

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 351 of 2011

1. Baburam, S/o Motiram Suryavanshi, aged about 55 years,
 2. Rameshwar @ Bullu, S/o Baburam Suryavanshi, aged about 28 years,
- Both R/o Village Jalso, Chowki – Pachpedi, PS Masturi, District Bilaspur (CG)

--- Applicants

Versus

State of Chhattisgarh, through Police Station Masturi, Chowki Pachpedi, District Bilaspur (CG)

--- Respondent

For Applicant : Shri Ankul Biswas on behalf of Shri C.K. Kesharwani, Advocate.

For Respondent : Shri Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

28.01.2021

On 26.10.2007 when the complainant Ramdulare Rai (PW-1) was irrigating his land from his own bore-well, one Guharam Suryavanshi had diverted the course of the water towards his own land and when it was objected to by him, accused/applicant Baburam came there and started hurling filthy abuses to Radhe Balram (PW-2). Not only this, accused Baburam assaulted PW-2 with the help of club also. When complainant (PW-1) asked Baburam as to why he was unnecessarily misbehaving PW-2, accused Rameshwar @ Bullu came there carrying rod with him and caused an injury with it on his head. Amendra (PW-5) is also said to have been assaulted by one Fulchand with the help of iron rod and when his brother Jogender (PW-4) came to his rescue, accused/applicant Baburam and Kamal started hurling filthy abuses and also caused club injuries on his head which started bleeding profusely. FIR (Ex.P-1) was lodged on the same day by Ramdulare (PW-1) on the basis of which offence under Section 294, 323/34 IPC were registered against the accused/applicants herein and two others who have been acquitted by lower appellate Court.

After completion of investigation including medical examination of the injured persons *challan* was filed against them under Sections, 294, 323, 325/34 and 324 IPC. The *challan* however was framed against the accused/applicants under Sections 294 on 4 counts, 323/34 on 3 counts and 325/34 IPC.

2. Learned Magistrate vide judgment dated 15.03.2011 passed in Criminal Case No.158/2007 convicted the accused/applicants under Section 323/34 on 3 counts and under Section 325/34 IPC imposing the sentence of fine of Rs.1000/- each under Section 323/34 and RI for 6 months with fine Rs.500/- under Section 325/34 IPC, plus stipulations. Learned lower appellate Court vide judgment dated 17.06.2011 passed in Criminal Appeal No.77/2011 acquitted the two accused persons namely Phulchand and Kamal of all the charges levelled against them but convicted the accused/applicants herein as described above. Hence this revision.

3. Counsel for the accused/applicants submits that when the other accused persons have been acquitted, the accused/applicants herein are also entitled for the same relief as the evidence collected by the prosecution against all of them is one and the same. He also submits that the evidence of the witnesses suffers from number of contradictions and omissions on material particulars and therefore also the same alone cannot be made a basis for conviction of the accused/applicants herein. In the alternative, he made a prayer for reduction of sentence to the period already undergone in case this Court is not inclined to interfere with the conviction part of the judgment impugned.

4. State counsel however supports the judgment impugned and submits that almost all the injured persons have been inflicted injuries by the accused/applicants herein and the seizure of club and iron rod has

also been made on their own memorandum, no fault can be attributed to the judgment impugned leading to interference in this revision.

5. Having heard learned counsel for the parties and perused the evidence of the witnesses it is apparent that it is the accused/applicants herein who had caused injuries to the victims. Injured Jogendra (PW-4) and Amendra (PW-5) have categorically stated that it is accused Baburam and Rameshwar who had caused injuries to them with Lathi and rod. Other witnesses have also corroborated the testimony of these two witnesses. While describing the role played by the accused/applicants, Radhe Balram (PW-2) has also supported the case of the prosecution stating that he was assaulted by accused Baburam with the help of Lathi and the other accused Rameshwar has also inflicted injuries with the help of rod. As regards other accused persons who have been acquitted by the lower appellate Court even PW-1, PW-3 and PW-5 have not stated anything on the basis of which their involvement in the incident could have been proved. PW-4 has also stated that Baburam at the relevant time was carrying club and the other accused Rameshwar was carrying iron rod with him. He has further stated that it is accused Baburam who has caused injuries on the head of Amendra (PW-5) with the help of iron rod. Medical evidence also supports the case of the prosecution where Dr. JP Arya (PW-6) vide his medical report (Ex.P-6) in respect of victim Amendra (PW-5) he has stated that there was lacerated wound on his forehead in the size of 4x3 cm, abrasion and injury in the size of 4x2 cm on his elbow and swelling on his left hand. All these injuries are said to have been caused with the help of hard and blunt object. The medical report of Jogender (PW-4) which is marked as Ex.P-3 also goes to show the swelling on fifth metacarpal bone, pain was complained on his ladyfinger and on X-ray being done his fifth metacarpal bone was found to be fractured. The injuries suffered by Jogender (PW-4) has been opined to be grievous in nature. Radiologist (PW-9) has also corroborated the

testimony of PW-6 and confirmed the fracture on the fifth metacarpal bone of PW-4. Not only this, the evidence of PW-8 also goes to show that the seizure of club was made from accused Baburam under Ex.P-8 whereas that of iron rod was made from Rameshwar under Ex.P-9.

6. In aforesaid view of the factual discussion, this Court is of the considered opinion that there is no illegality or infirmity in the findings recorded by the lower appellate Court while maintaining the conviction of these accused/applicants under Sections 323/34 and 325/34 IPC as almost all the witnesses have stated regarding their active involvement in the crime in question. The conviction of the accused/applicants herein being based on the testimony of the witnesses does not require any interference in this revision. The same is hereby maintained.

7. As regards sentence, keeping in mind the fact that sufficient long time has elapsed from the date of incident i.e. 26.10.2007 and that by now the accused/applicants have already remained inside for 17 days, this Court is not inclined to again send them behind the bars and thereby unsettle their already settled family life. Being so, the sentence imposed on the accused/applicants is reduced to the period already undergone.

8. Revision thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/Ajay