

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 839 of 1998

- The State Of M.P. (Now Chhattisgarh) through the District Magistrate, Raipur.

---- Appellant

Versus

1. Sadharam S/o Shri Nandu Sahu, aged about 50 years,
2. Shambhooram S/o Nandu Sahu, aged about 53 years,
3. Bharat S/o Shri Amru Sahu, aged about 28 years,
4. Kedarnath S/o Amru Sahu, aged about 21 years,

All are resident of Village Bhersar, Police Station Kurud, Distt. Raipur (M.P.)

---- Respondents

For Appellant	:	Shri Santosh Bharat, Dy.GA.
For Respondents	:	Shri S.P. Sahu, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/07/2019

This appeal has been filed by the State against the judgment dated 4th August, 1997 passed by Judicial Magistrate First Class, Dhamtari in Criminal Case No.684/89 whereby the respondents/accused have been acquitted of the charge under Section 325/34 of IPC.

02. Allegation against the respondents/accused is that on 9th October, 1989 at around 9-10 pm when complainant Daulal was watering his field, he was informed by one Kailash that accused Sadharam damaged the bund of the field, on which Daulal reached the spot where he was assaulted by the accused persons with club.

Complainant sustained injuries in his back and other parts of the body. The complainant was got medically examined vide Ex.P/1. On his report offence was registered against the accused persons under Section 325/34 of IPC. After completion of investigation charge sheet was filed against the accused under Section 325/34 of IPC.

03. During trial, charge under Section 325/34 of IPC was framed against all the accused, who denied the charge and pleaded innocence. In support of its case the prosecution examined 11 witnesses. Statements of the accused persons were recorded under Section 313 of CrPC in which they denied the incriminating circumstances appearing against them in the prosecution case and pleaded innocence. However, no witness was examined by them in defence.

04. It is worthwhile to mention here that a counter case was also registered against the complainant herein namely Dauram and Lakhanlal, Kailash & Goverdhan on the complaint of Sadharam (accused herein) as Criminal Case No.812/90 for the offence punishable under Sections 294 & 323 of IPC and tried by the same Court i.e. Judicial Magistrate First Class, Dhamtari. However, vide judgment dated 4th August, 1997, the trial Court also acquitted all of them of the said charges.

Aggrieved by the said judgment of acquittal, Sadharam preferred an appeal i.e. CrA No.1582/98, which was dismissed vide order dated 15.4.2019 as having been abated on account of death of appellant Sadharam on 31.8.2010.

05. Learned counsel for the appellant/State submits that the trial Court has wrongly acquitted the respondents/accused by not properly appreciating the oral and documentary evidence adduced by the prosecution. The injuries suffered by the complainant Daulal has been duly proved as per Ex.P/1 & P/6 and the evidence of Dr.V.S. Pandey (PW-6).

06. Learned counsel for the respondents/accused opposing the contention of the appellant's counsel submits that as per statement in

para-1 of complainant Daulal (PW-1) he sustained injury in his hand due to assault made by Sadharam and Shambhooram. However, both these accused have died and therefore, the instant appeal has already been abated in respect of these accused persons vide order dated 15.4.2019 of this Court. He submits that so far as other accused namely Bharat and Kedarnath are concerned, there is no cogent and clinching evidence adduced by the prosecution to show as to which of the accused persons caused which injury and on which part of the complainant. Hence the trial Court acquitted the accused persons by giving them benefit of doubt. The findings so recorded by the trial Court are based on proper appreciation of the evidence on record, which need no interference by this Court.

07. Heard learned counsel for the parties and perused the material available on record.

08. From the record, it is seen that only one grievous injury was caused in the hand of the complainant as per Ex.P/6 (x-ray report) and the said injury is said to have been caused by accused Sadharam and Shambhooram. However, it is not disputed by the parties that these accused persons have already died and the appeal against them has been dismissed as having been abated. It is also not in dispute that arising out of the same incident, a counter case was also registered against the complainant party herein at the instance of accused Sadharam for the offence under Sections 294 & 323 of IPC which was tried by the same Court i.e. Judicial Magistrate First Class, Dhamtari and vide judgment dated 4th August, 1997, the trial Court also acquitted all of them of the said charges. Against the said judgment of acquittal, Sadharam preferred an appeal i.e. CrA No.1582/98, which was dismissed as having been abated on account of death of appellant Sadharam on 31.8.2010. PW-1 Daulal states in para-5 of his evidence that Shambhoo assaulted on his left wrist, Sadhooram assaulted on his back, Bharat and Kedar assaulted on his head with club. He admits that the said fact is not mentioned in the FIR lodged by him.

09. The trial Court considering the facts and circumstances of the case giving rise to the incident, the manner in which the incident

occurred, the fact that there is no evidence to ascertain as to which of the accused caused which injury by which weapon to the complainant, there was free fight between the parties, keeping in view the decision of the Hon'ble Supreme Court in ***Balkar Singh Vs. State, AIR 1994 SC 1133***, recorded a finding that the prosecution has failed to prove its case against the accused beyond all reasonable doubt and therefore, acquitted them of the charge under Section 325/34 of IPC.

10. This Court finds no illegality in the judgment impugned acquitting the respondents/accused particularly when there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, in the present case, the prosecution has utterly failed in proving its case beyond reasonable doubt and therefore, the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

11. Resultantly, the appeal preferred by the State being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

(Gautam Chourdiya)

Judge