

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 296 of 2008

1. Sukhal Sai S/o. Dashrath, Aged about 60 years,
2. Manohar, S/o. Khem Sai, Aged about 27 years,
3. Khemsai S/o. Dashrath Gond, Aged about 55 years,

All above occupation Agriculture, R/o. Gram Pumpapur, P.S. and
Tahsil District Surguja (C.G.)

---- Applicants

Versus

State of Chhattisgarh Through Station House Officer, Surajpur,
District Surguja (C.G.)

---- Respondent

For Applicants : Mr. Aman Kesharwani, Advocate.
For Respondent No.1 : Mr. Raghvendra Verma, P L

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 26.06.2019

On 17.09.2004 FIR (Ex.P-3) lodged by Kusumbai- wife of the complainant wherein it is alleged that after answering the call of nature, his husband Khelsai was returning to his house then the applicants stopped him on the way, abused in the name of his mother and assaulted him with *lathi*, *danda* and axe. As a result of assault the complainant fell down on the ground. The incident was seen by Dhirendra Sahu and Pratap Sahu and seeing the witnesses approaching him the applicants fled. After medical examination and completion of investigation charge sheet was filed against the accused/applicants under Section 325/35 IPC.

2. By the judgment dated 26.02.2007 learned trial Court convicted the accused/applicants under Section 325/34 IPC and sentenced them to undergo RI for 1 year and to pay fine of Rs. 200 each of them with default stipulations. The findings recorded by the trial Court have subsequently been modified by the lower appellate Court. Hence, this revision.

3. Learned counsel for the applicants submits that the judgment of conviction and order of sentence passed by both the Courts below is arbitrary, illegal and contrary to the law. He submits that the Courts below failed to see that there is contradictions and omissions in the evidence of the prosecution witnesses. He submits that the both the Courts below failed to see that there is previous enmity between the complainant. He further submits that the conviction of the applicants is based on surmises and conjectures, therefore, he prays for discharge of the applicants from the charges levelled against them. State counsel however, supports the findings recorded by the both the Courts below.

4. The evidence of the injured PW-2 is very specific to the effect that on the date of incident the accused/applicants along with others followed him and opened an assaulted with help of bamboo sticks. His evidence further discloses that as a result of assault multiple injuries were received by him including fracture of right tibia bone. The fracture opined by the doctor is evident from medical report Ex.P-5. This apart, the injury was found to be grievous in nature. Furthermore, the evidence of PW-2 is corroborated by PW-3 who saw the injured lying unconscious on the spot. The wife of the injured who lodged the report has also supported the case of the prosecution. Thus, the evidence collected by the prosecution is sufficient for convicting the accused/applicants under Section 325/34 IPC and that way the

Court below appears to have been fully justified. Their conviction is thus maintained.

5. As regards sentence, keeping in view the fact that the incident had taken place in the year 2004, that the accused/applicants have already remained in jail for a period of about 20 days and further that by now they must be leading a well settled life saddled with innumerable responsibilities, this Court thinks it proper to reduce the sentence imposed on them to the period already undergone.

6. With the above, the revision stands allowed in part.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh