

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1006 of 2002**

Jairam, son of Ramchandar, caste Gond, aged about 21 years, occupation labourer, resident of Village Korandha, Police Chowki Bhatgaon, P.S. Pratappur, Tahsil Surajpur, District Surguja, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Pratappur, Tahsil Surajpur, District Surguja, Chhattisgarh

--- Respondent

and

Criminal Appeal No.523 of 2003

1. Durga, son of Ramchandar, caste Gond, aged about 28 years, occupation labourer,
2. Ramchandar, son of Ratana, caste Gond, aged about 61 years, occupation labourer

Both are residents of Village Korandha, Police Chowki Bhatgaon, Police Station Pratappur, Tahsil Surajpur, District Surguja, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Police Station Pratappur, Tahsil Surajpur, District Surguja, Chhattisgarh

--- Respondent

For Appellants	:	Shri Atanu Ghosh, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

5.2.2020

1. Since both the appeals arise out of a common judgment, they are heard and disposed of together.

2. The appeals have been preferred against the judgment dated 29.8.2002 passed by 5th Additional Sessions Judge (FTC), Surajpur, District Surguja in Sessions Trial No.137 of 1999, whereby the Appellants have been convicted and sentenced as under:

<u>Appellant</u>	<u>Conviction</u>	<u>Sentence</u>
Jairam	Under Section 307/34 of the Indian Penal Code	Rigorous Imprisonment for 4 years
	Under Section 323 of the Indian Penal Code	Rigorous Imprisonment for 6 months
Durga	Under Section 307/34 of the Indian Penal Code	Rigorous Imprisonment for 4 years
	Under Section 323 of the Indian Penal Code	Rigorous Imprisonment for 6 months
	Under Section 341 of the Indian Penal Code	Fine of Rs.200/- with default stipulation
Ramchandar	Under Section 307/34 of the Indian Penal Code	Rigorous Imprisonment for 4 years
	Under Section 323 of the Indian Penal Code	Rigorous Imprisonment for 6 months

3. Prosecution case, in brief, is that on the date of incident, i.e., 28.1.1999, one goat of Complainant Rajendra Gupta (PW4) was missing and he was in a doubt that the Appellants had killed his goat and buried in their *badi* (fence). He went to the *badi* and started digging there. On this, the Appellants quarreled with him and threatened that they will see him later. On 28.1.1999 itself, at about 6 p.m., while returning from his brother's house, when he

reached near a *tendu* tree, Appellant Durga came in his front, stopped his bicycle and started beating him. Therefore, he, leaving his bicycle, started running away. Then the Appellants made him run and they beat him with lathi. On his shouting, his father Ramgopal (PW8) came there. The Appellants beat his father also with lathi. When his father fell down, they left him there and fled. The matter was reported by Complainant Rajendra (PW4) vide Ex.P7. Both Complainant Rajendra (PW4) and his father Ramgopal (PW8) were medically examined by Dr. Maheshwar Singh (PW1). Medical report in respect of Complainant Rajendra (PW4) is Ex.P2 and that of Ramgopal (PW8) is Ex.P1. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants. Charges were framed against them.

4. In support of its case, the prosecution examined as many as 12 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. No witness has been examined in defence.
5. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellants as mentioned in the second paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the Appellants submits that without there being any clinching evidence on record, the Appellants have wrongly been convicted by the Trial Court. From the statements of Ramgopal (PW8) and Rajendra (PW4), it is established that initially

the quarrel had taken place with Rajendra (PW4) and thereafter when his father Ramgopal (PW8) came there and tried to intervene then he was assaulted. There was no previous enmity between the parties and the quarrel had taken place all of a sudden. After falling down of Ramgopal (PW8), the Appellants left him on the spot and they themselves fled from there. Meaning thereby, they had no intention to kill Ramgopal. Out of the injuries sustained by Ramgopal, only one injury was grievous in nature and rest of the injuries were simple in nature. No deadly weapon was used in the assault. Therefore, it is not established that the Appellants had any knowledge that the injuries of Ramgopal (PW8) could cause his death. Thus, the offence under Section 307 of the Indian Penal Code is not made out. At the most, the Appellants can be held guilty for the offence punishable under Section 325 of the Indian Penal Code. The Appellants have already undergone for about 3 months, therefore, in the alternative, their sentence may be restricted to the period already undergone by them.

7. Learned Counsel appearing for the State/Respondent supports the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. In his Court statement, Complainant Rajendra (PW4) has deposed that on 28.1.1999 at about 6 p.m., when he was returning from his brother's house on his bicycle, on the way, Appellant Durga came in his front, stopped his bicycle and started beating him. Thereafter, Appellants Jairam and Ramchandar also came there

and they also started beating him. When he shouted for his safety, his father Ramgopal (PW8) reached there. Then the Appellants left this witness and started beating his father Ramgopal (PW8). When Ramgopal (PW8) fell down, the Appellants left him there and fled. According to Rajendra (PW4), one week before the date of incident, his goat was missing and for search of his goat he had gone to the *badi* of Appellant Durga. At that time, the Appellants had come there and quarreled with him and they had threatened that they will teach him a lesson. Ramgopal (PW8) has also deposed in similar fashion.

10. Chandrika Singh (PW5) and Smt. Sonkunwar (PW7) have also supported the case of the prosecution. According to Chandrika Singh (PW5), when he reached the spot, he saw that Ramgopal (PW8) was lying there and the Appellants were fleeing from there. According to Smt. Sonkunwar (PW7), when she reached the spot, at that time, she saw that Appellants Durga and Jairam were committing marpeet with Complainant Rajendra (PW4). Thereafter, when all the persons left the spot, she heard noise of a quarrel between the Appellants and Ramgopal (PW8).

11. Dr. Maheshwar Singh (PW1) first examined injured Ramgopal (PW8). His report is Ex.P1 in which he found following injuries:

- (i) Lacerated wound of 3 inches x 1 cm x 1 cm over the forehead,
- (ii) Lacerated wound of 1½ inches x 1 cm x 1 cm over the forehead,
- (iii) Lacerated wound of 3 inches x 1 cm x 1 cm beside injury No.(i),

(iv) Lacerated wound of 1 inch x 1 cm x 1 cm over the right parietal region,

(v) Lacerated wound of ½ inch x 1 cm x 1 cm over the corner of the left eye.

According to this witness, injuries No.(i), (ii) and (iii) were grievous in nature. He also advised for radiological test of injuries No.(i) to (iv). The radiological test was conducted by Dr. M.K. Jain (PW12). According to M.K. Jain (PW12), there was a fracture over frontal skull bone of Ramgopal. Therefore, on what basis, Dr. Maheshwar Singh (PW1) opined that injuries No.(i), (ii) and (iii) of Ramgopal were grievous in nature, has not been explained by him.

12. Dr. Maheshwar Singh (PW1) also examined injured Rajendra (PW4). His report in respect of injured Rajendra is Ex.P2 in which he found that all the injuries of Rajendra were simple in nature.

13. On a minute examination of the evidence available on record, it is clear that the Appellants first beat Complainant Rajendra (PW4) and thereafter beat his father Ramgopal (PW8). It is also clear that earlier there was a dispute with Rajendra (PW4) and, therefore, the Appellants first beat Rajendra. Injuries suffered by Rajendra were simple in nature. On shouting by Rajendra, his father Ramgopal (PW8) reached at the spot. Then beating took place with him also. There was no previous enmity between the Appellants and Ramgopal (PW8). When Ramgopal fell down, the Appellants themselves left him at the spot and fled from there. From the evidence on record, it is well established that there was no intention on the part of the Appellants to commit murder of Ramgopal (PW8). From the injuries sustained by Ramgopal, it is

also established that only one injury was grievous in nature and rest of his injuries were simple in nature. Though one of his injuries was over his frontal skull bone, the said injury was 1 cm deep. In these circumstances, it is not established that the Appellants knowing that Ramgopal (PW8) would die by the injury suffered on frontal skull bone assaulted him. In my considered view, in place of Section 307/34 of the Indian Penal Code, the offence of the Appellants for causing injuries to Ramgopal (PW8) falls within the purview of Section 325/34 of the Indian Penal Code. Thus, the offence of the Appellants under Section 307/34 of the Indian Penal Code is altered to Section 325/34 of the Indian Penal Code. As regards the other offences, the Trial Court has rightly convicted the Appellants. Therefore, rest of the convictions imposed upon the Appellants by the Trial Court are affirmed.

14. So far as sentence part is concerned, the Appellants have already undergone for about 3 months. The incident took place in the year 1999. There was no previous enmity between the parties. Therefore, it would not be in the interest of justice to send the Appellants back to jail after a long period of 21 years. Hence, for the offence under Section 325/34 of the Indian Penal Code, the jail sentence of the Appellants is restricted to the period already undergone by them and for this offence each of them shall also pay fine of Rs.10,000/- within a period of three months from the date of receipt of a copy of this judgment. In default of payment of the fine, they shall be liable to undergo rigorous imprisonment for three months. For the offence under Section 323 of the Indian Penal Code, the jail sentence of the Appellants is restricted to the period already undergone by them. The sentence imposed by the

Trial Court upon Appellant Durga for the offence under Section 341 of the Indian Penal Code is affirmed.

15. Consequently, both the appeals are allowed in part to the extent indicated above.
16. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge