

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 76 of 2000**

1. Jaslal Son of Badhuwa, aged about 32 years, Occupation Cultivator, resident of Jainagar, P.S. Jainagar, District- Sarguja (M.P.).
2. Dharmdeo Son of Govind, aged about 35 years, Occupation Cultivator, resident of Devmudh P.S. Lakhanpur, District- Sarguja (M.P.). (appeal is abated vide order dated 22.10.2018)
3. Devsay, Son of Ramdeo, aged about 30 years, Occupation Cultivator, resident of Losga, P.S. Lakhanpur, District- Sarguja Present R/o Jodhpur, P.S. Lakhanpur, District- Sarguja M.P.

----Appellants**Versus**

- The State of Madhya Pradesh, Through Police Station Lakhanpur, District- Sarguja (M.P.) (now in Chhattisgarh).

---- Respondent

For Appellants : Smt. Meena Shastri, Advocate.
 For Respondent/State : Ms. Madhunisha Singh, P.L.

Hon'ble Shri Justice Gautam Chourdiya, J.
Judgment on Board

01/08/2019

1. This appeal is directed against the judgment of conviction and order of sentence dated 30th December, 1999 passed by First Additional Sessions Judge, Ambikapur, District Sarguja in Sessions Trial No. 133/91, convicting the accused/appellants for the offence punishable under Section 333 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for four years and to pay fine of Rs.2,000/- each, in default of payment of fine, to further undergo rigorous imprisonment for one year.

2. Appeal is abated in respect of appellant No. 2-Dharmdeo as per order dated 22.10.2018 passed by this Court.

3. Briefly stated facts of the case are that on the basis of Written complaint dated 27.11.1990 (Ex. P/14) submitted by Raghunath Prasad Soni, Beat Guard, at Police Station Lakhanpur, FIR (Ex. P/13) was lodged under the crime No. 173/1990 alleging that on the date of incident i.e. 27.11.1990 at around 11.00 am when Raghunath Prasad Soni, Beat Guard (PW-3), who was working in forest Jhilmili alongwith Sukhram another person, has seen that appellants were cutting tree in forest and when Raghunath Prasad Soni tried to stop them, they assaulted complainant Raghunath Prasad Soni, as a result of which complainant sustained multiple injuries on his body including fracture and as per X-ray report (Ex.P-6), he suffered fracture of Metacarpal bone. As per MLC report Ex. P/4, one incised wound and lacerated wound and contusion were found on the body of the complainant. On the same day, vide Exs. P/1 & P/2, two axes were seized from the accused persons namely Dharmdev, Mangru. Another accused persons namely Jasral & Devsay were arrested on the same day i.e. 18.02.1990.

4. After usual investigation, charge-sheet was filed against all four accused persons whose name were mentioned in the FIR under Sections 307, 353, 332 333 and 34 of the Indian Penal Code.

5. Learned Trial Court framed charge against the accused persons under Section 333 of IPC. After framing of charges, under Section 333 of IPC, the prosecution examined as many as 7 witnesses namely Dinesh Lal Shrivastava (PW-1), Dr. I. D. Bhatnagar (PW-2), S. K. Tiwari (PW-3), Vishnu Malik (PW-4), Raghunath Prasad Soni (PW-5), Suryadev Singh (PW-6) and Shri

Ramcharan Verma (PW-7) in support of its case statements of the accused are also recorded under Section 313 of Cr.P.C in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implications. In support of their case they examined two defence witnesses namely- Phulsai & Deriha Das.

6. Learned trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment convicting and sentenced the appellants as mentioned in para one of this judgment.

7. Learned Counsel appearing for the appellants submits that in the instant case, accused persons were not identified by the eyewitness and complainant to the incident, as long gap occurred between the incident and examination of complainant Raghunath Prasad Soni (PW-5), and no test identification parade was conducted by investigating Officer nor any particulars regarding the accused persons given in the FIR. He submits that from accused Jashlal, no articles were seized and no other prosecution witness supported the case of the prosecution. In written complaint, no particulars given regarding assault made by the appellants to the complainant, therefore, all the appellants were wrongly convicted and sentenced by the learned Trial Court looking to the fact that complainant was working as a forest guard at the time of incident is not proved by the prosecution by adducing appropriate evidence, in these circumstances, the learned trial Court has wrongly convicted and sentenced the accused/appellants for the aforesaid offence. Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellants are guilty of the offence under Section 333 of Cr.P.C. considering the fact that the incident occurred on 27.11.1990 i.e. 29 years ago, the appellants are tribal

people, no criminal antecedent of the appellants was reported during this period and their age they may be sentenced to the period already undergone by them.

8. Learned counsel for the State opposed the contention made by the appellant's counsel and submits that in this case there is no any enmity between the complainant and the accused persons. The complainant was not known to the accused persons before the incident but on the same day the appellants were caught when they were cutting the trees. This fact is duly proved by the statement of the Raghunath Prasad Soni (PW-5) and his statement is supported by another witness Shri S. K. Tiwari, (PW-3) who also stated in para 1 of his statement that Raghunath Prasad Soni (complainant) is a Government Servant and proved the certificates which were seized as per seizure memo Ex. (P/9) and Ex. (P/10). Therefore, there is no substance in the argument of appellant's counsel that Raghunath Prasad Soni was not working as a forest guard at the time of accident. Learned counsel for the State also argued that regarding dock identification is not challenged during trial and named FIR lodged and on the same day another accused-Dharmalal Jaiswal was arrested and the article Axe seized from the accused as per Ex. P/1 and P/2. Looking to the named FIR against the accused persons, it being a day light incident and complainant-Raghunath Prasad sustained severe blow on various parts of the body, complicity of the appellants in the crime in question stands prove beyond all reasonable doubt and as such the trial Court committed illegality and convicting them by the impugned judgment.

9. Heard learned counsel for the parties and perused the material available on records.

10. As per Ex. P/10 this fact is proved that on the date of incident

i.e. 27.11.1990, Raghunath Prasad Soni was performing his official duty in Forest circle- Lakhanpur at Chando as a Forest-guard. The aforesaid document is seized by the police and the aforesaid fact is proved by the statement of Shri S.K. Tiwari (PW-3).

11. Now the only issue which is to be considered is the identification of the accused/appellants, the complainant- Raghunath Prasad Soni (PW-5) was examined before the Court on 13.11.1997 and he categorically stated in paragraph 2 of his statement that after hearing the sound of cutting of tree he went towards the spot and found the accused/appellants are carrying axe in their hands and on being objected, they assaulted him. The Accused/appellants also threatened him not to lodge any report against them. He admits that he did not know the accused/appellants prior to the incident and saw them for the first time at the time of occurrence. In the FIR lodged by Raghunath Prasad Soni (PW-5) he specifically stated that he could identify the assailant on seeing them. In the Court he has duly identified the accused persons as assailant and nothing could be elicited from him by the defence in the Court examination which could make his evidence doubtful regarding identification of the accused/appellants.

12. As per Ex. P/4 MLC report and Ex.P/6 X-ray report by Dr. I. D. Bhatnagar (PW-2), he opined that complainant sustained multiple injuries. He also proved that the injuries suffered by the complainant having caused by sharp edged weapon which has been duly proved by Dr. I. D. Bhatnagar (PW-2).

13. Thus, considering the unrebutted evidence of Raghunath Prasad Soni (PW-5), complicity of the accused/appellants in the crime in question prove beyond all reasonable doubt. Pursuant to memorandum statements of accused namely- Jaslal & Devsay two

axes were seized vide Ex. P/1 & P/2 and considering the MLC report, this Court is of the opinion that the trial Court was absolutely justified in convicting the appellants under Section 333 of IPC.

14. So far as sentence is concerned, considering the fact that the incident occurred way back in the year 1999, the appellants are facing trial since 1991, the age of the appellants at the relevant time and the fact that Devsay has already remained jail for a period of 1 year five months & Jasral has remained jail for a period of above three years and at present they are on bail, this Court is of the opinion that the ends of justice would be served if they are sentenced to the period already undergone by them.

15. Resultantly, the appeal is allowed in part. While maintaining conviction of the appellants under Section 333 of IPC they are sentenced to the period already undergone by them. The appellants are reported to be on bail, therefore, their bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C..

Sd/-

(Gautam Chourdiya)
Judge