

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 932 of 2001**

1. Surendra Ram, S/o Anand Ram Chikwa, aged about 30 years (now died).

2. Ram Kumar Ram, S/o Anand Ram Chikwa, aged about 25 years

Both R/o Vill. Bamba, P.S. - Bagicha, Distt.- Jashpur Nagar (C.G.).

---- Appellants**Versus**

- State of Chhattisgarh, Through- Police Station Bagicha, Distt.- Jashpur Nagar (C.G.).

---- Respondent

For Appellant	: Shri A. N. Bhakta & Shri Vivek Bhakta, Advocates.
For Respondent/State	: Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****17/10/2019**

This appeal arises out of the judgment of conviction and order of sentence dated 03.09.2001, passed by the Additional Sessions Judge, Jashpur (C.G.) in S.T. No. 179/1999, convicting and sentencing the accused/appellants is as under:

Conviction	Sentences
(Appellant No. 1- Surendra Ram) Under Section 307 of IPC	Rigorous imprisonment of 7 years with fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment of two

	months.
Under Section 324 of IPC	Rigorous imprisonment of one year.
Under Section 323/34 of IPC	Rigorous imprisonment of six months.
(Appellant No. 2- Ram Kumar Ram) Under Section 307/34 of IPC	Rigorous imprisonment of seven years with fine of Rs. 500/-, in default of payment of fine, to further undergo rigorous imprisonment of two months.
Under Section 324/34 of IPC	Rigorous imprisonment of one year.
Under Section 323 of IPC	Rigorous imprisonment of six months.
	(All sentences were ordered to run concurrently)

02. During pendency of the appeal the accused/appellant- Surendra Ram died on 24.05.2013 and that fact is supported by an affidavit alongwith death certificate of appellant- Surendra Ram given by the appellant's counsel.

03. Considering the fact that the appellant- Surendra Ram died during pendency of the appeal, the appeal is abated in respect of Accused/appellant No. 1- Surendra Ram, only one accused/appellant- Ram Kumar Ram is remained alive for considering the instant appeal.

04. Case of the prosecution, in brief, is that the incident occurred on 23.10.1999 at about 5 p.m. in village Bamba, Thana Bagicha. At the time of incident, both the appellants were in the house of one Jaimati Bai and were using abusive words in relation to partition of some land

and its possession. At that point of time, Pankunwar Bai (PW-3) stopped them from using abusive words. Thereafter, appellants Surendra and Ram Kumar got out of Jaimati Bai's house and stated that you (Jaimati Bai) had built house and *Badi* on our land so vacate it and run away from here, while saying this appellant No. 1 – Surendra Ram (Now died) came to the place of occurrence with “Tangi” (Axe) and inflicted injuries on Radheshyam's head and left knee by Axe. In the meanwhile, when one Gangaram and Pankunwar Bai were trying to resolve the dispute, accused/appellant No. 1- Surendra Kumar was inflicted injuries on the person of Gangaram (PW-1) by Axe near his left wrist and Pankunwar Bai (PW-3) by Axe on right side of head from where blood started oozing *whereas* appellant No. 2- Ram Kumar Ram had beaten Dashrath (PW-2) with an electric wire, which caused hurt to Dashrath (PW-2). The matter was reported to the police Station Bagicha in Rojnamcha Sanha (Ex.P-13'C') and injured persons were sent to hospital for treatment and after receiving of the doctor's report on 26.10.1999, FIR (Ex.P-11) has been lodged against the accused persons.

05. As per MLC report (Ex.P/2) of complainant – Pankunwar Bai (PW-3), she sustained incised wound in the size of 7"x2x 1½" on parietal region and as per X-ray report (Ex. P/3), she also sustained parietal bone fracture. Injured Radheshyam sustained one incised wound in the size of ½" x ½" x 1/2" on left parietal region vide Ex.P-7A and as per his X-ray report (Ex.P-7), there is no any fracture has seen in his person whereas as per MLC Report (Ex. P-8A), injured Dashrath sustained abrasion in the size of 2" x 1/2" on the middle of right side of

back and one abrasion in the size of 1/2" on the left side of his forehead. As per MLC Report (Ex.P-9-A), injured -Gangaram sustained abrasion in the size of 2" x 1/2", near upper layer of left hand near wrist joint, which is simple in nature.

06. After due investigation, charge-sheet under Sections 307, 307/34, 324/34 & 323/34 of Indian Penal Code (in short "IPC") was filed against the accused/ appellants. After filing of chargsheet, the trial Judge framed charges against the accused persons under Sections 307, 307/34, 324/34 & 323/34 of IPC.

07. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses namely- Gangaram (PW-1), Dashrath (PW-2), Pankunwar Bai (PW-3), Rampyara (PW-4), Dr. C. D. Bakhla (PW-5), Dr. Smt. Vinodni Bakhla (PW-6), Pawan Say (PW-7), Diluram (PW-8), K. P. Gupta (PW-9), Kiran Ram Magat (PW-10), Ravi Narayan Rathiya (PW-11) & Radheshyam (PW12). Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness has been examined on behalf of the accused/appellant.

08. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

09. Learned counsel for the appellants submits that on account of some property dispute complainant illegally demanded land from the accused but since the partition has already been taken place between

the parties prior to the incident, therefore, only because of lust of getting more property, the said illegal demand was raised by the complainant party. He also submits that there is no reason to believe that any common intention was present in the instant case to assault the complainant. He also submits that looking to the prompt FIR (Ex.P-11) lodged by Dashrath Prasad (PW-1) when dispute arose regarding partition between the parties, all of a sudden they assaulted the complainant due to some hot talk between them and there is no common intention shared by the accused persons to assault the complainant party. Any deadly weapon was not used by the appellant/accused No. 2- Ram Kumar. He used the electric wire for assaulting the complainant. Only Surendra Ram (since deceased) had used the deadly weapon i.e. axe for assaulting the complainant. He also submits that no independent eyewitness has supported the case of the prosecution. He further submits that the injuries found on the body of the complainant are not supported by the medical report, therefore it is prayed that the appellant may be acquitted of the charges leveled against him.

10. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is based on proper appreciation of the evidence and as such, there is no scope for interference in the judgment impugned.

11. Heard counsel for the respective parties and perused the material on record.

12. It is not disputed by the counsels appearing for the parties that a complaint was made by Dashrath Prasad (PW-1) in Rojnamchasana

(Ex. P/13), who is also injured in the said incident and as per Rojnamchasana (Ex. P/13) dispute arose between the parties regarding partition of the land and at the time of incident when the accused persons were sitting in the home of Jagmati Bai, then Pankuwar Bai came there and restrained the accused persons from using filthy language in the conversation. No pre-planning or premeditation was there to commit the offence as per Ex. P/13-C, all of a sudden dispute arose and that fact is also proved by one of the witnesses namely-Ramapyara (PW-4), who has not supported the case of the prosecution and has been declared hostile but he stated how the dispute arose between the parties. In para 2 of his statement he admitted the fact that all of a sudden, quarrel started between the parties.

13. Main allegation of committing offence is against the appellant No. 1 namely-Surendra Ram, who is now dead. As per statements of Gangaram (PW-1), Dashrath (PW-2), Pankunwar Bai (PW-3) & Radheshyam (PW-12), accused- Surendra Ram assaulted Gangaram, Radheshyam & Pankunwar by Axe and no allegation was made against the accused- Ramkumar Ram regarding any injury caused to the Gangaram, Radheshyam & Pankunwar. Only the injuries found on the body of Dashrath Prasad i.e. one abrasion on the back side of the Dashrath Prasad as per Ex. P/8. Only 2"x1/2" abrasion found on the middle of right side of the back and one abrasion on forehead. As per Ex.P/13, Dashrath Prasad was assaulted by Ram Kumar Ram with the electrical wire and that weapon is not deadly weapon and injuries found on his person are simple in nature.

14. Looking to the evidence of entire prosecution witnesses it cannot be said that there is any common intention shared by both the accused to assault the complainant or to attempt to commit his murder. Looking to the nature of injuries which were found on the body of Pankunwar Bai and other injured persons these are not sufficient to cause death of any person.

15. Dr. C. D. Bhakhla (PW-5) stated that the injury found on the body of the Pankunwar is incised wound and if any complication arises, then it is harmful and danger to life, except this no other injuries were found on the body of the Pankunwar involving any complication at later stage.

16. The assault was made by Surendra Kumar (since deceased) by deadly weapon i.e. Tangi (Axe) to Gangaram, Radheshyam & Pankunwar and only one injury caused to the complainant- Dashrath Prasad by the accused- Ramkumar Ram by use of electrical wire and by that means of weapon the injury caused to the complainant is simple in nature. As per Rojnamchasana (Ex. P/13) and other document, it is proved that there is no common intention shared by both the accused to commit the said offence. Therefore, the accused/appellant- Ramkumar Ram is liable only for the offence punishable under Section 323 of IPC and he is not liable to be convicted for the offence punishable under Sections 307 & 324 of IPC. Therefore, the finding recorded by the trial Court regarding the conviction & sentence of appellant- Ramkumar Ram under Section 307 & 324 of IPC is liable to be and is hereby set aside.

17. So far as offence under Section 323 of the IPC is concerned, considering the fact that the incident occurred way back in the year

1999, the appellant- Ramkumar Ram has been facing trial since 1999 and the fact that the appellant- Ramkumar Ram has already remained in jail for 11 months, 20 days and at present he is on bail, this Court is of the opinion tat the ends of justice would be served if he is sentenced to the period already undergone by him. To this, counsel for the State has no serious objection.

18. Resultantly, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 323 of IPC, his jail sentence is reduced to the period already undergone by him. He is acquitted of the charges under Section 307/34 & 324/34 of IPC. The appellant- Ramkumar Ram is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)

Judge