

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 39 of 2003

1. Indraman S/o. Loknath Rathore, Aged about 44 years, R/o. Village Putpura, P.S. Janjgir, District Janjgir Champa (C.G.)
2. Gurbari Bai W/o. Indraman Rathore, Aged about 25 years, **(Dead)**

---- **Appellants**

Versus

State of Chhattisgarh, through P.S. Janjgir, District Janjgir Champa (C.G.)

---- **Respondent**

For Appellants : Mr. Rajeev Shrivastava, Advocate.

For Respondent : Mr. Raghvendra Verma, Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

22.06.2020

Prosecution case in brief is that on 28.11.1998 at 11.30 am, FIR (Ex.P-6) was lodged by complainant Ramkrishna Rathore (PW-5), alleging in it that he along with his family members namely Takeshwr (PW-1) younger brother of the complainant, his wife Parvati (PW-7) and niece Chama Bai (not examined) had gone to the field of Shantilal for harvesting the crops. While Chama Bai was grazing the buffalo, appellant No. 2 Gurbari bai, objected and abused niece of the complainant. After that, Ramkrishna (PW-5) objected to Gurbari Bai's act of abusing then she tried to inflict injury him with sickle. When the

complainant tried to ward off the attack, his left finger got chopped off from his hand and then appellant No. 2 Indraman also tried to assault him with stick. Thereafter when his brother Takeshwar (PW-1) came there for rescue of his brother, Gurbari Bai inflicted injury with sickle on his abdomen and left elbow. Based on this FIR, offences under Sections 307, 324/34 IPC was registered against them and they were medically examined vide Ex.P-13 and Ex.P-14. After completion of investigation, charge sheet was filed against the appellants under the same sections followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 30.12.2002 passed in Sessions Trial No. 147 of 1999 has convicted the appellants under Sections 326, 324 and 323 IPC with imposition of sentence of RI for two years with fine of Rs. 10,000/- under Section 326, fine of Rs. 1000/- under Section 324 IPC and fine of Rs. 1000/- under Section 323 IPC with default stipulation. Hence, this appeal.
3. As accused/appellant No.2 (Gurbari Bai) died during the pendency of the appeal on 31.12.2013, her appeal stood abated and dismissed such on in her respect. Now the present appeal is in respect of accused/appellant No.1- Indraman only.
4. Counsel for the accused/appellant attacks the judgment impugned on the ground of number of illegalities and irregularities committed by the Court below in passing the same. He further submits that it is the complainant who was the aggressor to the incident and whatever has

been done by the accused/appellant was in exercise of their right of private defence.

5. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
6. Heard counsel for the parties and perused the material available on record including the judgment impugned.
7. Perusal of the record including the evidence of the victims (PW-1 and PW-5) shows that the main allegation of assault with sickle which led to chopping off the finger of the complainant (PW-5) and causing grievous injuries on his stomach, is against the deceased-accused Gurbari Bai whose appeal has already been dismissed as having become abated. Only allegation against the present appellant is that when the dispute erupting over grazing of buffalo could not be pacified and he was also subjected to abuses by PW-1 and PW-2, he caused a club injury to PW-5. The Doctor who medically examined victim Ramkrishna has stated that injury no. 2 (lacerated wound) caused on his parietal region could have been caused by the club produced before him for examination. But regarding this injury attributed to the sole surviving accused, the doctor has not opined it to be grievous in nature. Witnesses to seizure being PW-6 and PW-8 have also supported the case of the prosecution. Statement of victim

(PW-5) has also been corroborated by PW-2, PW-4, PW-7, PW-8, PW-10, PW-11 and PW-15.

8. Thus in view of the material collected by the prosecution the offence under Section 323 IPC is clearly made out against the accused/appellant herein, and being so the Court below has not committed any legal error in holding the accused/appellant guilty under the said section. His conviction is accordingly maintained.
9. As informed to this Court, the fine amount of Rs. 1000/- which is the only sentence imposed on the accused/appellant, has already been deposited by him and therefore, no order on this count needs to be passed. Appeal is thus dismissed.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/ Santosh