

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2518 of 1999

1. Ramesh Kolta aged 30 years S/o Basu Kolta, Occupation Cultivation, resident of village Balenda, tahsil Saraipali, District Mahasamund, MP (now CG)
2. Kishore Kolta aged about 29 years, S/o Basu Kolta, Occupation Cultivation, resident of village Balenda, tahsil Saraipali, District Mahasamund, MP (now CG)
3. Narayan Kolta aged about 38 years, S/o Nimaee Kolta, Occupation Cultivation, resident of village Balenda, tahsil Saraipali, District Mahasamund, MP (now CG)
4. Chheliya Kolta aged about 39 years, S/o Pitamber Kolta, Occupation Cultivation, resident of village Balenda, tahsil Saraipali, District Mahasamund, MP (now CG)
5. Suraj Kumar S/o Gayaram Yadav aged about 26 years R/o Village Bhaskura, Thana Marwaha, District Bilaspur, MP (Now CG)

---- Appellants

Versus

State of Madhya Pradesh (now CG) through District Magistrate Mahasamund, MP (Now CG)

---- Respondent

For Appellants	-	Shri Rajendra Tripathi, Advocate
For Respondent.	-	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

07/02/2018

This appeal is directed against the judgment and order dated 02.09.1999 passed by Additional Sessions Judge, Mahasamund in Sessions Trial No. 75/1996 convicting and sentencing the accused/appellants:-

Appellant	Conviction (U/s)	Sentence
Ramesh Kolta	326 IPC	RI for 03 years with fine of Rs. 1000/-
	324 IPC	RI for 01 year with fine of Rs. 500/-
Kishore Kolta, Narayan Kolta & Chheliya Kolta	326/34 IPC	RI for 03 years with fine of Rs. 1000/- each
	324/34 IPC	RI for 01 year with fine of Rs. 500/- each

2. As per the case of prosecution, there was an old land dispute between the accused/appellants and the complainant party. On 11.05.1995 the accused/appellants had broken the bund of the field which was in possession of the complainant party for which the matter was reported to the village Panchayat. On 12.05.1995 when injured Jogendro (PW-7), Vikram (PW-8) and Shouki Lal (PW-9) were working in their field, at about 8 AM the accused/appellants reached there carrying axe and club in their hands and assaulted them. FIR Ex. P-34 was lodged on 12.05.1995 at 11 AM by Vikram Kolta (PW-8) for the offences under Sections 341, 294, 307 and 323/34 IPC. PWs 7, 8 and 9 were medically examined on the same day by Dr. S.K. Shukla (PW-1) vide reports Ex. P-4, P-2 and P-17 respectively. As per x-ray report Ex. P-5 of Jogindro (PW-7) there was fracture on his left frontal bone and the query report Ex. P-7 reflects that injury of PW-7 was grievous in nature and sufficient to

cause death if the medical treatment was not provided immediately. Injuries caused to PW-8 and PW-9 were however opined to be simple in nature. After completion of investigation and filing of challan, the Court below framed the charge under Sections 307/34, 323/34, 294 and 323 IPC against accused Chheriya; under Sections 307/34, 324, 294, 323/34 IPC against accused Kishore; under Sections 307, 324, 294, 323/34 IPC against accused Ramesh; and under Sections 307/34, 324, 294, 323/34 IPC against accused Narayan.

3. So as to hold the accused/appellants guilty, prosecution has examined 10 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellants as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submit that he is not pressing this appeal on merit and confining his argument to the sentence part of the judgment impugned only. He submits that the incident had occurred 23 years back, that the appellants have already remained in jail for about two months and by now all the accused/appellants must be in their advanced age, therefore, no useful purpose would be served in again sending them to jail at this stage. He further submits that though the accused/appellants'

financial condition is very pathetic yet they are willing to adequately compensate the injured persons.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants as shown above are strictly in accordance with law and there is no infirmity in the same. According to him, looking to the gravity of the injuries sustained by Jogendro (PW-7) the sentence too appears to be just and proper.

7. Heard counsel for the parties and perused the evidence on record.

8. Jogendro (PW-7) is the injured who has stated that on account of old land dispute, on the date of incident when he was repairing the bund in the field which was damaged by the accused/appellants, they reached there and accused Ramesh gave an axe blow on his forehead. He has however stated that rest of the accused/appellants did not cause him any injury and they were simply standing carrying the weapons. He is then stated to be brought home and then taken to hospital. Vikram (PW-8) - the son of PW-7 has stated that on account of old land dispute, accused Ramesh caused injury to his father whereas other accused persons caused injuries to him and his brother. Shoukilal (PW-9) - another son of PW-7 has stated almost the same thing like PW-8. Dr. S.K. Shukla (PW-1) is the witness who medically examined the victims and gave his reports Ex.P-2, P-4 and P-17. Further, as per x-ray report Ex. P-5 of Jogindro (PW-7) there was fracture on his left

frontal bone and query report Ex. P-7 reflects that injury of PW-7 was grievous in nature and sufficient to cause death if the medical treatment was not provided immediately. K.K. Singh (PW-10) is the investigating officer who has duly supported the case of the prosecution.

9. Close scrutiny of the material available on record including the evidence of the injured witnesses and the doctor (PW-1) who medically examined the victims PW-7, PW-8 and PW-9 as also the seizure of axe and club made under Ex. P-22 and P-26, this Court is of the opinion that complicity of the accused/appellants in the crime in question has been duly proved by the prosecution and therefore, their conviction as described above does not appear to suffer from any legal flaw. Accordingly, it is hereby affirmed. However, keeping in mind the peculiarity of the things, incident being 23 year old, the fact that the accused/appellants have already remained in jail for about two months and that by now on account of reaching the advance age they must have been saddled with huge family responsibilities, this Court is of the opinion that at this stage no useful purpose would be served in again sending them to jail because ultimately it will, for nothing, unsettle their somehow settled life and may give a push to the domain of crime. Considering all that, the sentence imposed on the accused/appellants is reduced to the period already undergone by them by directing each to give Rs. 5,000/- total being Rs. 20,000/- to be paid as compensation in terms of Section 357 of the Code of Criminal Procedure. Out of this total sum, Rs. 12,000/- would be given to injured Jogindro and Rs. 4000/- each to Vikram and

Shoukilal. If the amount directed is not deposited before the trial Court within a period of six months, the accused/appellants shall be required to be inside for another six months.

10. With the aforesaid, the appeal is allowed in part.

Sd/-

(Pritinker Diwaker)

Judge