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**(2018) 06 CHH CK 0195**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 522 Of 1999

Keshwar And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** June 28, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 147, 148, 149, 307, 323
- Code Of Criminal Procedure, 1973 - Section 313, 357

**Hon'ble Judges:** Pritinker Diwaker, J

**Bench:** Single Bench

**Advocate:** Sandeep Shrivastava, Ravindra Agrawal

**Final Decision:** Partly Allowed

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**Judgement**

Pritinker Diwaker, J

1. This appeal is directed against the judgment of conviction and order of sentence dated 12.2.1999 passed by Additional Sessions Judge Ambikapur,

District Sarguja in Sessions Trial No. 21/1992 convicting the accused/appellant Ramsevak under Section 148, all the accused/appellants u/s 307/149

and 323 and accused/appellants Keshwar, Satunath, Shivnath, Chutai, Hena @ Hiranman and Balmukund u/s 147 IPC. Under Section 148

accused/appellant Ramsevak has been sentenced to undergo RI for three years, under Sections 307/149 and 323 all the accused/appellants have been

sentenced to undergo RI for seven years and one year respectively, and under Section 147 accused/appellants Keshwar, Satunath, Shivnath, Chutai,

Hena @ Hiranman and Balmukund have been sentenced to undergo RI for one year. All the sentences have been made to run concurrently.

2. Facts of the case in brief are that on 2.9.1991 FIR (Ex. P-24) was lodged by Hussain (PW-6) to the effect that on that day at about 10 AM the

accused/appellants herein along with others went to the field being ploughed by his brothers Hamid (PW-8) and Juldan (PW-7) and caused injuries to

them with club and Tabbal. Based on this FIR, offences under Sections 147, 148, 149 and 307 IPC were registered against the present

accused/appellants and others. Hamid (PW-8) was medically examined by Dr. B.R. Sharma (PW-2) vide report (Ex. P-2) mentioning swelling on

both the legs and the injuries being simple in nature. Juldan (PW-7) was also medically examined by the same doctor vide report (Ex. P-5) mentioning

cut injury on head, swelling in right thigh and back. Query report Ex. P-7 shows that injury No.1 being compound fracture on right temporal and frontal

bone was dangerous in nature. After completion of investigation, charge sheet was filed by the police against 11 accused persons for the offences as

mentioned in the FIR followed by framing of charge by the Court under sections 147, 148, 149, 307/149 and 323 IPC.

3. So as to hold the accused/appellants guilty, prosecution has examined 09 witnesses in support of its case. Statements of the accused persons were

also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence

and false implication in the case.

4. After hearing the parties, the trial Court acquitted co-accused Sukhram, Bhagwat, Bholu and Jamaluddin of the charges levelled against them but

has convicted and sentenced the accused/appellants herein as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submits that during the pendency of appeal accused/appellant No.1 namely Keshwar has expired and therefore

the present appeal relates to accused/appellants No. 2 to 7. He further submits that he is not pressing this appeal as regards it challenges the

conviction part of the judgment impugned and would confine his arguments to the sentence part thereof only. According to him, as some

accused/appellants are in their sixties and some in seventies, all not keeping good health and now ready to keep peace in the village and looking to the

fact that incident had taken place about 27 years back, that they have already remained inside for about three months and that they are ready and willing to suitably compensate Juldan (PW-7) sentences imposed on them may be reduced to the period already undergone.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below

convicting and sentencing the accused/appellant as mentioned above are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence on record.

8. Juldan (PW-7) has stated that on the date incident when he along with Hamid (PW-8) and one Kareemulla was ploughing the field,

accused/appellants came there carrying club and Tabbal and deceased/accused Keshwar exhorted to kill them. According to this witness, accused

Setunath caused injuries to PW-8 with club. Accused Setunath and Balmukund held him up and accused Ramsewak caused injury on his head with

Tabbal as a result of which he became unconscious and regained consciousness in the hospital. Hamid (PW-8) - another injured witness has also

supported the case of the prosecution stating that on the date of incident when he along with PW-7 and one Kareemulla were ploughing the land,

accused/appellants came there, started abusing and then accused Shivnath caused club injuries on his leg. According to him, deceased/accused

exhorted others to kill them. Thereafter, accused Setunath and Balmukund caught hold of PW-7 and accused Ramsewak caused him axe injuries on

his temple as a result of which he fell down on the ground. Hussain (PW-6)- an independent eyewitness to the incident has also supported the case of

the prosecution stating that the accused/appellants caused injuries to PW-7 and PW-8 with club and axe on the exhortation of accused Keshwar. Dr.

B.R. Sharma (PW-2) is the witness who medically examined PW-7 and gave his report Ex. P-5 stating that he noticed incised wound over right side

of scalp in the size of 8 x 3 x 4 cm, contusions on the right thigh in the size of 10 x 3 cm, yet another contusion on the right side of back in the size of

10 cm x 3 and  $\hat{A}\frac{1}{2}$  cm. Query report Ex. P-6 shows that injury no. 1 being compound fracture of temporal bone was dangerous and in the absence of

immediate treatment the injured would have died. R.K.S. Jaisindhu (PW-9) is the investigating officer who has duly supported the case of the prosecution.

9. Having thus perused the material available on record including the evidence of injured PW-7, PW-8, one independent eyewitness (PW-6) and that of the doctor (PW-2) who among many has opined injury No.1 suffered by PW-7 to be dangerous to life, this Court is of the considered opinion that the trial Court was justified in convicting the accused/appellants as mentioned above and there is no infirmity or illegality in the same. Accordingly, the conviction part of the judgment impugned is maintained.

10. As regards sentence, considering the fact that the incident had taken place about 27 years back, that by now some accused/appellants are in their sixties and some in seventies, that henceforth they undertake to keep piece in the village, that they have already remained in jail for about three months and most importantly they are ready and willing to adequately compensate the injured in terms of Section 357 of the Code of Criminal Procedure, this Court is of the opinion that ends of justice would be served if the sentence imposed on them is reduced to the period already undergone. Ordered so.

Each of the accused/appellants is directed to pay Rs. 5000/- totaling to Rs. 30,000/- out which Rs. 25,000/- would be given to injured Jaldan (PW-7) and remaining Rs. 5,000/- would go to injured Hameed (PW-8). Let this amount be deposited by the accused/appellants in the Court below within a period of six months or they will be required to be sent to jail for a period of six months.

11. Appeal is thus partly allowed to the extent indicated above.

12. As regards accused/appellant Keshwar, the appeal abates in view of the statement of the counsel for the parties that he died during the pendency of the appeal.