

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 15/02/2019****Judgment Delivered on : 11/03/2019****Criminal Appeal No. 391 of 2015**

1. Tameshwar Prasad Chandra S/o Sukdev Prasad Chandra, aged about 28 years,
 2. Bhuwaneshwar Prasad S/o Shivprasad Chandra, aged about 22 years,
 3. Sukhdev Chandra S/o Pyarilal Chandra aged about 59 years,
- All are R/o village Bade Katekoni, police station Dabhara, Civil & Revenue District Janjgir-Champa, Chhattisgarh.

---- Appellants**Versus**

State Of Chhattisgarh S/o Through Police Station Dabhara, District Janjgir-Champa, Chhattisgarh.

---- Respondent

For the Appellants	:	Shri V.C. Ottalwar and Shri Ishwar Jaiswal, Advocates.
For the Respondent/ State	:	Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV JUDGMENT**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 17.3.2015 passed by Learned First Additional Sessions Judge, Sakti, District Janjgir-Champa, Chhattisgarh in Sessions Trial No. 129 of 2012 whereby and whereunder the learned First Additional Sessions Judge has convicted all the appellants for the offence under Sections 323/ 34 and 325/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for 6 months and 3 years and to pay fine of Rs.500/- and Rs.5,000/-, respectively, in default of payment of fine, to further undergo additional rigorous

imprisonment for 1 month and 2 months with a direction that both the substantive jail sentences shall run concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on 17.5.2011 at about 7:45 am, when an event of marriage was going on, the appellants came there and demanded Ramprasad (PW-9) to send back Santoshi Bai, who had come to attend the said function, to her village. On his refusing to do so, the appellants abused, threatened and assaulted him and his wife Jagbai (PW-5) with hands, fists and clubs causing injuries to them. Yash Kumar (PW-4) lodged FIR Ex.P/4 in police station Debra. On the basis of which, the offences were registered. Ramprasad (PW-9) and Jagbai (PW-5) both suffered grievous injuries. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court against the appellants.

(4) The appellants were charged for the offence under Sections 323/34 and 325/34 of the IPC. They denied the charges and prayed for trial. In order to prove the guilt of the appellants, the prosecution examined 9 witnesses. Statements of the appellants were recorded under Section 313 of the Cr.P.C. in which they denied all the incriminating evidence against them, pleaded innocence and false implication in the crime in

question. One witness was examined in defence.

(5) After providing opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellants as aforementioned.

(6) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(7) Learned counsel appearing on behalf of the appellants submits that the prosecution has not proved its case beyond reasonable doubt. The important witnesses Vasudev Tandon (PW-1), Gangadhar Prasad Chandra (PW-2) and Saheblal Chandra (PW-7) have not supported the prosecution case therefore, the conviction is based only on the evidence of Yash Kumar (PW-4), Jagbai (PW-5) and Ramprasad (PW-9), who are the interested witnesses. It was in fact a case in which the complainant party were the aggressors where the appellants exercised their right to self defence. FIR was also lodged against the complainant party and on the basis of which they have been prosecuted.

Reliance has been placed on the judgments of the Supreme Court in the cases of **Dashrath @ Jolo and Another vs. State of Chhattisgarh** reported in **(2018) 4 SCC 428**, **Nagarathinam and Others vs. State of Chhattisgarh** reported in **2006 CRI.L.J. 2120** on the point of reliability of the evidence therefore, it is prayed that the appellants are entitled for acquittal. In alternative, it is submitted that if this Court is not inclined to allow this appeal then, in the given facts and circumstances of the case, the sentence imposed upon the appellants may be reduced as

it is too harsh.

Reliance has also been placed on the judgment of Supreme Court in the case of **Manjappa vs. State of Karnataka** reported in **2007 Cri.L.J. 3220** and on the judgment of this Court in the case of **Ghasiram and Another vs. State of Chhattisgarh** reported in **2011(3)C.G.L.J. SN 32 (C.G.)**.

(8) On the other hand, learned counsel for the respondent/ State opposes the submissions made on behalf of the appellants and submitted that the prosecution has proved its case beyond reasonable doubt. It is not a rule that the evidence of the injured witnesses shall always be disbelieved but it is actually a rule of caution in the matter of relying upon the evidence of such case. The victims in this case have made reliable statement in favour of the prosecution. Therefore, no case is made out for acquittal of the appellants.

(9) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(10) Yash Kumar (PW-4) has stated that on 17.5.2011, at about 7:45 am when an event of marriage was going on, the appellants came there and asked his father Sukdev to send back Santoshi Bai to her village. His father, Ramprasad (PW-9) replied that he will send her after the marriage is over. Thereupon, the appellants demanded to send her back immediately and opened assault with hands, fists and causing injuries to Ramprasad (PW-9) and when Jagbai (PW-5) came to intervene she was

also assaulted and injured by them. He lodged FIR Ex. P/4 in police station Debra. In cross-examination, he has admitted that a social meeting was called on this issue that Santoshi Bai should be sent back to her village. He has denied about his presence in the meeting and also denied that his father was also present in that meeting. He has denied about opening of assault by appellant No.2 – Bhuwaneshwar Prasad and others with axes and clubs. He has also denied the suggestion that false FIR has been lodged against the appellants. It is admitted by him that separate prosecution has been lodged against him and others. Regarding the same incident, there is no such statement made by him in cross-examination so as to suggest that his statement in examination-in-chief has been rebutted.

(11) Jagbai (PW-5) has stated that the appellants came to her house and demanded that Santoshi Bai should be sent back. Her husband, Ramprasad (PW-9) replied that he will send her after the marriage is over. On his refusing to do so, appellants No.1 and 2, Tameshwar and Bhuwaneshwar abused, threatened and assaulted him with hands, fists and clubs causing injuries to him. On cross-examination, her statement has remained unrebutted.

(12) Ramprasad (PW-9) is one of the victims who has given a similar statement regarding the demand made by the appellants and his refusal and then about the assault that has taken place upon him and his wife Jagbai (PW-5). In cross-examination, his statement has remained unrebutted. He has denied all the adverse suggestions given in defence. Although, there is an admission that a parallel prosecution is going on

against him and others which is based on the same incident.

(13) The prosecution has examined the independent witnesses. Vasudev Tandon (PW-1) has given statement to this extent that he arrived on the spot after the incident had taken place and saw the appellants in injured condition. He was declared hostile and examined by the prosecutor in which he denied about any incident of assault made by the appellants to Santoshi Bai in his presence.

(14) Gangadhar Prasad (PW-2) is another witness of the spot who has stated that in his presence the appellants demanded Ramprasad (PW-9) and Jagbai (PW-5) to send back Santoshi Bai to her village and when Ramprasad refused to do so, the appellants kept on insisting and thereafter, he left the place. He has been declared hostile by the prosecution and cross-examined by the prosecutor in which he denied about the incident to have taken place in his presence. His statement was partially in support of the prosecution version was that the appellants had been present on the place making a demand from Ramprasad (PW-9) to send back Santoshi Bai, which is the initial stage from where the incident started. Saheblal Chandra (PW-7) has stated similarly in his examination-in-chief that the appellants were demanding Ramprasad (PW-9) to send back Santoshi Bai and thereafter, he left the place. He has been declared hostile for not stating about witnessing the incident even then his statement has partially supported the statement of the Yash Kumar (PW-4) and Ramprasad (PW-9).

(15) Head-Constable, Mool Chand (PW-3) has lodged the FIR Ex. P/4

and Inspector, Dilip Kumar (PW-8) has done the investigative procedures. Dr. N.P. Mishra (PW-6) examined Ramprasad (PW-9) and found two contusions on his left forearm, one contusion on the metacarpal region of the left forearm, one contusion on scapula region and one contusion on his back. He advised for x-ray examination of metacarpal regions of the left forearm and opined that remaining injuries were simple in nature. He examined Jagbai (PW-5) and found one contusion on left forehead and one contusion on left forearm vide Ex. P/8. He stated that the injuries were caused by hard and blunt object and he also advised for x-ray examination. He has further stated that on the basis of the x-ray report, Ramprasad (PW-9) had one bony injury of fracture of ulna region (Ex.P/9) and no injury was found on the body of Jagbai (PW-5) vide Ex.P/10.

(16) The defence has examined Dr. N.K. Mishra (DW-1) who has given statement about the injuries found on the body of the appellants vide MLC reports Exs.D/1, D/2 and D/3. It is argued on behalf of the appellants that the appellants have exercised their right of self defence.

(17) On close scrutiny of the evidence of the injured witnesses in this case, it has appeared that their statement is reliable, which is partially supported by the other witnesses like Gangadhar (PW-2) and Saheblal Chandra (PW-7). Therefore, it can be safely said that the appellants were present on the spot and asking Ramprasad (PW-9) to send back one of his guests and were continuously insisting for the same. The injuries found on the body of victims Ramprasad (PW-9) and Jagbai (PW-5) corroborates to the statement given by these witnesses

regarding the assault made upon them. There is no evidence brought on record by the defence or any admission made by the prosecution witnesses that the injuries that have been proved to be found on the body of the appellants were the outcome of the same incident. Although there is an admission that there had been a counter case but, that itself does not affect the evidence against the appellants, which has already been placed on record that they were the persons who came to the house of Ramprasad (PW-9) and the assault has been made. Therefore, after testing the reliability of the evidence of the concerned prosecution witnesses, which appears to be corroborated on the basis of facts and circumstances of this case and after closely scrutinizing the entire evidence of the prosecution present on record, I am of this view that the finding of conviction recorded by the trial Court does not suffer from any infirmity.

(18) Considered the prayer for reduction in sentence imposed upon the appellants. On perusal of the impugned judgment and order of suspension of sentence and grant of bail, it appears that the appellants have not undergone any detention in this case. It is a fact that these appellants had also suffered injuries. Although, it is not clearly established in this case that it was a case of free fight. The complainant party were have been prosecuted for offence under Section 307 of the IPC, that is the offence of attempt to murder, as it has been admitted by Inspector, Dilip Kumar (PW-8), in his cross-examination. There is no evidence to suggest in this case that the act of the appellants has been an act to exercise of right to private defence. However, the appellants have suffered more in the dispute with the complainants. Therefore,

I feel inclined to extend leniency in imposing sentence upon the appellants. As a result, this appeal is allowed in part.

(19) The conviction of the appellants as held by the Court below is confirmed, however, the sentences imposed for the aforesaid conviction are set aside and instead of that the appellants are sentenced with fine of Rs.5,000/- for the offence under Section 323 of the IPC and sentenced with imprisonment of till rising of the Court alongwith fine of Rs.15,000/- for the offence under Section 325 of the IPC. They are directed to appear before the Court below for undergoing the sentence of imprisonment up till rising of the Court at 11 a.m. sharp.

(20) Accordingly, the appeal is partly allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE