16. P.W. 2 Gariba Verma says in para 1 of his statement given on oath that near the court, aforesaid appellants had beaten complainant Mathura Bai, Mankunwar Him and himself by clubs and crowbar.

17. P.W. 3 Smt. Mankunwar says in para 2 and 4 of her statement given on oath that aforesaid appellants had beaten Gariba, Mathura and herself also. Appellant Jageshwar had a crowbar.

18. P.W. 4 Mathura Bai says in para 1 of her statement given on oath that aforesaid appellants had beaten herself, Mankunwar, Gariba, appellant Jageshwar had a crowbar and others had clubs.

19. P.W. 7 Jhadi Ram says in para 1 of his statement given on oath that he had seen that aforesaid appellants beat Gariba and Mankunwar Bai.

20. D.W. 1 Visheshar Kewat says in para 3 of his statement given on oath that no dispute happened between aforesaid appellants and complainants.

21. Alleged unnumbered Nalishi Ex. P-1 was lodged promptly. The entire incident has been described in it.

22. There is no such evidence on record on the strength of which it can be said that Ex. P-1 is an afterthought to falsely implicate the aforesaid appellants.

23. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Sheshnarayan, P.W. 2 Gariba Verma, P.W. 3 Smt. Mankunwar, p.w. 4 Mathura Bai, P.W. 7 Jhadi Ram are not believable. Thus, this Court believes on aforesaid statements of P.W. 1 sheshnarayan, P.W. 2 Gariba Verma, P.W. 3 Smt. Mankunwar, p.w. 4 Mathura Bai, P.W. 7 Jhadi Ram and disbelieves aforesaid statement of D.W. 1 Visheshar Kewat.

24. Looking to the above mentioned facts and circumstance of the case this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charges punishable under Sections 147, 148, 324/149 of the IPC against the appellants No. 1 to 6, 8

and 9. Thus, the conviction of the appellants No. 1 to 6, 8 and 9 under Section 147, 148, 324/149 of the IPC is affirmed.

25. At the time of the incident, no minimum imprisonment was provided for the offences punishable under Sections 147, 148, 324 of the IPC. The appellants Shiv Kumar, Dhanesh, Hanuman, Dayalu have remained in jail from 19-11-2001 to 6-12-2001, appellants Chaiti Bai, Raimun Bai, Motin Bai have remained in jail from 19-11-2001 to 22-11-2001, appellant Jageshwar has remained in jail from 18-11-2001 to 6-12-2001. About 17 years have passed after the incident. At the time of incident, appellants Shiv Kumar, Dhanesh, Hanuman, Dayalu, Chaiti Bai, Raimun Bai, Motin Bai, Jageshwar were aged 27, 50, 29, 34, 44, 29, 44, 23 years respectively. Now they are aged about 44, 67, 46, 51, 61, 46, 61, 40 years old. Now they are in mainstream of society. Sending them to jail would disturb them as well as their family members' life. Hence, no useful purpose would be served if they are sent to jail after 17 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] I am of the opinion that cause of justice would be subserved, if RI of 6 months, 6 months, 1 year are reduced to the sentence for the period already undergone by them, and some fine sentence may also be imposed.

26. The appeal is partly allowed. The sentences of appellants No. 1 to 6, 8 and 9 to undergo RI of 6 months, 6 months, 1 year under Section 147, 148, 324/149, IPC respectively are reduced to the sentence for the period already undergone by them. In

addition to the above jail sentences, they are also sentenced to pay fine of Rs. 2,500/- (Rupees two thousand five hundred only), Rs. 2,500/- (Rupees two thousand five hundred only) and Rs. 15,000/- (Rupees fifteen thousand only) for offences under Sections 147, 148 and 324/149 of the IPC respectively. In default of payment of fine, they shall further undergo additional RI for 3 months, 3 months and 6 months respectively. Out of the total fine amount, 25,000/- (rupees twenty five thousand only) be given to complainant Gariba as compensation, Rs. 25,000/- (rupees twenty five thousand only) be given to complainant Smt. Mathura Bai as compensation and Rs. 35,000/- (rupees thirty five thousand only) be given to complainant Smt. Mankunwar as compensation.

27. The appellants No. 1 to 6, 8 and 9 are granted three months' time from the date of receipt of certified copy of this order for depositing the fine amount.

28. The appellants No. 1 to 6, 8 and 9 are reported to be on bail. their bail bonds stand cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge