

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 674 of 2002**

1. Malki Bai W/o. Chulu Ram Nagwanshi, age 50 years
2. Guruwari Bai @ Lere W/o. Udal Nagwanshi, age 48 years
3. Bandhni Bai W/o. Parmatma Nagwanshi, age 25 years
4. Chulu Ram S/o. Chungru Nagwanshi age 52 years
5. Raju Ram @ Bandhu S/o. Udal Ram Nagwanshi, age 31 years
6. Ram Sagar @ Heli S/o. Chulu Ram Nagwanshi, age 20 years
7. Bihanu Ram S/o. Sukhram gond, age 35 years
8. Shivnath @ Simnath S/o. Chulu Ram Nagwanshi, age 22 years
9. Bholu Ram S/o. Bandhan Ram Nagwamshi, age 60 years
10. Rqamnath S/o. Dhiru Nagwanshi, age 25 years
11. Oskar S/o. Luis tirk, age 25 years

All residents of Village Dhungurjor, PS Kansabel, Tehsil Bagicha, District Jashpurnagar, CG

---- Appellants**Versus**

- State Of C.G. Through PS Kansabel, Tahsil Bagicha, District Jashpurnagar CG

---- Respondent

For Appellants	: Shri A.K.Prasad, Advocate
For Respondent/State	: Shri Anand Verma, Dy.GA

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Manindra Mohan Shrivastava, J.

14/03/2019

This appeal is directed against the impugned judgment of conviction and order of sentence dated 11.06.2002 passing in S.T. No. 138/92, whereby and whereunder the appellants, 11 in number, have been held guilty for commission of offence under Sections and sentenced as described below:

Conviction	Sentence
Under Section 332/34 IPC	RI for three months
Under Section 323/34 IPC	RI for three months
Under Section 333 IPC	RI for 1 year and fine of Rs. 100/- with default stiuplation.

2. Prosecution case, is that on 26th of March 1992, the appellants along with other accused, surrounded the police people who were taking some of the villagers to jail and it is alleged that the crowd started assaulting the police personnel in which the victims sustained injuries. According to the prosecution, at least two police officers namely H.R. Ahilrwar and Shankar sustained fracture injuries. The appellants and other co-accused were charged of having committed offences under Sections 148,307,332,333, 225 as also 307/149 IPC. The Learned trial court relied upon the eyewitness account given not only by the injured witnesses Shankar Ram Kalo, Ishwar, Suresh Panda, H.R.Ahirwar, Elahi Baksh, Churavan Das,

Rajendra Sai but also all other witnesses PW-1,2,3,4,6 & 7 corroborated from the evidence of injury sustained by injured witnesses proved by Dr. Y.K.Toppo PW-5 who conducted MLC and Dr. Kailash Datt Dubey PW-15, the Radiologist who proved fracture injury sustained by victim witnesses H.R.Ahirwar and Shankar. Learned trial court, recorded a finding that most of the victims were police officers who were taking some of the apprehended persons to jail and while the bus was standing, the crowd including present appellants, *surrounded* the bus and assaulted the police officers and thereby deterred them from performing their official duty and also opened assault resulting in grievous injury. The appellants were found guilty of the charges of commission of offence under Sections 307,148,149,307 and 225 IPC.

3. Assailing legality and validity of the order of judgment, learned counsel for the appellant would argue that the learned trial court failed to appreciate the evidence on record in its proper perspective. He would argue that it is not a case where only the police party and some witnesses had sustained injury. He would submit that the background of the incident which has come from the evidence of the prosecution itself is that Malki Bai was misbehaved and assaulted by the police people and when a protest was made by her son namely, Ramnath, the police people and gunned him down. At this stage, the incident of free fight had taken place. He would argue that it is not the appellants but the police party, who, armed with weapons, were the aggressors and assailants and what was done by the appellants was to do away with and to prevent brutal assault made by the

police officers. He would argue that while appreciating the evidence, learned trial court ought to have taken into consideration that in the police firing one of the villagers, namely Ramnath died. He has argued that in fact, in the present case, all the appellants were assaulted by the police personnel leading to another criminal case of police personnel opening fire and killing one villager in which they were tried by the trial court and one of the members of the police party was held guilty and convicted for commission of the offence under Section 304 Part I IPC and others convicted under Section 323 IPC. He would next argue that the defence which has been brought by the appellants, through evidence of DW-1 and 2 is quite probable which provides genesis of the dispute and shows that when the villagers started protest, they were assaulted by the police people. Last, but not the least, counsel for the appellant submits that present case arises out of an incident of the year 1992 i.e. more than 26 years. The appellants have undergone jail sentence for different period which ranges from 40 days up to 101 days, therefore, at this stage, looking to the overall circumstances, even if it is held that they are guilty of commission of the said offences, the sentences of the appellants may be reduced to the period already undergone by them.

4. On the other hand, learned counsel for the State argued that the guilt of the appellants of having deterred the police from performing their duties and going to the extent of attacking and assaulting them and causing injury is not only proved from the evidence of the witnesses of the prosecution but also injured

witnesses and also from specific medical evidence of number of police officers having sustained assaults and two of them even suffering from fracture injuries. It has been argued that present is a case where the villagers have attacked the police team to deter them from performing their public duty therefore, merely because the incident is an old one, the appellants cannot take this as the only ground to seek reduction of the period of sentence for each of the offences.

5. We have heard counsel for the parties and perused the records.

6. In order to prove its case, the prosecution has examined 6 injured witnesses who are Shankar PW-13, Ishwar PW-9, H.R.Ahirwar PW-16, Suresh Kumar Panda PW-14, Elahi Baksh PW-10 and Rajendra Singh PW-11. In addition to the injured eyewitnesses, the prosecution case is also supported from the evidence of Kalinder Sai PW-1, Prabhatilal Sharma PW-2, Mohd. Samimuddin 3, Mohd. Akhtar PW-4, Anil Kumar Sharma PW-6 and Budhram Pradhan PW-7. We have gone through the evidence of these witnesses. The evidence of these witnesses is broadly coherent in which it has been stated that while the police party was taking some of the accused in the bus, the incident happened at village Dhengurjor, where number of villagers surrounded. It has been stated by these witnesses that at the spot, the dispute arose. The background was that some of the villagers were arrested by the police and they were produced before the SDM. Those persons

were being brought back in the bus for being taken to jail and on the way to jail, the bus was stopped and then it is alleged that the fight took place at the spot, in which the police personnel sustained injuries. It has also come in the evidence that during this fight between the police personnel on the one side, and the villagers on the other, fire arm was used by the police party and due to gunshot, one Ramnath sustained bullet injury and, later on, died which led to initiation of criminal proceedings against some of the police personnel (witnesses of the present case).

7. Evidence of Dr. Y.K.Toppo PW-5 and Dr. Kailash Datt Dubey PW-15, who conducted MLC and the Radiologist respectively, proves multiple injuries on number of eyewitnesses/police personnels and other persons also. According to PW-5 Shankar Ram, Suresh Kumar, H.R.Ahirwar, Churawan Das, Rajendra, Laloo Ram, who were all police personnel, had sustained multiple injuries. Out of these, Constable Shankar Ram and Sub Inspector H.R.Ahirwar had also sustained fracture injuries. H.R. Ahirwar sustained two injuries on his head out of which, one was fracture injury. Shankar Ram sustained fracture in the ribs. These two victims and another police personnel had suffered many other injuries which were in the nature of swelling, scratches and other simple injuries said to be caused by hard and blunt object. From the evidence of these witnesses, we find that almost every police personnel had sustained multiple injuries. Apart from the police personnel having sustained injury, two other persons namely, Ishwar and Elahi Baksh also sustained injuries.

8. The appellants, either by way of giving suggestions in cross examination or by leading evidence in defence, have failed to explain as to how such injuries were sustained by the police personnel.

We find that in the MLC of appellants, Malki Bai, Gurwari Bai, Chullu Ram, Rajuram, Ram Sagar, Bihanu Ram, Shivnath, Bholaram and Ramnath, they have also sustained injuries, conducted by same doctor PW-5 exhibited as Ex.P-10 to P-26, and also found having sustained injuries, though simple in nature.

9. From the aforesaid evidence of the prosecution witnesses which include victims and injured witnesses and the medical evidence itself proved beyond doubt that the appellants had entered into fight with the police officials and two other persons, assaulted them and injured.

The police personnel were on duty as they were taking some of the accused said to be about 13 in number, in a bus and the incident happened when on the way, the bus stopped. Therefore, the guilt of the appellants under Sections 333, 332 and 323 IPC is clearly proved beyond doubt.

10. Moreover, we find that present is a case, where the appellants are alleged to have assaulted the police officials. Not only they have assaulted the police officials while they were on duty, two of them have sustained fracture injury. These injuries were grievous in nature. The fracture injury was on one of the most vital part of the

body of H.R.Ahirwar who also sustained injury on his head. Shankar Ram sustained fracture injury on his ribs. These are the two aggravating circumstances of the case.

However, according to the counsel for the appellant, the incident is of the year 1992, therefore at this stage, each of them has undergone sentence which is not less than 49 days, it is prayed that the sentence may be reduced to the period already undergone by them.

11. We also find that appellant No.1 Malki Bai, appellant No.2 Gurwari Bai, appellant No.4 Chulu Ram and appellant No. 9 Bhola Ram were 50 -60 years of age at the time of incident, some of them have also undergone sentence up to 101 days, balancing the mitigating circumstances, age of the appellants discussed hereinabove, we are of the view that the period of sentence on the appellants be reduced to the period already undergone by each of them. This is being done taking into consideration that the incident is of the year 1992 and the appellants are on bail since last about 17 years and at least four of them must have been quite aged by now. We also cannot ignore that in the incident of fight between the police party and the villagers, one of the villager particularly, son of appellant No.1 died. The appeal is accordingly, partly allowed in the manner and to the extent stated above.

Sd/
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge