

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 93 of 2005

1. Jai Narayan Singh, S/o Iman Sai, aged about 20 years, Occupation – Agriculture, (**Died**)
2. Kaleshwar @ Budhram, S/o Iman Sai, aged about 25 years, Occupation Agriculture, R/o Village Telaithar, PS Baikunthpur, District Korea (CG). --- **Appellant**

Versus

1. State of CG, through P.S. Baikunthpur, District Korea (CG)
2. Jan Sai, aged about 70 years, R/o Village Telkaidhar, PS Baikunthpur, District Korla (CG). --- **Respondents**

For Appellant	:	Mr. D.N. Prajapati, Advocate.
Respondent/State	:	Mr. Rakesh Sahu, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

29.10.2020

The incident is said to have occurred when victim Jansai (PW-1) tethering his oxen near the school building which was not liked by accused Jai Narayan Singh. It is relevant to mention here that house of the accused/appellants and that of the victim situated adjacent to each other near the said school building. The stand of the victim has been that from the time immemorial he used to tie the animals at the same place which remained un-objected to till then. It so happened on the date of incident that when the victim did not listen to the say of the accused Jai Narayan Singh, he got enraged and started dealing axe blows to him as a result of which the bone of his left hand got fractured and he fell down on the ground. Subsequently, accused Kaleshwar @ Budhram also rushed to the spot carrying crowbar with him and he also caused injuries with it on various parts of his body. The case of the prosecution is that both the accused persons continued their assault even after the victim fell down on the

ground and thus caused multiple fractures on several parts of his body. After hearing the shrieks of the victim his wife Phulkunwar (PW-2) came to the spot and when she tried to intervene in the matter, the accused persons abused her also. Thereafter, on account of the injuries the victim had become almost loathsome which made him to be shifted to the police station on a cot where an FIR (Ex.P-14) was lodged on the basis of which offences under Sections 307, 294, 325, 34 IPC were registered against the accused/appellants. Thereafter, he was taken to Community Health Centre, Baikunthpur and is said to have remained under hospitalization for about 3 months. After completion of investigation charge-sheet was filed against the accused/appellants for the offences mentioned in the FIR but however the charge was framed under Section 307/34 IPC only.

2. Learned Court below after taking into consideration the evidence of the witnesses convicted the accused/appellants under Sections 325/34 IPC and sentenced them to undergo RI for 3 years with fine of Rs.5000/-, plus default stipulation. Hence this appeal.

3. It is pertinent to mention here that one of the accused/appellants namely Jai Narayan Singh died during the pendency of this appeal and this appeal in his respect has been ordered to abate on 21.01.2016. At this stage, this appeal is only in respect of accused Kaleshwar @ Budhram only.

4. Counsel for the accused/appellant submits that the judgment impugned is not based on the proper appreciation of the evidence of the witnesses and therefore, liable to be set aside. According to him the witnesses PW-3, PW-4 and PW-5 namely Mohansai, Sohan

Singh and Rampati happened to be the close relatives of the victim and therefore, their testimony cannot be attached much significance for basing the conviction of the accused.

5. State counsel on the other hand supports the judgment impugned to be fully justified.

6. The evidence of victim (PW-1) makes it manifest that when he did not paid attention to the words of accused Jai Narayan Singh, he got infuriated and started assaulting with the axe and continued with his act even after he fell down on the ground causing number of injuries on various parts of his limbs coupled with fracture. He has also stated that the present accused/appellant also assaulted him with a crowbar and caused number of injuries on his body including fracture on his legs and hands. He has stated that his condition deteriorated to such an extent that he was required to be taken to the police station on a cot and for treatment also he remained hospitalized for about 3 months. He however has admitted that there was no previous dispute between them. PW-2 Phulkunwar – the wife of the victim has also stated that on hearing the cries of her husband she reached the spot and saw her husband being assaulted by the accused/appellants. She has categorically stated that deceased - accused Jai Narayan Singh was assaulted with axe and the present appellant with crowbar. According to her also, the victim remained hospitalized for about 3 months. PW-3 and PW-4 are the hearsay witnesses to the incident who came to know about the assault of the victim by some villagers and then rushed to the police station where they were told by the police people to bring the victim thereto. Rampati (PW-5) – the daughter-in-law of the victim has also stated

that after hearing cries of the victim when she came to the door-step she saw both the accused/appellants assaulting the victim with axe and crowbar. She too has described the specific role stating that accused Jain Narayan Singh was carrying axe and the present appellant was carrying crowbar at the relevant time and used the same for assaulting the victim. Dr. SK Gupta (PW-8) who medically examined the victim and gave his report Ex.P-10 has stated that injury No.1 suffered by the victim on right leg, injury No.3 on left hand, the injury No.4 on the left forearm were grievous in nature though the injury No.2 on the left leg was simple in nature. This witness has categorically stated vide his report Ex.P-12 that those injuries could have been caused by the weapons produced before him for medical examination though from the blunt side. He has further clarified that bones of right thigh, tibia and fibula of right leg and ulna of left arm were found to be fractured. He however has expressed the opinion that in the ordinary course of nature such injuries were not sufficient to cause death yet they could have proved so in case proper and timely medical treatment would not have been made available to the victim. PW-9 - the Investigating Officer has supported the case of the prosecution including seizure of blood stained clothes and the axe as also the crowbar from the accused/appellants.

7. Aforesaid factual discussion speaks a lot that the injuries caused by the accused/appellants were grievous in nature and were caused voluntarily. Being so, the conviction of the accused/appellant under Section 325 IPC cannot be said to be a faulted with warranting any interference by this Court, the same is hereby maintained.

8. Looking to the period of detention which in this case comes to about 7 months and considering the fact that the accused/appellant had already been battling this case for last about last 16 years, this Court does not see any reason in further dispatching him to jail and ruining his settled family life. Accordingly, in the interest of justice the sentence imposed on him is reduced to the period already undergone.

9. Appeal is thus allowed in part with the observations made above.

**Sd/-
(Vimla Singh Kapoor)**

Judge