

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 39 of 2009

Order reserved on 19.03.2019

Order pronounced on 17.10.2019

1. Amrit, S/o. Jagsia, aged about 32 years, Occupation Service in SECL, Caste Gond.
2. Dilu, S/o. Amar Sai, aged about 38 years, Occupation SECL, Caste Gond,
Both R/o. Village Patrapara, Ramnagar, P.S. Bishrampur, Tehsil Surajpur (Wrongly mentioned as Sarguja) District Sarguja, CG. **---- Applicants**

Versus

1. State of Chhattisgarh through Police Station Jainagar, District Sarguja, CG. **---- Respondent**

For Applicant : Shri Gyan Prakash Shukla, Advocate

For State/ Respondent : Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

According to the FIR (Ex. P-6) lodged by injured Ramsai (PW-7) on 11.10.1990 at about 8 PM, the present accused/applicants along with two others (one died and one acquitted by the Court below) came to the house of PW-7 and called them out. When PW-7 did not come out, they all forcefully dragged him out, took him to the enclosure and assaulted him with the help of axe and club causing numbers of injuries on his forehead, scalp near the ear, left thigh and left elbow as a result of which he became unconscious. After medical examination and completion of the investigation, charge-sheet was filed against all four under Sections 448, 325/34 and 506 IPC followed by framing of charged accordingly.

2. Learned Magistrate vide judgment dated 29.11.2008 passed in Criminal Case No. 507/2001 acquitted accused Tulsi of all the charges leveled against him. The present applicants were also acquitted by learned Magistrate of the charges under Sections 294, 455 and 506-II IPC but came to be convicted under Section 325/34 IPC and sentenced to undergo RI for one year with fine of Rs. 500/- each. In appeal however, their conviction under Section 325/34 IPC has been kept intact but the sentenced imposed on them has been reduced to RI for six months vide judgment impugned dated 13.01.2009 passed in Criminal Appeal No. 140/2008. Hence this revision.

3. Counsel for the accused/applicants submits that none of the so called witnesses has supported the case of the prosecution and, therefore, the conviction of the accused/applicants under Section 325/34 IPC is not in accordance with law and, therefore, is liable to be set aside. State counsel however supports the judgment impugned.

4. Though PW-1, PW-2 and PW-5 have not supported the case of the prosecution yet the injured PW-7 has clearly stated as to the manner in which the accused/applicants along with others came to his house in the night and when he refused to come out as per their call, they dragged him out and took him to a lonely place and caused injuries with the help of axe and club on his forehead, thigh, elbow etc., Dr. K.K. Tamrakaar (PW-3) who medically examined the injured and gave his report Ex. P-2 has also noticed number of lacerated wounds and abrasions on various parts of his body such as forehead, scalp, elbow etc. Looking to the injuries, he was referred to Ambikapur, Hospital for further treatment. The Radiologist Dr. M.K. Jain (PW-4) has

categorically stated in his report (Ex. P-3) that there was fracture of tibia bone of PW-7. Investigating Officer (PW-6) has also supported the case of the prosecution.

5. Taking a composite view of the evidence on record including that of the injured PW-7 and the doctors (PW-3 and PW-4), it can safely be said that the accused/applicants caused injuries to PW-7 with the help of axe and club by rushing into his house in the fateful night. No illegality or infirmity with the conviction part of the judgment impugned is visible and, therefore, their conviction under Section 325/34 IPC is hereby maintained.

6. However, as regards sentence, considering the fact that the incident had taken place about 29 years back, that by now the accused/applicants must be under the load of responsibilities, and further that they have already remained in jail for about a week, no useful purpose is going to be saved in again sending them to jail after such a considerable long time and disturb their family setup. Accordingly, the sentence imposed on them is hereby reduced to the period already undergone by the accused/applicants.

7. Revision thus is hereby allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge