

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 770 of 2002

1. Duryodhan Shrivasa, s/o Baijnath Shrivasa, aged about 37 years, occupation – saloon shop.
 2. Ram Ratan Shrivasa, s/o Baijnath Shrivasa, aged about 42 years, occupation – saloon shop.
- Both residents of village Mohalla Jhilmila, PS & Tehsil-Saraypali, Distt. Mahasamund.

---- Appellants

Versus

- State Of C.G. Through PS Saraypali, Distt. Dhamtari.

---- Respondent

For Appellants	:	Shri Manoj Paranjpe, Advocate.
For Respondent/State	:	Shri Pawan Kesharwani, P.L.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

14/11/2019

01. This appeal arises out of the judgment of conviction and order of sentence dated 16.7.2002 passed by the First Additional Sessions Judge, Mahasamund in S.T.No.168/2001 convicting each of the accused/appellants under Sections 323/34 & 324/34 of IPC and sentencing them to undergo RI for one year, pay a fine of Rs.1000/- with default stipulation and RI for two years respectively.

02. Case of the prosecution, in brief, is that house of the accused/appellants is situated at Ward No.8 of Saraipali and adjacent to their house is the vacant government plot which was being demanded by Dharamvir Sharma-father of complainants Sanjay Kumar & Rajendra Kumar, from the government but was not allotted to him and the said piece of land was being claimed by the accused persons. On the date of incident i.e. 9.2.2001 at around 4.30 pm when

complainants Sanjay Kumar and Rajendra Kumar reached the said plot, they found the accused persons constructing a wall thereon in order to take possession of the land. On being objected to the same by the complainants, the accused persons with common intention beat them. It is alleged that accused/appellant Duryodhan assaulted both the complainants with spade and accused/appellant Ram Ratan assaulted them with club. Soon after the incident FIR (Ex.P/1) was lodged by complainant Sanjay Kumar.

03. Complainant Sanjay Sharma was medically examined by PW-10 Dr. NL Sahu vide Ex.P/14 on 9.2.2001. The doctor noticed lacerated wound over occipital region of size about 2 x 0.5 x 0.5 cm, contusion over temporal region of size about 4 x 3 cm; contusion on left side of forehead of size about 5 x 4 cm; abrasion on frontal region of head of size about 1.5 x 0.5 cm; abrasion on right shoulder back side of size about 2 x 1.5 cm; bruise marks of about 6 x 2.5 cm on right shoulder front side. The injuries were opined to have been caused by hard and blunt object and the patient was referred to Medical College Hospital Raipur for x-ray of skull. As per x-ray report (Ex.P/14A), no fracture in the skull was found.

On the same day, complainant Rajendra Sharma was also medically examined by the said doctor vide MLC of Ex.P/15 wherein the doctor noticed incised wound of size about 4 x 0.25 x 0.25 cm on left parietal region, lacerated wound of size about 3.5 x 0.5 x 0.25 cm on frontal region of head; contusion of size about 2 x 2.5 cm on left forearm at mid part. According to the doctor the first injury was caused by sharp and hard object whereas the second and third injuries were

caused by hard and blunt object. Rajendra Kumar was also referred to Medical College Hospital Raipur for x-ray of his skull. However, as per x-ray report (Ex.P/15A) no fracture was found in the skull.

04. During investigation one full shirt of Sanjay Kumar having blood stains was seized vide Ex.P/2. One club was seized from accused Ramratan vide Ex.P/4. From accused Duryodhan one spade having blood stains was seized vide Ex.P/5. From Dharamvir one T-shirt worn by Rajendra Kumar at the time of incident having blood stains was seized vide Ex.P/8. Spot map Ex.P/6 was prepared by the Patwari. Statements of the witnesses were recorded. The seized articles were sent for chemical examination to FSL from where report Ex.P/19 was received according to which blood was found on Articles A, D, E & F i.e. bloodstained soil seized from spot, spade seized from accused Duryodhan; full shirt seized from complainant Sanjay Sharma and T-shirt of Rajendra Sharma.

05. After completion of usual investigation, charge sheet was filed against the accused persons under Sections 147 & 307 of IPC. The trial Court framed charges under Sections 148, 323/149, 307/149 of IPC against the accused persons who abjured their guilt and prayed for trial.

06. So as to hold the accused persons guilty, the prosecution examined as many as 11 witnesses. Statements of the accused 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.

07. The trial Court considering the submission of the respective parties and the overall material available on record by the impugned judgment while acquitting other accused persons of all the charges, convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

08. Learned counsel for the appellants submits that he is not pressing this appeal on merits and would confine his arguments only to the sentence part. He submits that in this case a counter report was also lodged by the accused party against the complainants and after trial they were convicted under Sections 323/34 of IPC on three counts by the trial Court which was affirmed in appeal by this Court vide judgment dated 20.6.2014. Therefore, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 18 years ago, the age of the appellants at the relevant time; the fact that they have no criminal antecedents, the appellants may be granted the benefit of Probation of Offenders Act or their sentence may be reduced to the period already undergone by them.

09. On the other hand, learned State counsel supporting the impugned judgment submits that conviction of the appellants is strictly in accordance with law and the punishment imposed upon them is proportionate to the act committed by them. As such, there is no justification in reducing the same.

10. Heard counsel for the respective parties and perused the material on record.

11. It is a settled legal position that mere acceptance or admission of guilt should not be a ground for reduction of sentence. The Courts are not expected to accept the concession given by the counsel in a routine manner. It is the duty of the Court to see that the cause of justice is subserved with serenity in accordance with the established principles of law. In the matter of Jeetu @ Jitendera and others Vs. State of CG, (2013) 11 SCC 489, while dealing with the aforesaid point, the Supreme Court held thus:

When a convicted person prefers an appeal, he has the legitimate expectation to be dealt with by the courts in accordance with law. That apart, he has intrinsic faith in the criminal justice dispensation system and it is the sacred duty of the adjudicatory system to remain alive to the said faith. He has embedded trust in his counsel that he shall put forth his case to the best of his ability assailing the conviction and to do full justice to the case. That apart, a counsel is expected to assist the courts in reaching a correct conclusion. Therefore, it is the obligation of the court to decide the appeal on merits and not accept the concession and proceed to deal with the sentence, for the said mode and method defeats the fundamental purpose of the justice delivery system. Where the High Courts, after recording the non-challenge to the conviction, have proceeded to dwell upon the proportionality of the quantum of sentence, the same being impermissible in law should not be taken resort to. It should be borne in mind that a convict who has been imposed substantive sentence is deprived of his liberty, the stem of life that should not ordinarily be stenosed, and hence, it is the duty of the Court to see that the cause of justice is subserved with serenity in accordance with the established principles of law."

12. Keeping in view the aforesaid principles of law, despite there being non-challenge to the conviction of the appellants on behalf of

their counsel, this Court proceeds to examine the legality of the conviction imposed on the appellants on the basis of evidence available on record.

13. PW-1 Sanjay Sharma and PW-8 Rajendra Sharma both have stated that when they reached the place of incident upon being informed by one person that the accused persons are trying to take over possession of the land in question by constructing a wall, accused Duryodhan assaulted them by spade whereas Ram Ratan assaulted with club and another accused was exhorting Duryodhan and Ram Ratan to kill them. According to these witnesses they sustained multiple injuries in the said incident. PW-1 Sanjay Sharma immediately after the incident lodged FIR (Ex.P/1) which has been duly proved by him. There is no contradiction or omission in the statements of these witnesses and the contents of the FIR.

14. PW-2 Guro, labour, has stated that he was called by accused Duryodhan, on which he along with Holiram went to the house of Duryodhan and they were doing construction work in his courtyard since 8 am till 12 noon and thereafter went away for having lunch. However, thereafter while they were doing construction work, at around 3.30 pm Sanjay Sharma and Rajendra Sharma reached there on motorcycle and that Kale (Rajendra Sharma) slapped him (PW-2) and thereafter also beat Duryodhan. After this incident, he along with other labours stopped construction work. He states that he does not know as to who beat Sanjay and Kale. He states that the police did not seize anything in his presence from the spot or from the house of Duryodhan. Hence this witness was declared hostile.

15. PW-4 RK Awade, Patwari, prepared the spot map Ex.P/6 and proved the same. He states that near the place of incident there is an open government plot and the disputed land is not in the name of Rajendra Sharma and Sanjay Sharma and that adjacent to the said land is vacant plot of Duryodhan.

16. The evidence of the injured witnesses (PW-2 & PW-8) finds due support from their MLCs of Ex.P/14 & P/15 which have been duly proved by PW-10 Dr. NL Sahu. According to the said medical reports, the injured witnesses suffered corresponding injuries on their person as mentioned in the preceding paragraphs.

17. True it is that a counter report was also lodged against the complainant party herein by the accused persons, on which they were tried and convicted under Section 323/34 of IPC on three counts and appeal preferred against the same was allowed in part by co-ordinate Bench of this Court vide judgment dated 20.6.2014 by maintaining their conviction while setting aside the jail sentence and keeping the fine sentence intact. However, neither the FIR nor the charge sheet or any medical document or any other relevant document of the counter case was produced before the trial Court during trial. Being so, the appellants cannot draw any benefit of counter case lodged against the complainant party.

18. Thus, considering the overall facts and circumstances of the case giving rise to the incident, the consistent evidence of injured witnesses PW-2 Sanjay Kumar and PW-8 Rajendra Kumar which finds due corroboration from the promptly lodged FIR (Ex.P/1) by PW-2 as well as their medical reports (Ex.P/14 & P/15) which have been duly

proved by the treating doctor PW-10 Dr. NL Sahu, this Court finds no illegality or infirmity in the findings of guilt recorded by the trial Court convicting them under Sections 323/34 & 324/34 of IPC. Being so, the conviction of the appellants by the trial Court is hereby affirmed.

19. As regards the sentence, in the totality of facts and circumstances of the case, the nature of dispute between the parties giving rise to the incident, the admitted fact that there was counter report lodged against the complainant party at the instance of the accused persons which resulted into their conviction; the fact that the incident occurred around 18 years back; the age of the appellants at the time of incident and at present; they have no criminal antecedents and are on bail since 2002, this Court is of the opinion that no useful purpose would be served in sending them back to jail at this stage and the ends of justice would be served if they are sentenced to the period already undergone by them which comes to around 37 days while keeping the fine amount as awarded by the trial Court with default stipulation intact.

20. In the result, the appeal is allowed in part. While maintaining conviction of the appellants under Sections 323/34 & 324/34 of IPC, their sentence is reduced to the period already undergone by them. However, the fine amount imposed upon the appellants by the trial Court with the default stipulation is kept intact. They are reported to be on bail, therefore, their bail bonds shall remain in operation for a period of six months from today in view of provisions of Section 437A of CrPC.

Sd/

(Gautam Chourdiya)
Judge