

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 15/02/2019****Judgment Delivered on : 11/03/2019****Criminal Appeal No. 411 of 2015**

1. Gopal Chandra S/o Ramprasad Chandra, aged about 27 years,
2. Heman S/o Ramprasad Chandra, aged about 23 years,
3. Ramprasad S/o Pyarilal Chandra aged about 48 years,
4. Yash Kumar S/o Ramprasad Chandra, aged about 25 years.

All are R/o village Bade Katekoni, police station Dabhra, District Janjgir-Champa, Chhattisgarh.

---- Appellants**Versus**

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

---- Respondent

For the Appellants	:	Smt. Savita Tiwari, Advocate.
For the Respondent/ State	:	Shri Avinash K. Mishra, P.L.

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

Heard.

(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. 172 of 2011 whereby and whereunder the learned First Additional Sessions Judge has convicted both the appellants for the offence under Sections 294, 324/ 34, 307/ 34 and 307/34 of the Indian Penal Code, sentenced them to undergo rigorous imprisonment for 2 months, 2 years, 10 years and 10 years and to pay fine of Rs.500/-,

Rs.2,500/-, Rs.5,000/- and Rs.5,000/-, respectively, in default of payment of fine, to further undergo additional rigorous imprisonment for 1 month, 2 months, 6 months and 6 months with a direction that all 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 between 7:30 and 7:45 am during the event of marriage ceremony of son of appellant No.3 – Ramprasad, a dispute arose on the arrival of Santoshi Bai in the said ceremony; all the appellants gathered in the residence of Bhuneshwar Prasad (PW-5) and by using abusive words, threatened to kill the persons concerned. Appellants No.1 – Gopal Chandra and No.2 – Heman assaulted Bhuneshwar (PW-5) with axe causing injury on his head; they also assaulted Tameshwar (PW-3) with axe causing injuries on his head, thigh, elbow and leg. Appellants No. 4 – Yash Kumar and No.3 – Ramprasad assaulted injured Sukdev (PW-6) by using clubs. Laxman Singh Chandra (PW-1) lodged FIR vide Ex.P/1 in the police station Debra. The injured victims were medically examined and sent for medical treatment. The police took up the investigation. On the basis of the memorandum statement of appellant No.1 – Gopal vide Ex. P/3 an axe was seized vide Ex. P/5; on the basis of the memorandum statement of appellant No.2 – Heman vide Ex.P/4, an axe was seized vide Ex. P/6. Clubs were seized from the possession of appellants No.4 – Yash Kumar and No.3 – Ramprasad vide Exs.P/18 and P/12. Report and query was

obtained from the concerned doctor who had examined the injured victims. 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 294, 323, 324 and 307/34 of the IPC. They denied the charges and prayed for trial. In order to prove the guilt of the appellants, the prosecution examined 16 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. Two witnesses were 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 appellants and the complainant party, both are related to each other and it was a family dispute which escalated and thereby offence is alleged to have been committed. In fact, it had been a free fight between the appellants and the complainant party as the offence was also

registered against Tameshwar (PW-3), Bhuneshwar (PW-5) and Sukdev (PW-6) of the complainant party and they have also been prosecuted in this case and have been convicted by the Court below and their separate appeal is pending. The trial Court has not given any consideration to the evidence of the defence witnesses. According to the appellants, it was a case of self defence, therefore, it is prayed that the appeal of the appellants may be allowed. In alternative, it is also prayed that the sentences imposed upon the appellants is harsh, which may be reduced.

(8) On the other hand, learned counsel for the respondent/ State opposes the submissions made on behalf of the appellants and has submitted that the prosecution has proved its case beyond reasonable doubt. All the injured witnesses have clearly stated about the act committed by the appellants which is clearly not in the exercise of right to self defence, for the reason that the complainant party has been prosecuted for lesser offence, which shows that the appellants were the aggressors, who fatally injured the victims in this case. Therefore, no case is made out either for acquittal or for reduction in sentence.

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

(10) Bhuneshwar (PW-5) is the main victim in this case. He has stated that on the date and time of incident, when his mother Santoshi Bai, who had been invited as guest in a marriage ceremony in the house of appellant No.3 – Ramprasad, because of which, an objection was raised

by some persons therefore, a meeting was held in his house, in which the appellants and other were present. This witness and others relatives had objection to the invitation given to Santoshi Bai, because of which, the appellants engaged in a dispute. Thereafter, all of sudden they started using abusive words; appellants No.1 – Gopal Chandra and No.2 – Heman armed with axes and appellants No.3 – Ramprasad and No.4 – Yash Kumar armed with clubs started assaulting him. He was assaulted by appellants No.1 – Gopal and No.2 – Heman with axes. They also assaulted and injured Tameshwar (PW-3). At the same time, appellants No.3 – Ramprasad and No.4 – Yash Kumar assaulted and injured Sukdev (PW-6) by clubs. In cross-examination, his statement regarding assault and injuries caused to the persons has remained unrebutted. He has admitted this suggestion that appellant No.3 – Ramprasad was asked to sent back Santoshi Bai to which he has refused, however, it has been denied that the witness and others present with him have challenged appellant No.3 – Ramprasad and they also used abusive words, threatened and assaulted and caused injuries to appellant No.3 – Ramprasad and Jagbai. However, he has admitted that he and others were being prosecuted on the basis of the prosecution based on the same incident and also denied all the adverse suggestions about falsely implicating the appellants.

(11) Laxman Singh Chandra (PW-1) is an eyewitness to this incident who has stated in support of Bhuneshwar (PW-5) and also stated about lodging of FIR Ex. P/1. In cross-examination, he has denied all the adverse suggestions given and denied that the complainant party itself has assaulted appellant No.3 – Ramprasad and Jagbai.

(12) Tameshwar Prasad @ Tomeshwar (PW-3) has similarly stated about the assault made by the appellants on him as well as on Bhuneshwar (PW-5) and Sukdev (PW-6) and about the injuries caused. In cross-examination, he has denied all the adverse suggestions given and remained firm on his statement in examination-in-chief. Sukdev (PW-6) has stated about the dispute and his presence in the place of incident. He has stated that all of sudden, the appellants started assaulting with axes and clubs after using abusive words and threatening them. He has stated about being assaulted by appellants No.3 – Ramprasad and No.4 – Yash Kumar with clubs because of which, he suffered injuries. In cross-examination, his statement has remained unrebutted.

(13) Sahiblal Chandra (PW-7) has stated about his presence in the spot of the incident that has taken place in which the appellants abused, threatened and injured the victims of this case. In cross-examination, he has remained firm on this statement. However, he has also made admission that Sukdev (PW-6), Buneshwar (PW-5) and Tameshwar (PW-3) had been to the house of the appellants demanding to send back Santoshi Bai to her village by using abusive words and also threatening them. He has denied that when the appellants and others were trying to pull out Santoshi Bai from the house of appellant No.3 – Ramprasad, then the incident has taken place. He has further made clear that the incident has taken place on the road and near the canal. However, he has also admitted that Tameshwar (PW-3), Bhuneshwar (PW-5) and Sukdev (PW-6) had assaulted and injured appellant No.3 – Ramprasad

and his wife. However, he has made admission that Tameshwar (PW-3), Bhuneshwar (PW-5) and Sukdev (PW-6) were the persons who had abused and threatened the appellants and he left the spot when the incident started, therefore, he cannot say what has happened later on. This statement made by him makes it doubtful as to his presence during the whole time of the incident. However, he was present when the appellants and the complainant party engaged in a dispute and his statement can be relied upon as the corroborative evidence for this part.

(14) Pyarelal Chandra (PW-8), who happens to be father of appellant No.3 – Ramprasad and grandfather of rest of the appellants, is also witness of the incident, who has supported the prosecution case in his examination-in-chief. In cross-examination, he has denied all the adverse suggestions given to him.

(15) Inspector, Dilip Kumar Mishra (PW-16) stated that on the basis of memorandum statement Ex.P/4 of appellant No.2 – Heman, an axe was recovered and seized vide Ex.P/6. Similarly, appellant No.1 – Gopal Chandra made a statement of memorandum vide Ex. P/3 and on that basis got recovered an axe vide Ex. P/5. Similarly, a wooden club was seized from appellant No.3 – Ramprasad vide Ex. P/12 and another wooden club was seized from appellant No.4 – Yash Kumar Chandra vide Ex.P/18 and thereafter, he completed the rest of the investigation. In cross-examination, this statement has remained unrebutted. Although, the independent witnesses have not supported the version of this witness, but there is nothing to suggest in his cross-examination that he has any personal interest to falsely implicate the appellants, therefore, it

is clear from the statement given by him that the seizure as aforementioned was made from the concerned appellants.

(16) Dr. N.P. Mishra (PW-15) examined Tameshwar (PW-3) and found four incised wounds of various sizes on his right thigh, which were caused by some hard and sharp object, 1 to 4 hours prior to the examination vide his report Ex.P/21. He also examined Bhuneshwar (PW-5) and found one incised wound on the occipital part of the skull. All dimensions are mentioned in the report and the skull bone was visible alongwith the depression of the skull bone vide his report Ex. P/22. He has opined that the injury caused to Bhuneshwar (PW-5) was fatal in nature. He has also examined Sukdev (PW-6) and found one lacerated wound on the left parietal region of the skull and another lacerated wound on the right parietal region of skull with dimensions mentioned in report. One lacerated wound was found on the back of Sukdev (PW-6) as dimensions mentioned and one contusion on the thoracic region was also found. He advised for x-ray examination. The report of the injuries found is Ex. P/23. He has further stated that no bony injury was found to Sukdev (PW-6) after examining the plates of x-ray vide Ex.P/24. In cross-examination, his statement regarding the description of injuries on the body of the injured victims has remained unrebutted.

(17) Yash Kumar (DW-1) has stated that on the date and time of incident Sukdev (PW-6), Tameshwar (PW-3) and Bhuneshwar (PW-5) came armed with axes and clubs; they were exhorting and challenging the appellants using abusive words, threatening and trying to enter into the house of the appellants, at that time, appellant No.3 – Ramprasad

came to the door and asked them not to enter into the house, because of which, appellant No.3 – Ramprasad was assaulted with axes and clubs and he suffered injuries. When his mother came to intervene, she was also assaulted and injured by Bhuneshwar (PW-5). Regarding this incident FIR Ex. D/4 was separately lodged in the police station. Certified copy of the injury reports of Sahiblal Chandra (PW-7) and Jagbai Ex.P/8 have also been produced. In cross-examination, he has denied all the adverse suggestions given.

(18) Harilal (DW-2) has made a similar statement in his examination-in-chief and his statement has remained unrebutted in his cross-examination.

(19) According to the prosecution evidence, at the time of incident a meeting had been called in the house of Bhuneshwar (PW-5) and that is the place where the incident has occurred. The spot map prepared Ex. P/2 shows the place of incident in front of the house of appellant No.4 - Yash Kumar who is the son of appellant No.3 – Ramprasad. Girdhar Das (PW-2) has admitted that the spot map Ex.P/2 was prepared in his presence but he is not a witness of the incident. The main injured witnesses in this case have denied that they had been to the house of the appellants however, one witness Sahiblal Chandra who had been examined as eyewitness in this case and is also witness of the preparation of the spot map Ex. P/2 has made admission in his cross-examination that Tameshwar (PW-3) and Bhuneshwar (PW-5) and others were present in front of the house of appellant No.3 - Ramprasad and had assaulted appellant No.3 - Ramprasad and others with clubs. This

admission made by him comes in support of the defence version and the statement given by defence witnesses.

(20) After close scrutiny of the entire evidence of the prosecution and defence, it is clear that on the date of incident although a meeting was held in the house of Bhuneshwar (PW-5), but the incident of assault did not take place there. On the basis of the evidence, it is clear that the complainant party were challenging and exhorting appellant No.3 – Ramprasad to send back Santoshi Bai, to which he refused, because of which, the incident started when the complainant party assaulted appellant No.3 – Ramprasad and his wife. It is also clear from the evidence that soon after this incident, the appellants reacted and made the assault on the complainant and others and this retaliation to any incident is not an act of self defence. Therefore, the claim made by the appellants with regard to exercise of right to self defence is not made out. On the basis of the findings herein-above, I do not find any reason for interference in the impugned judgment passed by the trial Court regarding conviction against the appellants. However, the prayer for reduction in sentence of the appellants is taken into consideration. Looking to the nature of dispute and the relation of the parties with each other, I am of this view that it is a fit case for reduction in sentence.

(21) After due consideration of the entire material present on record before the trial Court and on the basis of the finding herein-above, this appeal is allowed in part. The conviction imposed upon the appellants by the impugned judgment for the offence under Section 307/34 (twice) of the IPC is reduced to 5 years alongwith fine of Rs.5,000/-, in default of

payment of fine, to further undergo additional RI for 6 months and the conviction and sentence imposed upon the appellants for the remaining offences is maintained as it is.

(22) Accordingly, the appeal is partly allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

Nimmi