

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2014 of 1999**1. Lendas S/o Chhabil Das, aged 26 years, (**dead**)

2. Chhabil Das s/o Manbodhi Das, aged 60 years,

Both resident of Village Ameri, PS Chakkarbhata, Bilaspur, MP
(Now CG) **-- Appellant/s****Versus**

State Of M.P (Now CG)

--- Respondent-----
For Appellant/s : Ms. Savita Tiwari, AdvocateFor Respondent : Mr. Ishan Verma, PL
-----**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board****04.07.2019**

Facts put-forth by the prosecution in brief are that on 26.11.1998 at about 9:30 PM when Bhim Yadav (PW-1) was cooking food, accused/appellant Lendas came there in a drunken condition with club and asked PW-1 to go with him to the Sarpanch, on this PW-1 refused to go with him. After hearing the noise of the complainant and accused, Kartikram (PW-2) came out and asked the accused Lendas as to why he is shouting, on which accused Lendas assaulted the Kartikram (PW-2) with club as a result of which he sustained injuries on his head and hand. Thereafter, when his younger brother Netram (PW-3) and Rajimbai (PW-7) came to the rescue of PW-2, they too got assaulted by accused/appellant Lendas. At the same time accused Chhabildas – father of Lendas came to the spot and assaulted Netram and Rajimbai and thereafter both the accused/appellants sets fire the room of Nankuram – the father of the complainant (PW-10). Thereafter, the incident reported by Bhimiyadav (PW-1) to the Police Station Chakkarbhata Bilaspur and on the next day, FIR (Ex.P-1) was lodged against the accused/appellants for the offences under Sections 436, 323 and 325 IPC. After completion of investigation and other procedural formalities charge-sheet was filed against the

accused/appellants under the same sections followed by framing of charge accordingly.

2. On the basis of material available on record learned Court below has convicted the accused/appellant Lendas under Sections 436, 325 and 323 (twice) IPC and sentenced him to undergo RI for 5 years; 2 years; and 6 months (twice), respectively. However, learned Court below convicted the accused/appellant Chhabil Das under Sections 436 and 323 (twice) IPC and sentenced him to undergo RI for 5 years; and 6 months (twice), respectively but acquitted him of the charge under Section 325 IPC.

3. Counsel for the accused/appellants submits that judgment under challenged in this appeal is not based on due appreciation of the evidence of the witnesses. She submits that learned Court below has fallen in grave error in convicting and sentencing the accused/ appellants and being so, they are entitled for acquittal. State counsel however supports the judgment impugned.

4. It is pertinent to mention here that during the pendency of appeal accused/appellant Lendas reported to be died on 12.01.2007, therefore, this appeal is abated against him.

5. Having heard counsel for the parties and perused the material available on record including the evidence PW-1 who lodged the FIR (Ex.P-1) has stated in his evidence that on the date of evidence accused/appellant Lendas has assaulted his brother Kartikram (PW-2) on his head with Lathi as result of which he fell down on the ground. Kartikram (PW-2) in his evidence stated that Chhabilal and Lendas assaulted him with the club and also sets fire in his house. From the evidence of Rajimbai (PW-7) it is clear that the appellant Lendas came there in a drunken condition and assaulted PW-2 with club and when she tried to rescue the PW-2, Lendas also assaulted her with club as a result of which, she received injuries on her body. Furthermore, the evidence of

Nankuram (PW-10) it is clear that accused Lendas assaulted him with club and sets fire his room. Dr. S.S. Dubey (PW-12) who examined the complainant Netram under Ex.P-15 had noticed contusion 3x2x2 cm on the left hand and contusion in the size of 2x2x1 on the right hand. PW-12 also examined Kartikram under Ex.P-16 and noticed lacerated wound in the size of 2x1x1 on the left side of his head and laceration in the size of 1x1x1 on fingers of his right hand. Dr. Smt. S Jitpure (PW-7) examined the Rajimbai (PW-7) has noticed abrasions and swelling on right hand. Even the seizure of club under Ex.P-10 from accused Lendas and broken piece of club seized under Ex.P-12 from accused Chhabilal supports the case of the prosecution.

6. The defence has not brought on record to rebut the evidence collected by the prosecution, thus, this Court has no hesitation to affirm the view taken by the Court below in convicting the accused/appellants as described above with the evidence adduced by the prosecution. No illegality or infirmity is noticeable in conviction part of the judgment impugned and it is accordingly maintained.

7. As regards sentence, keeping in mind the incident being quite old and that the accused/appellant No.2 has already faced a lot by facing long drawn prosecution since 1998 and also not being forgetful of the fact that he has already remain behind the bars for about 9 months, this Court thinks it proper and in the interest of justice to reduce the sentence to the period already undergone. Order accordingly.

8. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge