

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1090 of 2002**

1. Vijay Kumar S/o Shri Bhikhari Ram Satnami, aged about 19 years.
2. Kartik Ram S/o Shri Dhaniram, aged about 32 years.
3. Sudharam S/o Shri Bhikhari Ram Satnami, aged about 26 years.

All are agriculturist and resident of village Illa, Tahsil Patthalgaon, District Jashpur, Chhattisgarh.

---- Appellants**Versus**

- State of Chhattisgarh, Though : Police Station Patthalgaon, District Jashpur, Chhattisgarh (C.G.)

---- Respondent**And****CRA No. 1111 of 2002**

- Devendra Pal S/o Shri Chheduram Satnami, aged about 22 years, Caste - Satnami, Occupation - Agriculture, R/o Village - Ella, Police Station & Tahsil Patthalgaon, District Jashpur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Though : Police Station Patthalgaon, District Jashpur, Chhattisgarh (C.G.)

---- Respondent

For Appellants in CRA No.1090/2002	-	Shri A.N. Bhakta, Advocate.
For Appellants in CRA No.1111/2002	-	Shri Rakesh Pandey, Advocate
For Respondent	-	Shri Anil Pilley, Dy. A.G.

Hon'bel Shri Justice Pritinker Diwaker

Judgment On Board

08/02/2018

As these two appeals arise out of the common judgment of conviction and order of sentence dated 03.10.2002 passed by the Additional Sessions Judge, Jashpur (C.G.) in S.T. No.234/2001 convicting the accused/appellants as under, they are being disposed of by this common judgment.

Name of Accused/appellant	Conviction under Section	Sentence
Vijay Kumar, Kartik Ram, Sudharam and Devendra Pal	341, 326/149, 324/149 and 323/149 of IPC	R.I. for one month. R.I. for two years with fine of Rs.200, plus default stipulation. R.I. for one year R.I. for six months.
Sudharam	147 of IPC	R.I. for six months
Kartikram and Devendra Pal	148 of IPC	R.I. for one year.

02. As per the prosecution case, on 10.03.2001 at about 01.00 PM, on account of old land dispute, six accused persons including the appellants caused injuries to Dewal Singh (PW/1), Tij Kunwar (PW/2) and Sanjay Kumar (PW/3) by club, rod and axe. On the same day at 05.00 pm, FIR (Ex.P/1) was lodged by Dewal Singh (PW/1) against six accused persons under Sections 341, 147, 148, 307 read with section 149 and 323 read with Section 149 of IPC. Injured Dewal Singh (PW/1) was medically examined by Dr. P. Suthar (PW/5) vide Ex.P/17 and found following injuries:-

- i. Incised wound of 4 cm x 1/2 cm x 1 cm on right frontal region.
- ii. Incised wound of 10 cm curved x 1/2 cm x 1/2

- cm on right occipital parietal region.
- iii. Chopped wound of 2cm x 2cm x 1/4 cm on left parietal region.
- iv. Incised wound of 1/2cm x 1/2cm x 1/4 cm on right thigh
- v. Incised wound of 1 1/2cm x 1/2cm left tibia.
- vi. Incised wound 1/2 cm x 1/2 cm on left palm.
- vii. Contusion of right wrist joint.

Injured Tij Kunwar (PW/2) was also medically examined by Dr. P. Suthar (PW/5) vide Ex.P/27 and found following injuries:-

- i. Swelling on left hand.
- ii. Complaint of hearing in right ear with pain but on examination no injury was found.
- iii. Swelling on left scapular region.

Injured Sanjay Kumar (PW/3) was also medically examined by Dr. P. Suthar (PW/5) vide Ex.P/23 and found following injuries:-

- i. Incised wound of 3cm x 1/2 cm on front part of forehead.
- ii. Incised wound of 4 cm x 1/2 cm on right parietal region.

The Doctor has opined that injuries suffered by the injured persons were caused by hard and sharp object.

03. As per X-ray report (Ex.P/22) of PW/1, fracture of third finger of left hand, right front parietal bone and right wrist joint were noticed, whereas no bony injury has been found upon PW/2 and PW/3. According to Dr. P. Suthar (PW/5), PW/1 has remained in hospital for about 21 days. After filing of the charge-sheet, the trial Court framed the charges against the accused/appellants under Sections 341, 147, 148, 307/149, 323/149 and 324/149 of IPC.

04. So as to hold the accused/appellants guilty, the

prosecution examined as many as 08 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record while acquitting accused Chheduram has convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

06. Learned counsel for the appellants submits as under:-

- (i) That they are not pressing this appeal on merit and would confine their argument to the sentence part thereof only.
- (ii) That the accused/appellants have already remained in jail for about 4 and 1/2 months, the incident took place about 17 years back, by now the accused/appellants are well settled, their relation with the complainant party is normal and no useful purpose would be served in again sending them to jail. Placing reliance on the decision of the Apex Court in the matter of **Vinay & Ors. Vs. State of Karnataka & Anr.**¹, it has been argued that by enhancing the fine amount suitably, the jail sentence already undergone by the appellants can be held to be sufficient.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the

¹ SCC 2015 (11) 612

accused/appellants is strictly in accordance with law and there is no infirmity in the same.

07. I have heard learned counsel for the parties and perused the material available on record.

08. Dewal Singh (PW/1) has stated that on 10.03.2001 when he was returning from Tasoram's shop, opposite to his house accused persons were standing. At the same time, accused Vidur Ram caught hold him from behind and other accused/appellants assaulted him by axe, rod and club. He has further stated that accused Chheduram, Vidur were holding axe, appellant Devendra and Vijay were holding Rod & accused Gosai and Shobharam were holding club. He states that he suffered number of injuries on his head and other parts of body. This witness has also stated that he is not aware as to why the accused/appellants assaulted him, but he was having old land dispute with accused Gosai Ram. In cross-examination, he remained firm and nothing could be elicited by defence to discredit his testimony.

09. Tij Kunwar (PW/2), wife of PW/1, while supporting the prosecution has stated as to the manner in which she, her husband (PW/1) and son PW/3 were beaten by the accused persons.

10. Sanjay Kumar (PW/3), son of PW/1 and PW/2 and injured eye-witness to the incident, has also duly supported the prosecution case.

11. Khiti Bhushan (PW/4) is witness to seizure Ex.P/7, P/9,

P/10, P/12, P/14, P/16 by which three cans of tin, club, iron rod, club, iron rod and axe were seized respectively. He is also a witness to memorandum Ex.P/8 of accused Gosai Ram, Ex.P/11 of appellant Sudha Ram, Ex.P/13 of appellant Devendra Pal and Ex.P/15 of appellant Kartik Ram.

12. Dr. P. Suthar (PW/5) medically examined PW/1, PW/2 and PW/3 vide Ex.P/17, Ex.P/27 and Ex.P/23 respectively and opined that the injuries were caused by hard and sharp object. As per X-ray report (Ex.P/22) of PW/1, fracture of third finger of left hand, right front parietal bone and right wrist joint were noticed, whereas no bony injury has been found upon PW/2 and PW/3.

13. Sudro Ram (PW/6) has been declared hostile but he states that Shashi Bhushan, son of PW/1, had informed him that there was quarrel between his father and accused persons & they have assaulted the injured persons.

14. Dharam Sai (PW/7) is a witness to seizure (Ex.P/10) and memorandum of accused persons made under Ex.P/11, P/12, P/13, P/14, P/15 and P/16.

15. N.P. Porte (PW/8) is Investigating Officer who has duly supported the prosecution case.

16. Close scrutiny of the evidence makes it clear that on 10.03.2001, on account of old land dispute, the appellants and accused No.1-Gosai Ram assaulted PW/1, PW/2 and PW/3 by axe, club and rod as a result of which number of injuries were sustained by the injured person on their body. All the three

injured persons have categorically deposed as to the manner in which they were assaulted by the accused/appellants and have duly supported the prosecution case. Further, the statements of PW/1, PW/2 and PW/3 find corroboration from the evidence of Dr. P. Suthar (PW/5) who medically examined them vide Ex.P/17, P/27 and P/23 respectively noticing in all 12 injuries. Considering the evidence available on record, complicity of the accused/appellants in crime in question stands proved beyond reasonable doubt. Further, considering the nature of injuries sustained by injured Dewal Singh (PW/1) and other injured persons, conviction of the accused/appellants under Sections 341, 326/149, 324/149, 323/149, 147 and 148 of IPC is in accordance with law and there is no infirmity in the same.

17. Next question which arises for consideration by this Court is as to what would be the appropriate sentence to be imposed upon the accused/appellants.

18. Considering the fact that the incident had taken place about 17 years back, accused/appellants have already remained in jail for about four and half months, their relation with the complainant party is now cordial and, therefore, this Court is of the opinion that, in the peculiar facts and circumstances of the case, ends of justice would be served if their sentence is reduced to the period already undergone by them.

19. The other aspect that needs to be examined is whether any compensation be awarded in favour of the injured persons

under Section 357 of the Code of Criminal Procedure, 1973.

20. The Apex Court on the decision in the matter of **Ankush Shivaji Gaikwad Vs. State of Maharashtra**² while elaborating the issue has held that while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

21. In the result, appeals are partly allowed. Conviction of the accused/appellants under Sections 341, 326/149, 324/149, 323/149, 147 and 148 of IPC is hereby maintained, however,

² (2013) 6 SCC 770

they are sentenced to the period already undergone by them. This apart, accused/appellants to pay compensation of Rs.5,000/- each to injured persons in addition to fine amount imposed by the trial Court, which comes to Rs.20,000/-. Let this be done within six months from today, failing which they shall have to undergo R.I. for six months. The compensation amount shall be deposited by the accused/appellants before the trial Court concerned, who in turn, shall disburse Rs.12,000/- to Dewal Singh (PW/1), Rs.4,000/- to Tij Kunwar (PW/2) and Rs.4,000/- to Sanjay Kumar (PW/3) after due verification by it.

Sd/-

(Pritinker Diwaker)
JUDGE