

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 12.03.2019

Judgment delivered on 04.12.2019

CRR No. 145 of 2005

- Sarvottam Das, aged about 55 Years, Guru Shri Swarup Saheb, Kabir Sansthan, Pandri Tarai, Raipur, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh, through The Station House Officer, Police Station Dharsiwa District Raipur Chhattisgarh.
2. Abhay Ram Baghel S/o Bodhan Singh, aged About 36 Years R/o Village Kuthrel, Police Station Dharsiwan, District Raipur Chhattisgarh.
3. Smt. Asha Devi W/o Shri Abhay Ram Aged About 32 Years R/o Village Kuthrel, Police Station Dharsiwan, District Raipur Chhattisgarh.

---- Respondent/s

For Appellant/s	-	Dr. N.K. Shukla, Sr. Advocate with Shri Ashwin Panika, Advocate
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For Respondent/s	-	Mr. Raghvendra Verma, GA
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Hon'ble (Smt.) Justice Vimla Singh Kapoor

CAV Judgment

Case of the prosecution in brief is that on 05.09.2004, the applicant herein and one Shivprasad (PW-1) went to the house of accused Abhay where on account of some pending old land dispute accused Abhay started abusing the applicant and caused injuries to him as also to PW-1 with the help of club. In the meanwhile accused Asha and Amit also came over there and started assaulting the applicant and PW-1 with fire wood and also threatened them of being killed and buried then and there. On the basis of report Ex.P-1 lodged by Shivprasad (PW-1) offences under

Sections 294, 506-B and 323/34 IPC were registered against the accused/respondents. After medical examination of the injured persons and completion of investigation charge-sheet was filed against them under Sections 294, 506-B, 323/34, 325 and 307 IPC. During investigation seizure of club and fire wood was made from the accused persons as per Ex.P-3 and Ex.P-4. The Court below however framed the charge against accused Abhay under Sections 294, 323, 506-B and 307 whereas the charge framed against the accused Amit and Asha was under Sections 506-B and 307 IPC.

2. Learned Court below however acquitted accused Asha and Amit of the charge under Sections 307, 294 and 506-B but held them guilty under Section 325 IPC for causing injuries to applicant Sarvottam (PW-2). Accused Abhay has also been acquitted of the charge under Sections 294, 307, 325 and 506-B IPC as regards injures to Sarvottam. Accused Abhay has also been acquitted of the charge under Section 307 IPC for causing injury to Shivprasad (PW-1) but has been convicted under Section 323 IPC. Likewise, accused Amit and Ashadevi after being acquitted under Section 307 have been convicted under Section 325 IPC with imposition of suitable sentences. Hence this revision by the injured applicant.

3. It is relevant to mention here that during the pendency of this revision accused Amit kumar has already expired and therefore, this revision is only against accused Abhayram Bhaghel and Smt. Ashadevi.

4. Counsel for the applicant submits that though there is sufficient evidence to hold the accused/respondents guilty under

Section 307 IPC, the Court below has fallen into a serious error of law in ignoring the same and acquitting them of the said offence. Counsel for the respondents/accused however supports the judgment impugned to be fully justified calling for no interference in this revision.

5. Having heard counsel for the parties and perused the evidence on record, this Court is of the considered opinion that it is the injured party who first went to the house of accused Abhay where on account of some land related dispute exchange of some abusive words took place and the accused Abhay lost control over his nerves and dealt club blow on them. Meanwhile, other accused persons also appeared on the scene and caused injuries to the injured persons with the help of fire wood. No previous animosity between the accused and injured party has been pointed out which could have demonstrated the intention of the accused behind causing the injuries to the victims. Rather, the incident took place on the spur of moment where the applicant and the injured (PW-1) received certain injuries. These injuries however have not been opined by the doctor to be dangerous to life in the ordinary course of nature. Mere a mention by the doctor that the death could have been caused in case immediate medical treatment was not provided, does not construe that the injury was dangerous to life in the ordinary course of nature. Thus looking to the medical evidence where fracture of bones of knee of Sarvottam and the complaint of pain in the waist of injured Shivprasad, and also keeping in mind the evidence of other witnesses, the acquittal of respondents/accused of the charge under Sections 307, 294, 506-B

IPC is fully justified. The Court below has passed the judgment impugned after considering all aspects of the matter in its proper perspective and then arriving at the conclusion that it is complainant party who went to the house of the accused Abhay where the incident took place. Even otherwise, it is the settled legal position that if the material on record gives rise to two plausible and possible views, the one favouring the accused has to be preferred. This is what the Court below has done while passing the judgment impugned. No illegality or infirmity is noticed in the judgment impugned warranting interference therewith.

6. Revision being without any substance is hereby dismissed.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/ajay.