

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQUITTAL APPEAL NO. 214 OF 2015**

Suryakant Dindore S/o Shankar Das Dindore, R/o Mohbhatha Road,
Behind C.S.E.B. Office, Ward-7, P.S. Bemetara, District Bemetara (CG)

... Appellant**Versus**

1. Mayank Soni S/o Vinod Soni, aged about 35 years, R/o Sumbalpur, P.S. Nandghat, Bemetara (C.G.)
2. Suraj Chouhan S/o Govardhan Singh Chouhan, aged about 32 years, R/o Village Banshankar, P.S. Simga, District Balodabazar (C.G.)
3. Pawan Verma S/o Shankar Lal Verma, aged about 31 years, R/o Village Banshankar, P.S. Simga, District Balodabazar (C.G.)
4. Manish Chobey S/o Shiv Prasad Chobey, aged about 32 years, R/o Sumbalpur, P.S. Nandghat, Bemetara (C.G.)
5. Ramdhar Rajek S/o Baldau Ram Rejak, aged about 32 years, R/o Sumbalpur, P.S. Nandghat, Bemetara (C.G.)
6. Laxman Yadav S/o Ram Kumar Yadav, aged about 32 years, R/o Sumbalpur, P.S. Nandghat, Bemetara (C.G.)
7. Kapiesh Chobey S/o Shiv Prasad Chobey, aged about 38 years, R/o Sumbalpur, P.S. Nandghat, Bemetara (C.G.)
8. Ashish Chobey S/o Shiv Prasad Chobey, aged about 28 years, R/o Sumbalpur, P.S. Nandghat, Bemetara (C.G.)
9. Atish Chobey S/o Shiv Prasad Chobey, aged about 26 years, R/o Sumbalpur, P.S. Nandghat, Bemetara (C.G.)
10. Nitish Chobey S/o Shiv Prasad Chobey, aged about 24 years, R/o Sumbalpur, P.S. Nandghat, Bemetara (C.G.)
11. State of Chhattisgarh, through District Magistrate, Bemetara, District Bemetara (C.G.)

... Respondents

For Appellant	:	Mr. Maneesh Sharma and Mr. Pragalbha Sharma, Advocates.
For Respondent-State	:	Mr. UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per NAVIN SINHA, C.J.****30/10/2015**

1. Heard Learned Counsel for the Appellant and the State.

2. The Appellant, an injured witness, assails acquittal of the Respondents from the charge under Sections 148, 294, 506-B, 307/149, 325/149, 324/149 and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, by the Special Judge (Atrocities)/Sessions Judge, Bemetara, dated 29.11.2014, in Sessions Trial No. 54 of 2007.

3. Learned Counsel for the Appellant submitted that the Trial Judge has erred in application of the law by holding that the Respondents did not constitute an unlawful assembly because they suddenly happened to chance upon PW-2 Awadhesh Dehre on the road and that they had not come together with an unlawful object. Unlawful object can develop on the spot also and it is not necessary that there must be previous meeting of minds to display common object. The moment the Respondents caught hold of the collar of PW-2 Awadhesh Dehre on the road and assault followed, common object developed on the spot. It was next submitted that the injuries sustained by the prosecution witnesses has not been considered properly and there is erroneous appreciation of evidence in rejecting the same as irrelevant merely because the weapon of assault used by the Respondents have not been recovered. It was lastly submitted that with regard to the same incident there was a case and counter case. Both ought to have been tried together. The Trial Judge has got swayed by the fact that the prosecution witnesses had already been convicted under Section 302 IPC and other allied Sections, in the counter case which unfortunately concluded earlier.

4. We have considered the submissions and are of the opinion that the order of acquittal calls for no interference.

5. According to accusations, PW-2 Awadhesh Dehre on 28.8.2007 was going to the house of his brother, Ramesh Dehre along with PW-3, Bhakt Prahalad. The Respondents were travelling in their car and had a chance meeting at the cross-roads. There is no evidence that they had come together for purposes of assault or were generally on the lookout for the witness. The assault followed with a *Farsha*, a wooden bait, *lathi* and iron rod. The Appellant, PW-7, was also alleged to have been injured. The police report was lodged on 29.8.2007 at 4:30 a.m. by PW-2 Awadhesh Dehre. In his court deposition he reiterated that he was going with PW-3 Bhakt Prahalad. The Respondents were not present since earlier, but suddenly emerged while he was crossing and stopped their car. PW-3, Bhakt Prahalad went completely hostile stating that he had heard that some assault had been made on PW-2 Awadhesh Dehre. He did not talk of any assault made by the Respondents with any weapons. The accusations of the Respondents having abused PW-2 Awadhesh Dehre also collapsed because of PW-3 Bhakt Prahalad going hostile. It is not the case of PW-2 Awadhesh Dehre that he was accompanied by any other except PW-3, Bhakt Prahalad when he was stopped and assaulted. PW-2 Awadhesh Dehre himself did not support the accusation of foul abuses used by the Respondents during his court deposition, much less did he mention nature of abuse by each. According to the Appellant, PW-7, he was at his house when he heard the shouts and abuses, which obviously means he was not present at the time of occurrence. PW-2 Awadhesh Dehre in his court deposition did not make any statement supporting his police statement that the Respondents had threatened to kill.

6. PW-9, Dr. Hridayanarayan Gupta, the Medical Officer who conducted the MLC of PW-2 Awadhesh Dehre, found all the injuries on PW-2 to be simple in nature and none of the injuries were on any

sensitive part of the human body much less that it was likely to cause death. PW-10, Reshamlal Bhaskar, the Investigating Officer, has also deposed that he did not see any external injuries on the witness of a nature likely to cause death. The Trial Judge has also noticed that originally PW-2 Awadhesh Dehre had not lodged the FIR under Section 307/149 IPC. After submission of charge-sheet, Section 307 was added as an afterthought despite absence of any injuries of a nature to attract that provision.

7. The Appellant did not disclose that any of the Respondents had assaulted him. The Respondents are alleged to have called PW-2, Awadhesh Dehre as “Chamar”, but he was a “Satnami”. Calling by caste name in absence of any intention to do so for humiliating, the charge had rightly been held not to have been proved.

8. Lastly and not least important, PW-2 Awadhesh Dehre in his cross-examination at paragraph 14 acknowledged that they had already been convicted in the counter case for murdering Pawan Rajput accompanying the Respondents and was undergoing imprisonment himself. The Trial Judge has not passed the conviction on basis of any finding against the Appellant in the counter case but has arrived at his own independent conclusion for the failure of the prosecution to establish the accusation. It can therefore be said safely, in the facts of the case that the Respondents had acted in self defence. We therefore find no reason to interfere with the order of acquittal.

9. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge