

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.159 of 2007

1. Dhananjay Singh, son of Shri Raghunandan Singh, aged about 23 years, Shiksha Karmi, resident of Village Uchhbhatti, P.S. Seepat, District Bilaspur, Chhattisgarh
2. Subhash Singh, son of Shri Aniruddh Singh, aged about 32 years, occupation Service, University, Bilaspur, resident of I.T.I. Koni, Bilaspur, Chhattisgarh
3. Dheeraj Singh, son of Raghunandan Singh, aged about 30 years, occupation agriculture, resident of Village Uchhbhatti, P.S. Seepat, District Bilaspur, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh through the P.S. Koni, District Bilaspur, Chhattisgarh

--- Respondent

and

Criminal Appeal No.205 of 2007

1. Prakash Singh, son of Annirudh Singh, aged about 42 years, resident of I.T.I. Koni, P.S. Koni, District Bilaspur, Chhattisgarh
2. Shakti Singh, son of Prakash Singh, aged about 36 years, resident of I.T.I. Colony, P.S. Koni, District Bilaspur, Chhattisgarh
3. Annirudh Singh, son of Ramsahay Singh, aged about 70 years, I.T.I. Colony, P.S. Koni, District Bilaspur, Chhattisgarh
4. Subhash Singh, son of Annirudh Singh, aged about 32 years, resident of I.T.I. Koni, P.S. Koni, District Bilaspur, Chhattisgarh
5. Yuvraj Singh, son of Prakash Singh, aged about 22 years, resident of I.T.I. Koni, P.S. Koni, District Bilaspur, Chhattisgarh
6. Dheeraj Singh, son of Raghunandan Singh, aged about 30 years, resident of Village Uchhbhatti, P.S. Seepat, District Bilaspur, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through P.S. Koni, District Bilaspur, Chhattisgarh

--- Respondent

For Appellants	:	Shri Goutam Khetrapal, Advocate
For State/Respondent	:	Shri H.S. Ahluwalia, Dy. Adv. Gen.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

4.1.2021

1. The instant appeals have been preferred against the judgment dated 19.2.2007 passed by 8th Additional Sessions Judge (FTC), Bilaspur in Sessions Trial No.111 of 2006, whereby each of the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 147 of the Indian Penal Code	Rigorous Imprisonment for 1 year
Under Section 148 of the Indian Penal Code	Rigorous Imprisonment for 2 years
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- with default stipulation
Under Section 307/149 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- with default stipulation
Under Section 323/149 of the Indian Penal Code (2 Times)	Rigorous Imprisonment for 1 year (2 Times)
	All the sentences are directed to run concurrently

2. It is submitted by Learned Counsel appearing for the Appellants that Appellant No.3, Dheeraj Singh (Criminal Appeal No.159 of 2007) has already died on 4.1.2012 and his death certificate has been filed. In view of the fact, Criminal Appeal No.159 of 2007, so far as it relates to Appellant No.3, Dheeraj Singh, abates. Learned Counsel further submitted that Appellant No.2, Shakti Singh (Criminal Appeal No.205 of 2007) has died on 24.2.2014 and his death certificate has also been filed. Taking into consideration the fact, Criminal Appeal No.205 of 2007, so far as it relates to Appellant No.2, Shakti Singh, abates.

3. Case of the prosecution, in brief, is that on 3.7.2005 at about 9:30 p.m., the Appellants along with 9-10 other unknown persons, with an intent to assault Complainants Ramgopal, Shyam Krishna, Smt. Shakuntala and Shiv Krishna, entered their house and assaulted them, as a result of which they sustained injuries over their bodies. The Appellants also looted one *mangalsutra* of Smt. Shakuntala. On the basis of a report made by the Complainants, offence was registered. On completion of investigation, charge-sheet was filed. Charges were framed against the Appellants.
4. To bring home the offence against the Appellants, the prosecution examined as many as 11 witnesses. The Appellants were also examined under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. No witness has been examined in their defence.
5. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the Appellants submitted that the Appellants have wrongly been convicted without there being clinching and sufficient evidence on record. Ramgopal had not sustained any grievous injury over any part of his body. Therefore, the offence under Section 307 IPC is not made out and the Trial Court has wrongly imposed the conviction under Section 307 IPC. At the most, offence under Section 325 IPC is made out. It is further submitted that now both the parties have amicably settled their dispute and they have also moved an application before this

Court for compounding the offences. It is further submitted that during trial and during pendency of these appeals, the Appellants have remained in jail for about 8 months. It is prayed that since the parties have amicably settled their dispute, the Appellants may be sentenced to the period already undergone by them.

7. On the contrary, Learned Counsel appearing for the State/Respondent supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the entire statements of the Complainants/injured persons Ramgopal (PW8), Shakuntala (PW10), Shyam Krishna (PW11) and Shiv Krishna (PW9). I have also perused the statements of Dr. G.M. Xaxa (PW4), Dr. R.K. Upadhyay (PW6) and Dr. Naresh Krishnani (PW7). From the statements of the injured persons, it is well established that at the time of incident, all the accused persons had entered the house of the Complainants/injured persons. From their statements and the statements of Dr. G.M. Xaxa (PW4), Dr. R.K. Upadhyay (PW6) and Dr. Naresh Krishnani (PW7), it reveals that only Shakuntala (PW10) had sustained grievous injury over her left hand. Ramgopal (PW8), Shyam Krishna (PW11) and Shiv Krishna (PW9) had not sustained any bony injury. Though Ramgopal (PW8) had sustained injuries over his chest and head, both the injuries were of simple nature. His city-scan report also states that he had not sustained any grievous injury. Looking to the above, in my considered view, the Trial Court has wrongly convicted the Appellants for the offence under Section 307/149 IPC. Instead of it, the act of the Appellants falls within the ambit of

Section 325/149 IPC. Therefore, in respect of the injuries of Ramgopal (PW8), the conviction imposed upon the Appellants by the Trial Court is altered from Section 307/149 IPC to Section 325/149 IPC. Rest of the convictions under Sections 147, 148, 450 and 323/149 (Two Times) of the IPC imposed upon the Appellants by the Trial Court are in accordance with the evidence available on record.

9. An application has been moved by Complainants Ramgopal, Shakuntala, Shyam Krishna and Shiv Krishna for compounding the offences. Their statements have already been recorded by the Registry. In their statements, they have categorically stated that they have amicably settled the dispute with all the Appellants. The offence under Section 450 IPC is not compoundable and, therefore, the said application for compounding the offences is allowed with respect to the offences under Sections 147, 148, 325/149 and 323/149 (Two Times) of the IPC only. Consequently, the Appellants are acquitted of the charges under Sections 147, 148, 325/149 and 323/149 (Two Times) of the IPC.
10. As regards the offence under Section 450 IPC, it is submitted that the Appellants have already undergone for about 8 months, they have no criminal antecedent and they are facing the */is* for the last 13-14 years. Both the parties have amicably settled their dispute and now no grievance exist between them. Therefore, it is prayed that for the offence under Section 450 IPC, the Appellants may be sentenced to the period already undergone by them. With regard to Appellant No.2, Subhash Singh (Criminal Appeal No.159 of

2007), it is further prayed that Appellant Subhash Singh is a government employee and since the dispute has already been amicably settled between the parties and now no grievance exist between them, Appellant Subhash Singh may be sentenced to the period already undergone by him and while sentencing him it may be observed that his conviction under Section 450 IPC may not adversely affect his employment under the government.

11. Considering the facts and circumstances of the case including the facts that the Appellants have already undergone for about 8 months, they have no criminal antecedent, the dispute has already been amicably settled between the parties, I am of the view that the ends of justice would be served if the Appellants, for the offence under Section 450 IPC, are sentenced with the period already undergone by them. Ordered accordingly. The sentence of fine of Rs.1,000/- is affirmed. It is also ordered that the government employment of Appellant Subhash Singh and his employment related future prospects shall not adversely affect.
12. Consequently, both the appeals are allowed in part to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge