

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 847 of 2002**

1. Etwaram aged about 43 years S/o Shri Laudha Ram,
2. Barsati Bai aged about 40 years W/o Etwaram,
3. Jhamoro Bai alias Radha Devi, aged about 17 years D/o Etwa Ram

All are agriculturist R/o Vilage Paiku, Tahsil and District Jashpur Nagar (C.G.).

---- Appellants

Versus

1. State of Chhattisgarh, through P.S. Jashpur Nagar, District Jashpur (C.G.)

---- Respondent

For Appellants	:	Shri Anand Kumar Gupta, Advocate.
For Respondent/State	:	Shri Pawan Kesharwani, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya

21/11/2019

Judgment On Board

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 24/07/2002 passed by Additional Session Judge, Jashpur Nagar (C.G.) in Session Trial No. 230/2001; whereby the appellants stand convicted and sentenced as under:-

Name of accused	Conviction	Sentences
Etwaram	U/s. 325/34 of Indian Penal Code (in short "IPC")	R.I. for 1 year & fine of Rs. 500/- in default of fine additional R.I. for 3 months.
	U/s. 323 of IPC	R.I. for 6 months.
Barsati Bai	U/s. 325/34 of IPC	R.I. for 1 year & fine of Rs. 500/- in default of fine additional R.I. for 3 months.
Jhamoro Bai alias Radha Devi	U/s. 325/34 of IPC	R.I. for 1 year & fine of Rs. 500/- in default of fine additional R.I. for 3 months.

- 2) No one appeared on behalf of the appellants, when the matter is called. In these circumstances, this Court is left with no other option but to appoint the counsel through the High Court Legal Services Committee.
- 3) Shri Anand Kumar Gupta, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court has appointed Shri Anand Kumar Gupta, Advocate to argue the matter on behalf of the appellants. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
- 4) Case of the prosecution is that on date of incident on 10/07/2001 around 03:00 PM at village Paiku complainant Banduram and Bindeshwar Ram both are went to the field of Bandhuran which was given to Bindeshwar Ram for cultivating and improvement of land. When they reached place of incident accused Etwaram, brother of complainant Bandhuran and Barsati Bai wife of Etwaram and Jhamoro Bai alias Radha Devi daughter of Etwaram started assaulting them with Club, Axe and Catapult. First accused Etwaram assaulted Bindeshwar Ram with catapult near his left eye as a result of which he sustained injury as per Ex. P-3. Accused persons also assaulted Bandhuran by Axe and wooden log and he sustained injury as per Ex. P-2. Bandhuran also sustained grievous injury in his leg as per Ex. P-4 and fracture in second metacarpal and tibia & fibula vide Ex. Ex. P-5. FIR was lodged by Bandhuran as per Ex. P-1 on next day of incident on 11/07/2001. After due investigation charge sheet was filed against appellants/accused for the offence under sections 307/34 of IPC.
- 5) The Trial Court framed charges against all 3 accused/appellants under sections 307 & 307/34 of I.P.C. The accused/appellants denied the charges and prayed for trial.
- 6) The prosecution in support of its case examined as many as 09 witnesses namely PW-01 Bandhuran, PW-02 Bindeshwar Ram,

PW-03 Magraram, PW-04 Dr. Manju Minz, PW-05 Pilwanram, PW-06 Surajnarayan Pandey, PW-07 Ghuranram Bhagat, PW-08 Dr. Kumudni Kerketta and PW-09 J.N. Baghel, T.I. The statements of the accused were also recorded under section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication. Accused/appellant Etwaram examined himself in his defence as DW-01.

- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above.
- 8) Learned counsel for the appellants submit that complainant Bandhuram was not residing in village Paiku and in fact he had left the said village and went to Aasam for his livelihood since long. Etwaram, brother of complainant, was taking care of the land in question which came into his possession by way of will executed by his father Laudha Ram Ex. D-3. From the said will it is evident that accused Etwaram was taking care of his father during his lifetime, cultivating the said land whereas complainant Bandhuram never took care of his father and mother and was residing separately out of village. On the date of incident it is the complainant party who tried to forcibly dispossess the accused persons from the said land, assaulted them and therefore, in exercise of right of private defence of property the accused persons assaulted the complainant Bandhuram
- 9) He submits that there is delay of one day in lodging the FIR and no explanation has been offered in this regard. He submits that in this case the complainant party was the aggressor, the incident occurred on sudden and grave provocation by the complainant party to the accused persons as the complainant party was forcibly trying to dispossess the accused persons from the land in question which was legally possessed by the accused persons on the basis of will executed by Laudha Ram, father of accused Etwaram and complainant Bandhuram. In these circumstances the Trial Court was not justified in

convicting and sentencing them as mentioned above.

- 10) On the other hand learned counsel for the respondent/State supporting the impugned judgment and submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court.
- 11) Heard counsel for the parties and perused the material available on record.
- 12) PW-01 Bandhuran complainant has admitted in his court statement that 15 years prior to the incident he was residing in Aasam and that the disputed land was in possession of his parents. He also admits that accused Etwaram was taking care of his parents and cultivating the land in question. PW-02 Bindeshwar Ram also admitted this fact that complainant Bandhuran was living in Aasam for about 22 to 25 years and thereafter he returned village Paiku. It is also admitted that after the death of Laudha Ram, father of the complainant and accused Etwaram the land was being cultivated by accused Etwaram.
- 13) As per document Ex. D-3 i.e. will executed by Laudha Ram, it is mentioned there that accused Etwaram was taking care of Laudha Ram and his mother, he was cultivating the disputed land whereas complainant Bandhuran was living outside the village since long. As per Ex. D-3 the land in question was bequeathed by Laudha Ram in favour of accused Etwaram during his lifetime in presence of witnesses. Thus from the oral and documentary evidence available on record it stands proved that on the date of incident the land in question was in possession of accused Etwaram and the dispute arose when complainant Bandhuran came back to his village Paiku. Therefore, the Trial Court rightly recorded finding that accused Etwaram assaulted the complainant party in exercise of right of private defence of his property and further observed that looking to the nature of injuries caused to complainant Bandhuran, he exceeded his such right.

- 14) PW-01 Bandhuran and PW-02 Bindeshwar Ram have categorically stated that accused Etwaram, Barsati Bai and Jhamoro Bai alias Radha Devi assaulted them. PW-03 Magraram also supported the evidence of PW-01 Bandhuran and stated that accused Etwaram assaulted with Axe to Bandhuran, accused Jhamoro Bai alias Radha Devi caught hold of muffler of Bandhuran and beat him. DW-01 Etwaram has stated that his elder brother Bandhuran (complainant) had gone to Bengal and Assam around 18 to 20 years ago for earning his livelihood and in his absence he (Etwaram) was looking after his parents and therefore, his father had executed a will in his favour of in respect of the land in question vide Ex. D-3. He states that on the date of incident while he was working in the said field, complainant Bandhurama alongwith Magraram and PW-02 Bindeshwar Ram reached there and Bandhuran raised a dispute with him saying that as to why he is not allowing them to earn their livelihood by working in the said field. During this quarrel Bandhuran assaulted with Lathi near his right eye on which he tried to run away but he was caught by Bindeshwar Ram and Bandhuran during the scuffle they (Bandhuran, Bindeshwar Ram and himself) fell down on the ground and suffered injuries. He states that at the time of incident his wife Barsati Bai and daughter Jhamoro Bai alias Radha Devi were not present at the place of occurrence.
- 15) PW-04 Dr. Manju Minz on 11/07/2001 medically examined injured complainant Bandhuran PW-01 vide Ex. P-2 and noticed following injuries :-
- i. Lacerated wound on left leg just above the Ankle Joint size length 3cm and deep upto bone.
 - ii. Lacerated wound on right leg at middle of the leg size length 5cm and deep upto bone.
 - iii. Lacerated wound on left palm size 5cmx1cm.
- According to the Doctor, she advised for X-Ray for the left leg, right leg and left palm and opined regarding the complainant can be given after X-Ray report.

As per query report Ex. P-3, Doctor opined that if treatment was not done death was possible and the injury was grievous in nature. As per x-Ray Report Ex. P-4 and Ex. P-5 multiple of fractures below Tibia & Fibula of left leg was noticed. Multiple fractures of Tibia & Fibula of both legs was found and second metacarpal bone of left palm was found to be dislocated.

- 16) PW-08 Dr. Kumudni Kerketta on 10/07/2001 medically examined PW-02 Bindeshwar Ram vide Ex. P-8 and noticed following injuries :-

- I) lacerated wound size 1"x2cmxbone deep present on the left side of forehead.

According to the Doctor, the injury was simple in nature and opined that the injury was caused by hard and blunt object prior to 4-5 hours of his examination.

- 17) Thus considering the overall facts and circumstances of the case, the genesis of the incident, the manner in which the incident took place, the admitted fact that on the date of incident the land in question was in possession of accused Etwaram, the complainant party reached there and raised quarrel over the issue of possession of the said land with accused Etwaram, present appears to be a case of sudden and grave provocation on the part of the complainant to the accused persons. Being so, conviction of appellant Etwaram under sections 323 and 325/34 of IPC deserves to be altered to sections 334 and 335/34 of IPC. Likewise, conviction of appellants Barsati Bai and Jhamoro Bai alias Radha Devi under sections 325/34 of IPC deserves to be converted to sections 335/34 of IPC.

- 18) As regards the sentence, considering the fact and circumstances of the case, the manner in which the incident took place, the fact that incident occurred about 19 years back, the age of the appellants, fact that they have no criminal antecedent and they already remained in jail for 07 days and are on bail, this Court is

of the opinion that the ends of justice would be served if the appellants are sentenced to the period already undergone by them which comes to about 07 days and are directed to pay a fine of Rs. 2,000/- each for the offence under section 335/34 of IPC. In addition, appellant Etwaram shall also pay a fine of Rs. 500/- under section 334 of IPC. The aforesaid fine amount being deposited by the appellants, Rs. 6,000/- shall be payable to complainant PW-01 Bandhram and Rs. 500/- to PW-02 Bindeshwar Ram under section 357 of Cr.P.C. as compensation.

- 19) In the result, the appeal is allowed in part. Conviction of the appellant Etwaram under sections 323 and 325/34 of IPC is hereby set aside and instead he is held guilty under sections 334 and 335/34 of IPC. Similarly, conviction of appellants Barsati Bai and Jhamoro Bai alias Radha Devi under sections 325/34 of IPC is hereby set aside and they are held guilty under sections 335/34 of IPC. Their jail sentence is reduced to the period already undergone by them. However, they are directed to pay a fine of Rs. 2,000/- each for the offence under section 335/34 of IPC. In addition, appellant Etwaram shall also pay a fine of Rs. 500/- under section 334 of IPC. The aforesaid fine amount being deposited by the appellants, Rs. 6,000/- shall be payable to complainant PW-01 Bandhram and Rs. 500/- to PW-02 Bindeshwar Ram under section 357 of Cr.P.C. as compensation after due verification by the Trial Court. If the said fine of Rs. 2,000/- and Rs. 500/- as imposed by this Court on the respective appellants is not deposited within 3 months from today, they shall have to undergo additional imprisonment for 01 month and 15 days respectively. In case the appellants have already deposited the fine as imposed by the Trial Court, the same shall be adjusted accordingly. Since the appellants are reported to be on bail, their bail bonds shall remain in force for a period of six months from today in view of provision of section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge