

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2733 of 1998

1. Ramprasad, aged about 18 years, S/o. Dhirendra Devnath, Caste Kayasttha (Kayastha)
2. Chitranjan, aged about 21 years, S/o. Dhirendra Devnath, Caste Kayastha
3. Deepak, aged about 22 years, S/o. Dhirendra Devnath, Caste Kayastha

All R/o. Borgaon, Police Station Parasgaon, District Bastar (M.P.)
(Now Chhattisgarh)

---- Appellants

Versus

State of Madhya Pradesh through Police Station Farasgaon District
Bastar (MP) (now Chhattisgarh)

---- Respondent

For Appellants : Mr. Manoj Sinha and
Mrs. Seema Singh, Advocates.
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

10.07.2019

1. Facts of the prosecution case relevant for disposal of this appeal are that on 15.08.1996 at about 11.30 PM when complainant Narottam Das was sleeping in his house, the accused/appellants with an intention to commit loot entered in the house being armed with knife and bamboo sticks. Narottamdas woke up after hearing the barking of dogs and identified them. Appellant Ramprashad

assaulted him and caused injury on the left side of the head with knife whereas appellant Chitranjadas assaulted Birendradas and caused injury on the stomach, nose and hand thereafter complainant Gautam intervened in the matter then all the accused/appellants assaulted him with knife. After hearing the voice of incident Ashokdas and Ashishdas came there for rescue then the accused/appellants left them and fled from there. Subsequently, Narottamdas (PW-1) lodged the FIR (Ex.P-1) in Police Station where Crime No. 76 of 1996 was registered. After completion of investigation charge sheet was filed under Sections 459, 307/34 IPC followed by framing of charge accordingly.

3. Learned court below by its judgment dated 12.10.1998 passed in Sessions Trial No. 438/1996 acquitted the appellant under Section 307/34 IPC but convicted under Sections 459, 326 and 324 IPC and sentenced them to undergo RI for 10 years and to pay fine of Rs. 2000/- under Section 459 IPC, RI for 7 years and to pay fine of Rs. 5000/- under Section 326 IPC and RI for 3 years, to pay fine of Rs. 1000/- with default stipulations. Hence, this appeal.
4. Learned counsel for the appellant submits that the ingredients of offence under Section 459 and 326 IPC is not attracted and the trial Court has wrongly reached the conclusion and convicted the appellant. He submits that trial Court has exaggerated the medical report of the doctor who examined the complainants as such offence under Section 326 is not made out. Lastly, he submits that if this Court is not inclined to interfere with the conviction part of

the judgment impugned, at least the sentence imposed on them may be reduced to the period already undergone by them.

5. On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the appellants.
6. Having heard counsel for the parties and perused the material available on record including the evidence of PW-1 who lodged the FIR, has stated that the appellants came there with knife, lathi and bamboo sticks, when he tried to stop him then appellant Ramprashad assaulted on his head with knife. After hearing his voice, his father Birendradas came there then appellant Chitrandas assaulted him also. Evem Gautam has been spared by all three accused who caused injuries his left hand with *Danda*. After the incident, he immediately went to the Police Station and lodged the report against them. Narayan Majumdar (PW-7) has supported the case of the prosecution. Evidence of Doctor (PW-8) who medically examined all the injured persons has noticed number of injuries on various part of their body which is evidence from Ex.P-11 to Ex.P-13. Though he has stated the injuries of all three to be simple in nature yet has opined that the nature thereof could be decided only after getting the x-ray report. However, the x-ray report did not say about any fracture on any of the injured yet the medical report Ex.P-13 states that the injury no.1 of Birendradas was a stab injury which as per the query report Ex.p-14 has been held to be grievous in nature. The doctor has further stated that the injury caused to the victim

could have been caused by hard and blunt object and the injuries to Birendradas was grievous in nature. The injury sustained by the injured persons is corroborated by medical evidence. Overall evidence thus establishes the fact that the appellants entered in the house of the complainants at night and thereby causing grievous injuries to the complainants which referred to above by hard and blunt object and therefore, their conviction under Section 549, 326 and 324 IPC is maintained.

6. As regards sentence, keeping in view the fact that the incident had taken place in the year 1996, that the appellants have already remained in jail for a period of about one year and half months 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. Order accordingly.

Sd/-
(Vimla Singh Kapoor)
JUDGE