

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 267 of 2005

1. Jawahar Tiwari, Aged about 64 years, S/o. Shri Awadhram Tiwari,
2. Omprakash Tiwari, S/o. Jawahar Tiwari, Aged about 21 years,
3. Gajendra Bhushan S/o. Shri Jawahar Tiwari, Aged about 19 years,

All are resident of village Jarvekhurd, P.S. Janjgir, District Janjgir
-Champa (Chhattisgarh) **---- Appellants**

Versus

State of Chhattisgarh, through Police Station Janjgir, District Jangir
Champa (C.G.)

---- Respondent

For Appellant : Mr. Rajeev Shrivastava, Advocate.
For Respondent : Mr. Raghvendra Verma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

26.06.2020

As per prosecution case, Ranjit Kumar (PW-10) - the resident of Jarvekhurd and Babulal (PW-12) is his brother-in-law. It is alleged that on 29.03.2002 at about 2.30 PM when Babulal (PW-12) was going to Birgahni carrying mutton with him, accused/appellant No. 1 - Jawahar Lal met him near his house and started abusing him. When the complainant party resisted to the abuses, accused/appellant came there armed with *tabbal*, *lathi*, spear, and sword with them and

opened an assault on the complainant party. The incident was witnessed by Latel Kashyap (PW-6), Yashodabai (PW-7) and Laxminbai Kashyap (PW-11). Thereupon, FIR (Ex.P-24) was lodged by PW-10 and the complainants were medically examined vide Ex.P-13-A to Ex.P-15-A. After completion of investigation, charge sheet was filed against the appellants under Sections 294, 323, 324, 325, 506-B and 307/34 IPC followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 17.03.2005 passed in Sessions Trial No. 245 of 2002 acquitted the accused/appellants under Sections 294, 506-B, 307 and 325 IPC but has held them guilty under Sections 324/34 (twice) and 323/34 IPC with imposition of sentence of one year RI with fine of Rs. 500/- under Section 324/34, RI for one year with fine of Rs. 500/- under Section 324/34 and fine of Rs. 500/- under Section 323/34 IPC plus default stipulations. Hence, this appeal.
3. Counsel for the appellants submits that the judgment impugned convicting the accused/appellants under Sections 323/34 and 324/34 IPC is not based on the proper appreciation of the evidence of the witnesses and therefore, liable to be set aside. He further submits that it is the complainant party who was the aggressor to the incident and whatever has been done by the accused/appellants was in exercise of their right of private defence. He submits that there are number of contradictions and omissions in the statements of witnesses which makes the case of the prosecution doubtful.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
5. Heard counsel for the parties and perused the material available on record including the judgment impugned.
6. There are two eye-witnesses to the incident namely Latel (PW-6) and Yashoda (PW-8). They both have categorically supported the case of the prosecution ascribing the role to each accused/appellant armed with deadly weapons such as spear, sword, *tabbal* etc. According to PW-6, accused Jawahar and Ghanshyam caused club injuries to Babulal (PW-12) and according to Yashoda (PW-8) accused Ghanshyam caused club injury to Babulal, accused Omprakash caused spear injuries on his abdomen whereas accused Gajendra caused battle-axe injury to him, as a result of which his hand got broken. PW-8 has further stated that when Laxmin (PW-7) came to intervene in the matter, accused Omprakash caused battle-axe injury on her neck, accused Gajendra caused battle-axe injury on her chest whereas accused Jawahar inflicted a *tabbal* blow which made her fall down on the ground. PW-8 has further stated that while intervening in the matter, Ranjit (PW-10) also suffered injuries at the hands of accused Jawahar with *tabbal* and by accused Ghanshyam with *lathi* on his wrist, abdomen, waist etc., and then taking all to be dead they left the spot. Laxminbai (PW-7), Babulal (PW-12) and Ranjit (PW-10) all injured

witnesses have also supported the case of the prosecution specifying the role played by each of the accused persons in causing injuries by various weapons held by them. Though Radiologist (PW-1) did not find any fracture on any of the victims yet Dr. R.D. Gupta (PW-2), who noticed numbers of injuries on the person of PW-7, PW-10 and PW-12 has stated vide his report Ex.P-14-A, Ex.P-13 and Ex.P-15 that had the proper treatment not been made available to Babulal and Laxminbai, the injuries could have been fatal to their life. Since the testimony of independent eye-witnesses and the injured ones depicts the act of the accused/appellants in opening assault on the victims and thereby causing numbers of injuries on various parts of their body, the trial Court has already taken a lenient view while holding them guilty under Sections 323/34 and 324/34 IPC. Almost all the witnesses have been consistent in deposing the things in the Court as also while making the statement before the Police, and all that, if read in a composite way, the involvement of the accused/appellants in the crime in question is fully established.

7. The discussion made above thus does not make this Court take a view contrary to the one taken by the Court below and therefore, the same is hereby affirmed holding the conviction of the accused/appellants under Sections 323/34 and 324/34 IPC to be well reasoned one.
8. As regards sentence, looking to the fact that the incident had taken place about 18 years back and that by now the accused/appellants have already suffered a lot by fighting a long drawn legal battle since

then, this Court does not see any reason to again disturb their lives by again sending them to jail and therefore, their sentence is reduced to the period already undergone, which comes to about 7 days in this case. Order accordingly. Fine amount is however left as it is.

9. Appeal is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/ Santosh