

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 81 of 2003**

- Ram Kumar S/o. Banas Ram Nishad, Aged About 30 Years
- Shiv Kumar, S/o. Banas Ram Nishad, Aged about 27 years
- Nand Kumar, S/o. Banas Ram Nishad, Aged about 25 years

All r/o. Village Barbhatta, Police Station, Fingeshwar, Rajim,
District Raipur CG

---- Appellants**Versus**

- State Of Chhattisgarh, through Police Station fingeshwar, Rajiml
district Raipur CG

---- Respondent

For Appellants	: Shri Sachin Singh Rajput, Advocate
For Respondent /State	: Shri Sameer Sharma, Dy.GA

Hon'ble Smt. Justice Rajani Dubey**Order On Board By Virtual Hearing****25/08/2021**

This appeal arises out of judgment and order dated 12/12/2002 passed by the Sixth Additional Sessions Judge, Raipur (CG) in S.T. No. 322/2002 convicting the accused/appellants under Sections 307/34 IPC and sentencing them to undergo RI for five years and fine of Rs. 500/- with default stipulations.

2. As the prosecution story unfurls, report was was lodged by

Uber Ram son of the injured alleging that on 13.07.2002 at about 7.00 am, when he was at his shop and his father was constructing boundary wall in the house, he saw two villagers namely Palak Ram and Maya Ram entering his house and returned at once. He has stated that after a while, he heard his mother was shouting that the appellants are assaulting his father with clubs as a result of which he fell unconscious. Report was lodged at police station Fingeshwar and he was taken for medical examination to the hospital at Fingeshwar from where the doctor has referred to Medical College Hospital, Raipur. After investigation, charge sheet was filed against the appellants under Sections 307,34 IPC.

3. In support of its case, prosecution has examined 12 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, considering the entire evidence on record and convicted the appellants under Sections 307,34 IPC and sentenced each of them to undergo 5 years RI with fine of Rs.500/-. Hence the present appeal.

5. Counsel for the appellant submits that the injuries sustained by the injured may heal within 15 days. He submits that as per the statement of the doctor (PW-12) has stated that the injuries were simple in nature. He submits that the accused/appellant has been falsely implicated in the crime in question. He submits that the incident

took place about 19 years back, appellant has already remained in jail for about 5 months and therefore his sentence be reduced to the period already undergone by him.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the accused/appellants is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Close scrutiny of the evidence makes it clear that on the date of incident, accused/appellants went to the house of the injured and finding him alone, with an intention to kill the injured, assaulted with club as a result of which he sustained injuries over his body. Dr. P.Budesia (PW-12) has admitted in his cross-examination that in the X-ray report, no bone injury was found and all the injuries were simple in nature and were not dangerous to life. However, the prosecution did not examine the treating doctor and looking to the X-ray report Ex.P-21 and 26 and the statement of the doctor at Primary Health Centre Fingeshwar, a who has opined that the injuries were simple in nature, I am of the view that the complicity of the accused/appellants in the commission of the offence has been duly proved by the prosecution and thus looking to the act of appellants and the evidence adduced by the prosecution, their conviction under Section 307,34 is altered and instead thereof Section 324 IPC appears to be justified. However, looking to the facts and circumstances of the case and keeping in mind the fact that the incident occurred in the year 2002,

appellants by now must be a middle aged persons, they remained in jail for about 5 months, I am of the view that ends of justice would be served if the sentence imposed on them is reduced to the period undergone by them.

9. Consequently, the appeal is partly allowed. Accused/appellants are reported to be on bail and therefore no further order is required. Their bail bond stands discharged.

Sd/-

(Rajani Dubey)
Judge