

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.66 of 2010**

1. Ram Prasad, Age 35 years, S/o Shri Radheyshyam Patel,
2. Radheyshyam, Age 57 years, S/o Shri Biharilal Patel,
Both are by Caste Agharia, R/o Village Kesharipur, P.S. Basna, District Mahasamund (CG)

---- Appellants**Versus**

State Of Chhattisgarh Through the Police Station Basna,
District Mahasamund (CG)

---- Respondent

For Appellant : Shri J.A.Lohani, Advocate

For State/ Respondent : Shri Ramakant Pandey, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****20/08/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 6.1.2010, passed by the Sessions Judge, Mahasamund (CG) in Sessions Trial No. 36/2009, whereby the appellants have been convicted under Section 452 and 324 r/w Section 34 of the Indian Penal Code, 1860 (for short the I.P.C.) and sentenced to undergo R.I. for 4 years and fine of Rs.2000/- and R.I. for 2 years and fine of Rs.1000/- with default stipulations.

2. As per the case of prosecution, both the appellants having club and axe and after preparation for causing hurt to one Parmanand Nayak entered into his house on 12.3.2009 at about 15.00 pm and assaulted him on account of some money dispute. The matter was investigated and the appellants were charge-sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellants as aforementioned.

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

4. Learned counsel for the appellants submits as under :

(i) From the evidence adduced by the prosecution, house trespass is not proved and the offence is committed outside the house, therefore, offence under Section 452 I.P.C. is not made out.

(ii) For commission of offence under Section 324 I.P.C. there is contradiction in statements of material witnesses and offence of voluntarily causing simple hurt by sharp edged weapon is not established.

5. On the other hand, learned counsel for the State supporting the judgment submits that the Court below has rightly convicted and sentenced the accused/appellants and the conviction is not liable to be interfered with.

6. To substantiate the charge prosecution has examined as many as 12 witnesses.

7. Parmanand Nayak (PW1) is the victim. As per version of this witness, offence is committed outside of the house when he was sitting there. Version of this witness is supported by the version of Smt. Anita Nayak (PW3) who has also deposed that the offence was committed outside of the house. Though Smt. Ramkunwar (PW4) deposed that the assault was made in the house, but in cross-examination (para 5) she deposed that she has seen only one incident of assault. Hemkumari (PW2) deposed (para 5) that Parmanand Nayak was sitting outside the house when he has been assaulted. From the statement of the complainant and other witnesses it is not proved that any of the appellant entered into the house of the complainant with preparation to assault him. For commission of offence under Section 452 I.P.C. house trespass is condition precedent. But, in the present case house trespass is not established, therefore, offence under Section 452 I.P.C. is not established.

8. From the statement of Parmanand Nayak (PW1), Hemkumari (PW2), Smt. Anita Nayak (PW3) and Smt. Ramkunwar (PW4), it is established that both the appellants have assaulted the victim by club and axe.

9. Dr. J.P. Pradhan (PW7) who conducted examination of the complainant, found cut injuries on the body of the victim. Dr. Rohit Dubey(PW12) also found incised wounds on the body of the complainant.

10. From the statement of expert, it is found that the injuries were simple and there is no other expert opinion that the injuries were grievous in nature. Looking to the incised wound, it is clear that the victim was inflicted by some cutting object. It is not the case that the appellants were acting in self defence or in defence of property. Further, their case does not fall in any of the exception mentioned between Section 76 to 106 of the I.P.C. The appellants were having knowledge that their assault will cause pain to the victim, therefore, their act is voluntary in nature and voluntarily causing hurt by sharp edged weapon is an offence under Section 324 I.P.C. for which, the trial Court has convicted them. The conviction of the appellants is based on clinching and legally admissible evidence which is not liable to be interfered with invoking jurisdiction of appeal.

11. On overall assessment of the evidence conviction of the appellants under Sections 452 I.P.C. is set aside. They are acquitted of the said charge and conviction of the appellants under Section 324 r/w Section 34 I.P.C. is affirmed.

12. Heard on the point of sentence:

13. Appellant No.1– Ram Prasad has suffered jail sentence from 13.3.2009 to 26.2.2010 which comes out to more than 11 months and appellant No.2- Radheyshayam has suffered jail sentence between 29.4.2009 to 4.7.2009, 4.12.2009 to 5.12.2009 and 6.1.2010 to 26.2.2010 which comes out to nearly 4 months.

Maximum sentence that can be awarded for commission of offence under Section 324 I.P.C. is for 3 years.

14. Considering the facts and circumstances of the case and looking to the detention period of the appellant, I am of the view that no useful purpose would be served in sending the appellants behind the bars again, therefore, their corporeal sentence is reduced to the period already undergone by them. The fine amount imposed by the trial Court 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.

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

Sd/

(Ram Prasanna Sharma)

JUDGE