

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1093 of 2002

Judgment reserved on 09.08.2002

Judgment delivered on 13.11.2018

1. Ghanshyam son of Khokram, aged about 20 years
2. Lekh Ram son of Bodh Ram, aged about 30 years,
3. Bodh Ram son of Pilwa, aged about 60 years,
4. Khokram son of Bodh Ram, aged about 38 years,

All residents of village Kenapali, Thana Dabhra, District Janjgir Champa,
CG

---- Appellants

Versus

1. The State of Chhattisgarh through the District Magistrate, Janjgir.

---- Respondent

For Appellants	-	Shri Rajendra Tripathi, Advocate.
For Respondent	-	Ms. K. Tripti Rao, PL

Hon'ble (Smt.) Justice Vimla Singh Kapoor

CAV Judgment

This appeal is directed against the judgment of conviction and order of sentence dated 04.10.2002 passed by Additional Sessions Judge, Sakti, District Bilaspur in Sessions Trial No. 38/2002 convicting the accused/appellants under Sections 307 and 323/34 IPC and sentencing them to undergo rigorous imprisonment for five years with fine of Rs. 500/- u/s 307 and rigorous imprisonment for three months u/s 323 IPC, plus default stipulation.

2. Facts of the case in brief are that on 31.07.2001 on account of some land dispute between accused Khokram, complainant (PW-1) and

his brother Keshav Prasad (PW-2), the accused/appellants abused PW-2 and when PW-2 asked accused Khokram not to abuse, he assaulted him with spear and others with club. Accused/appellants assaulted Motichand (PW-1) also. Thereafter, when Phoolbai (PW-3), Rammu (PW-4 and Chandravati (PW-5) came to the rescue of PW-1 and PW-2, accused/appellants did not spare them and assaulted them too. Subsequently, the matter was reported to the police vide FIR (Ex.P-1) lodged by Motichand (PW-1) based on which offences under Sections 147, 148, 149, 294, 307 and 323 IPC were registered against the five accused persons. All the injured persons being PW-1 to PW-5 were sent for medical examination and then after completion of investigation *challan* was filed by the police followed by framing of charge by the Court below against all the accused persons u/s 148, 307/149, 294 and 323 IPC.

3. So as to hold the accused persons guilty, prosecution has examined 13 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court acquitted the accused namely Shyamlal and Mohanlal of all the charges levelled against them. The Court below acquitted the present appellants also of the charge under Sections 294 and 148 IPC but has convicted and sentenced them as mentioned above in paragraph No.1 of this judgment.

5. At the outset, counsel for the accused/appellants submits that he does not want to press this appeal as far as it relates to conviction part

of the judgment impugned, and would confine his argument to the sentence part thereof only. He submits that considering the detention period of the accused/appellants and the fact that the incident had taken place about 18 years back, the sentence imposed on them may be reduced to the period already undergone by them.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as described above are strictly in accordance with law and there is no infirmity in the same.

7. Though there is a prayer on behalf of the accused/appellants for pressing the judgment impugned as far as it relates to sentence imposed on the accused/appellants, this Court feels it appropriate to deal with the same in its entirety on merits and hence proceeds to do that.

8. Motichand (PW-1) - the lodger of the FIR and one of the injured here has stated that as the land related case going on in the Court against accused Khokram had come in their favour, accused/appellants being annoyed started rebuking badly and when his elder brother (PW-2) came in the front asking them to stop doing that, accused/appellant Khokram assaulted him with spear and others caused him injuries with club. When this witness intervened in the matter, the accused/appellants inflicted club injuries to him also on his head, right elbow, left temple and left cheek. According to this witness, his brother (PW-2) had received injuries on head back and fracture of his left arm. Accused/appellants are also stated to have inflicted injuries to PW-3, PW-4 and PW-5 also when they tried to come in between. Keshav

Prasad (PW-2) – the victim has also stated almost the same thing like PW-2 and thereby supported the case of the prosecution as a whole. He has clarified that accused/appellant Khokram assaulted him with spear and others with club. He has further stated that on account of the injuries suffered by him, he became unconscious and was shifted to hospital for treatment where he remained admitted for 15-16 days. Phool Bai (PW-3), Rammu (PW-4) and Chandravati (PW-5) have also supported the case of the prosecution stating that when they tried to save PW-2 from the assault of the accused/appellants, they too were inflicted club injuries. Shyamdas Mahant (PW-6) has stated that on the date of occurrence Rammu (PW-4) came to his house and asked him to open the door and that on opening the door he saw blood coming out of the head of Keshav (PW-2). In respect of seizure, this witness has however been declared hostile. Dr. G.L. Miri (PW-10) is the witness who medically examined Motichand (PW-1) and gave his report Ex. P-17 stating that he noticed lacerated wounds coupled with contusions on his head, in the periphery of eye, right elbow and temple. He also did the medical examination of injured Keshav (PW-2) and gave his report Ex. P-18 stating that he noticed number of lacerated wounds on his head and bruises on back. This witness also examined Phool Bai (PW-3) and Chandravati (PW-5) and gave reports Ex. P-20 and P-21 respectively stating that he noticed simple injuries on their hands. While responding to the query report vide Ex. P-22 in respect of injured Keshav (PW-2) he has stated that the excessive bleeding from the head injury could have resulted in his death. Mahesh Kumar Tiwari (PW-8) is the investigating officer who has also supported the case of the prosecution.

9. In view of the factual discussion made above in the light of the material available on record, it is apparent that in the wake of some old standing land dispute, accused/appellant Khokram abused PW-2 and assaulted with spear causing injuries on his head. Other accused/appellants also assaulted him with club. Apart from PW-2, the accused/appellants assaulted PW-1, PW-3, PW-4 and PW-5 also with club when they tried to save PW-2. Medical evidence also lends full support to the case of the prosecution describing the injuries as above on their person. Moreover, there are number of injured eyewitnesses to the incident who have fully supported the case of the prosecution narrating the manner in which the incident took place. Being so, there appears to be no illegality or infirmity in the conviction part of the judgment impugned, which is hereby maintained.

10. As regards sentence, keeping in mind the fact that the incident had taken place in the year 2001 and thereby about 17 years have gone by; that by now the accused/appellants must be in the middle of their life burdened with familial responsibilities, this Court is of the view that it would be in the interest of justice if the sentence imposed on them is reduced to rigorous imprisonment for six months from that of five years as imposed by the Court below. Order accordingly. Since the accused/appellants had been inside just for about one and a half month, let them be arrested and sent to jail for serving out the remaining part of the sentence imposed on them.

11. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge