

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 330 of 2009**

1. Sunil Singh @ Raju Singh S/o Shriniwas Singh, aged about 22 years, Occupation Agriculturist, R/o Badkagaon, at present village Kewra, Thana Pratappur, District Sarguja (CG)
2. Jiya Ulhaque, S/o Javed Ansari, aged about 21 years, Occupation Motor Cycle Machanic, R/o Shrigarh, Ambikapur, At Present Village Kewra, Thana Pratappur, Distt. Sarguja, C.G.
3. Pintu @ Parmeshwar S/o Jugal Keshari, Aged about 20 years, Occupation Business, R/o Village Kewra, Thana Pratappur, Distt. Sarguja, C.G.
4. Rahi Hassan S/o Mohd. Nazeer, aged about 20 years, Occupation Bussiness, watch Shop, R/o Bhesamunda Kewra, Thana Pratappur, Distt. Sarguja, C.G.
5. Sharif Khan, S/o Late Shri Salim Siddquie, Aged about 25 years, Occupation Student, R/o Village Kewra, Thana Pratappur, Distt. Sarguja, C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through The District Magistrate, Ambikapur, Distt. Sarguja, C.G.

---- Respondent

For Appellants : Smt. Indira Tripathi, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****24/10/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 06.4.2009,

passed by the Additional Sessions Judge (FTC), Pratappur, Sarguja (CG) in S.T.No. 366/2004, whereby the appellants have been convicted under Sections 341, 147, 148, 323/149, 325/149 and 427 of the IPC and sentenced to undergo fine of Rs.500/-; R.I. for 1 year; R.I. for 1 year; R.I. for 1 year; R.I. for 2 years and fine of Rs.1000/- and fine of Rs.1000/- respectively with default stipulations. The sentences were directed to run concurrently.

2. As per the report lodged by the complainant, Ajit Kumar Gupta on 5.6.2002 went to village Bhaisamunda for attending a dinner party at the house of one Raauf Khan and at that time, all the appellants made an unlawful assembly and assaulted Amit Kumar, Manoj Kumar, Shalik Gupta, Vinod Kumar and Ajit Kumar by deadly weapons like sword, Gandasa and iron rod. It is alleged that they also fired a pistol. The matter was reported and investigated and after completion of trial, the trial Court convicted and sentenced the appellants as above.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellants submits that the injuries caused on the body of the victims are simple in nature and the case of the prosecution is not established by independent witnesses, therefore, benefit of doubt be extended to the appellants. It is further argued that there are material contradictions and omissions in the

statements of the witnesses, therefore, finding of the trial Court is liable to be reversed.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with.

6. To substantiate the charge prosecution has examined as many as 21 witnesses.

7. Ajit Kumar Gupta (PW1), Salik Gupta (PW2), Amit Kumar Gupta (PW13) and Manoj Gupta (PW20) have deposed in one voice that all the appellants formed an unlawful assembly during incident with deadly weapons like sword, gandasa and iron rod and they assaulted Amit Kumar, Manoj Kumar, Shalik Gupta, Vinod Gupta and Ajit Kumar. Version of these witnesses is subjected to searching cross-examination but, nothing could be elicited in favour of the defence. Oral evidence is supported by the version of medical evidence of Dr. R.L. Thakur (PW21). As per version of this medical expert, he examined the following injured persons on 6.6.2002 at Community Health Centre, Sakti and noticed injuries:

(1) Amit Kumar :

(i) Contusion of 4 x 4 cm on right clavicle.

(2) Manoj Kumar :

- (i) Sharp cutting wound of 5 x 1 x 1 cm oblique on scalp of frontal head, blood was oozing and given 9 stitches;
- (ii) Sharp cutting wound of 5 x 1 x 1 cm oblique on scalp of occipital region; and
- (iii) Contusion of 10 x 2 cm behind left shoulder

(3) Vinod Gupta :

- (i) Contusion of 3 x 2 cm oblique on scalp;
- (ii) Contusion of 3 x 2 cm oblique on left side of chest wall

(4) Shalik Gupta:

- (i) Sharp cutting wound of 4 x ½ x ½ cm on right shoulder lateral aspect and one stitch was given;
- (ii) Abrasion of 3 x ½ cm on right upper eye-brow

(5) Ajit Kumar:

- (i) Lacerated wound of 2 x 1 cm oblique on left maxilla;
- (ii) Contusion of 2 x 1 oblique on left side of chest wall;
- (iii) Abrasion of 2 x 2 cm on left knee; &
- (iv) Swelling on fingers of both hands

8. From the evidence of Dr. M.K. Jain (PW9), it is established that Amit Kumar suffered fracture of right clavicle bone. Version of this witness is subjected to cross-examination but the same is unshaken and there is no expert opinion contrary to the opinion of this witness, therefore, it is established that Amit Kumar sustained grievous injury and Manoj Kumar, Shalik Gupta and Ajit Kumar suffered simple injuries in the incident. Case of the appellants does not fall in any of the exception mentioned in IPC and their act is

intentional or having knowledge to cause pain to the persons mentioned above.

9. Causing grievous injury is an offence under Section 325 IPC and causing voluntarily simply injury is an offence under Section 323 IPC. Wrongful restraint is an offence under Section 341 IPC and causing mischief to damage to one motorcycle as per evidence is an offence under Section 427 IPC. Again, forming unlawful assembly is an offence under Section 147 and 148 IPC for which, the trial Court has convicted and sentenced the appellants and this Court has no reason to record a contrary finding. Accordingly, conviction of the appellants under Sections 341, 147, 148, 323/149, 325/149 and 427 of the IPC is hereby affirmed.

10. Heard on the point of sentence:

Appellant No.1- Sunil Singh @ Raju Singh has suffered the jail term for about 9 months and 20 days; appellant No.2- Jiya Ulhaque has suffered the jail term for about 4 months and 3 days; appellants No.3- Pintu @ Parmeshwar and No.4- Rahi Hassan have suffered the jail term for about 3 months and 24 days; and appellant No.5- Sharif Khan has suffered the jail term for about 20 days. Looking to the fact that the incident had taken place in the year 2002, i.e. 16 years back, I am of the opinion that the jail sentence suffered by appellants would meet the ends of justice. Accordingly, the jail sentence awarded to all the appellants is reduced to the period already undergone by them. The fine amount

shall remain intact. The appellants are reported to be on bail. Their bail bonds shall continue for a period of six months in view of Section 437-A Cr.P.C.

11. With these modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)

JUDGE