

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 59 of 2008**

1. Mana Ram, S/o Boond Ram aged about 42 years, Caste – Marrar,
2. Hemlal, S/o Mani Ram, aged about 25 years, Caste – Marrar,
3. Motilal S/o Likh Nath, Aged about 40 years, Caste Marrar,

All are R/o Tendumudi, Thana – Bilaigarh, District Raipur, CG.

---- Applicants

Versus

State of Chhattisgarh through Police Station Bilaigarh, District Raipur, CG

--- Respondent

For Applicants : Shri Deepak Jain, Advocate

For State/Respondent : Smt. M. Aasha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor**Order On Board****08/01/2019**

This revision assails the judgment dated 18.01.2008 passed by Additional Sessions Judge, Baloda Bazar in Criminal Appeal No. 216/2004 affirming the judgment dated 18.08.2004 passed by JMFC Baloda Bazar in Criminal Case No. 572/2002 convicting the accused/applicants under Section 323/34 IPC and sentencing each of them to undergo RI for one year with fine of Rs. 200/-.

2. On the report Ex. P-1 lodged by complainant Kartik (PW-2) offence under Section 324/34 IPC was registered against the four accused persons including the applicants herein. It is stated in the report that on 15.05.1995 on account of the complaint being made to the *Patwari* by Ganga Ram (PW-8) regarding cutting of trees in an illegal manner, accused Mana Ram assaulted him with axe on his head on account of which he fell down. Accused Mani Ram (since deceased), Mana Ram and Hemlal are said to have assaulted Radheshyam (not examined) also with *lathi*. Accused Motiram is said to have assaulted Bodhan with *lathi*. Punaibai (PW-7) was assaulted by deceased accused Maniram with axe and Manaram with *lathi*.

3. On considering the material on record trial Court did not find the charge under Sections 325 and 326 proved against the accused/applicants and therefore, convicted them only under section 323 IPC. Lower appellate Court also confirmed the order passed by learned Magistrate. Hence this revision.

4. Counsel for the applicants does not want to press this revision as regards conviction of the accused/applicants. His only prayer is to the sentence being reduced to the period already undergone considering the fact that the incident is of 1995 and the applicants have already remained in jail for 178 days, 122 days and 122 days respectively. State counsel however, supports the judgment impugned.

5. The main accused Maniram died during the pendency of appeal before the lower appellate Court itself. Most of the allegations were against him only. Though the doctor has opined to have noticed certain injuries caused to some of the victims yet he could not prove the same in the Court as he died before being examined. Even otherwise, to convict an accused under Section 323, the medical evidence does not play very crucial role. Looking to the overall evidence on record, the conviction of the accused/applicants under Section 323/34 does not appear to suffer from any illegality. It is hereby maintained.

6. As regard sentence, considering the detention period of the accused/applicants (178 days, 122 and 122 days respectively), and that the incident is of more than 24 years old, at this stage it would not be proper to again send them to jail, and therefore it is hereby reduced to the period already undergone.

7. Revision allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge