

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 07/02/2017****Judgment delivered on: 28/04/2017****Criminal Appeal No.510 of 2000**

1. Rajendra aged about 30 years S/o Chhote Lal, occupation-Laborer, Gram Ghorda, P.S. Lalbagh, District-Rajnandgaon, M.P.
2. Bhagwan Das, aged about 43 years S/o Bhanwar Singh, occupation-Laborer, Gram Ghorda, P.S. Lalbagh, District-Rajnandgaon, M.P.
3. Shatrughan, aged about 45 years S/o Hazari, occupation-Laborer, Gram Ghorda, P.S. Lalbagh, District-Rajnandgaon, M.P.
4. Raghu, aged about 40 years S/o Purshottam, occupation-Laborer, Gram Ghorda, P.S. Lalbagh, District-Rajnandgaon, M.P.
5. Hemlal, aged about 35 years S/o Phool Singh, occupation-Laborer, Gram Ghorda, P.S. Lalbagh, District-Rajnandgaon, M.P.
6. Nirmal Jain, aged about 42 years S/o Kailash Chandra Jain, occupation-Laborer, Gram Ghorda, P.S. Lalbagh, District-Rajnandgaon, M.P.

---- Appellants**Versus**

- State of Madhya Pradesh (now Chhattisgarh) through P.S. Lalbagh, District Rajnandgaon, Chhattisgarh.

---- Respondent

For the Appellants : Shri R.S. Marhas & H.S. Ahluwalia, Advocate.
For the State : Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment****28/04/2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the learned First Additional Sessions Judge, Rajnandgaon, M.P. in Criminal Case No.844/1996 on 31.01.2000 by which the appellants were convicted under Sections 147 and 367 read with Section 149 of Indian Penal Code (for the short 'IPC') and each of them was sentenced with to R.I. for a period of 3 months and R.I. for a period of 3 years with a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months with a direction to run the sentences concurrently.
2. The case of prosecution in brief is this, that complainant Tuleshwar Sahu PW/5 was member of Janpad Panchayat, Dongergaon. On the intervening night on 14.11.1996 at about 1:00 a.m. at night, appellants came to his place of residence and informed him that a meeting is scheduled in Village-Ghorda, where he is required to go, as complainant was the reason of dispute and he has to resolve it. Complainant Tuleswar PW/5 refused to go, then he was forcefully dragged, beaten and forced to sit in a jeep. Complainant raised alarm, after hearing his cry villagers came on the spot looking to which, appellants ran away from the spot, injuries were caused to the complainant. On his information, FIR Ex.P/10 was recorded in P.S.-Lalbagh, District-Rajnandgaon against the appellants and co-accused persons,

offences were registered under Sections 294, 506-B/34, 147, 148 and 149 of IPC. While investigating the case Tuleswar Sahu PW/5 was medically examined in which, he was found to have suffered grievous bony injuries. Clubs were seized from the possession of appellants Raghuram and Hemlal vide Ex.P/1 and Ex.P/2, a jeep bearing Registration No.M.P.23B-4491 was seized vide Ex.P/3. Spot map Ex.P/14 was prepared by Investigating Officer. Seized articles were examined by the Dr. Rajesh Sharma PW/10 and the record of medical treatment of appellant was collected. Statement of witnesses were recorded under Section 161 of Cr.P.C. On completion of investigation, appellant and co-accused Bhuwan Lal and Ashok Kumar were charge-sheeted.

3. Appellants were charged under Section 147, 367, 325 and 506 read with Section 149 of IPC. Appellant and other co-accused persons denied the charges. Prosecution has examined as many as 10 witnesses. On examination under Section 313 of Cr.P.C. appellant and co-accused persons denied all the incriminating evidence against them, pleaded innocence and false implication. No witnesses were examined in defence. The impugned judgment was passed by which the appellants stand convicted and sentenced, as mentioned above. Co-accused Bhuwan Lal and Ashok Kumar were acquitted of all the charges.
4. The grounds in this appeal are these, that no incident took place at 1:00 a.m. on the night of 15.11.1996. On the contrary, complainant Tuleswar PW/5 and his companion Mohar Lal jointly

assaulted appellant Nirmal Jain at 8:00 am on 15.11.1996 causing him injuries, who has been medically examined by Dr. C.S. Mahobe PW/4 vide Ex.P/4. Ramswaroop Sahu PW/7, who claimed to be an eye witness is not mentioned in the FIR Ex.P/10, hence, his deposition was unreliable. Trial Court has erroneously passed a judgment convicting the appellants on the basis of sole eye witness Tuleswar PW/5. The statement of Tuleswar PW/5 and Ramswaroop Sahu PW/7 are full of contradictions and omissions on material particulars which could not have been made the basis of conviction. The defence version was wrongly rejected by the trial Court. On this ground, acquittal is prayed for.

5. It is submitted by counsel for the appellants, that as alleged by prosecution the incident in question took place at about 1:00 a.m. on 15.11.1996, but the report was lodged at 8.30 a.m., in the morning. This delay has not been explained by the prosecution witnesses. There is evidence regarding the meeting held on 14 and 15 November, 1996 and the defence of appellants that another incident took place at 8:00 a.m. of 15.11.1996 which falsifies the prosecution case. The injuries caused to the appellant-Nirmal Jain has been proved in this case and no explanation has been offered in this respect. There is no such evidence to make out that there had been a case of kidnapping or abduction. Hence, for these reasons, appellants are entitled to be acquitted.

6. Considering the material on record and the arguments submitted from both the sides the question in this appeal is, whether the conviction against the appellants is supported by evidence of prosecution beyond all reasonable doubt ?
7. The important witnesses of this case are Tuleswar Sahu PW/5, Kejuram PW/6, Ramswaroop Sahu PW/7 and Bhelas Sahu PW/8. Tuleswar Sahu PW/5 has stated that on the night of 14.11.1996 at about 1:00 a.m. he heard knock on the door of his residence. On opening and coming out of the door, he saw the appellants who used abusive words for him and he was beaten and dragged by the appellants and taken to a jeep. In the meanwhile, brothers of complainant and other villagers came on the spot. Brother Kanhaiya Lal pulled out the complainant from the jeep whereafter the appellants ran away from the spot. Injuries were caused to the complainant by the appellants. He has stated about the recording of FIR Ex.P/10. In cross-examination, he has stated that he gave telephonic information to P.S.-Lalbagh in Rajnandgaon at about 2.30 am then police arrived at 6:00 a.m. in the morning. He came with the police party to Rajnandgaon at about 8.30 p.m. He denied knowledge about any injuries caused to appellant-Nirmal Jain and about lodging of any report by appellant No.1 Nirmal Jain. On going through the whole cross-examination, there seems to be no statement which can be considered as materially contradicting his statement in examination-in-chief. Some improvement and

extra details given by this witness on account of questions put to him are of no consequence. His statement about appellants arriving at his place of residence thereafter by dragging and beating him and forcefully trying to put him in a jeep remains un rebutted.

8. Kejuram PW/6 is a neighbor of Tuleswar PW/5, hearing the commotion at the time of incident he came out in his house and saw that complainant Tuleswar PW/5 being helped by Kanhaiya, Uttam and Bhaiyaram in getting down from a vehicle, he saw appellants present on the spot and also saw complainant Tuleswar Sahu PW/5 having injuries on his body. He did not make any direct statement against the appellants; prosecution declared him hostile and leading questions were put to him in which, he admitted that when he arrived on the spot he saw appellants surrounding the complainant Tuleswar PW/5 and others helping Tuleswar PW/5 to get down from a jeep. In cross-examination of this witness, there is no such statement so as to contradict or rebut his statement in examination-in-chief. This witness has although not narrated about the particular of the incident, but the statement given by him as relevance according to which, he saw the appellants present on the spot and by the help of the other persons complainant Tuleswar Sahu PW/5 was getting down from the jeep. Hence, it is sufficient to corroborate the statement of Tuleswar Sahu PW/5.

9. Ramswaroop Sahu PW/7 has stated that at the time of incident,

he was woken up by the wife and children to Tuleswar PW/5. On their giving information about the incident, he along with his other brothers came to the spot and saw that his brother Tuleswar Sahu PW/5 was sitting in a jeep and appellants were also present in the jeep. He acted to rescue Tuleswar PW/5 by helping him out of the jeep and while doing so, he also suffered some injuries. He saw Tuleswar PW/5 in injured condition. He has been declared hostile by the prosecution for omissions of some part of his previous statement. On leading question being put to him by the prosecution, he has further admitted that telephonic information was given to the police, the police party arrived in the village and then the report was lodged in the police-station. There is no statement in his cross-examination, which can be considered as contradicting or rebutting his statement in examination-in-chief.

10. Bhelas Das PW/8 has supported the prosecution version. He is brother of Tuleswar PW/5. He has stated that he was present on the spot where the incident took place and helped in the rescue of his brother. There is no statement in rebuttal in his cross-examination. Rest of the witnesses are examined about the investigative procedures. Kaliram PW/1, Tulsiram PW/2 and Pursottam PW/3 are witnesses of seizure memo Ex.P/1, Ex.P/2 and Ex.P/3. S.I. PW/9 has proved the investigation, no question is raised by the appellants about the investigation made in the case.

11. Dr. Rajesh Sharma PW/10 examined Tuleswar PW/5 on 15.11.1996 found six injuries on his body vide his report Ex.P/13A and advised for X-ray examination of four of the injuries caused. He also examined Ram Swaroop PW/7 vide Ex.P/12A and found injuries on his body. He has also stated about examining appellant-Nirmal Jain vide Ex.P/16A finding injuries on his body. Dr. C.S. Mahobe PW/4 conducted X-ray examination of Tuleswar PW/5 and vide his report Ex.P/7 found 1 fracture on metacarpal bone of left hand. He also conducted X-ray examination for appellant Nirmal Jain and found one fracture on his right scapula region vide Ex.P/4. His statement has remained unrebutted.

12. The statement of prosecution witnesses is supported by medical evidence about finding of injuries coupled with fracture, which indicates that Tuleswar PW/5 was assaulted and beaten in the incident. Similarly, the defence raised by the appellants also finds partial support that appellant Nirmal Jain suffered injuries coupled with a fracture.

The grounds in defence that no incident took place at 1:00 a.m. of 15.11.1996, needed to be specifically proved by the defence and also that the only incident that took place occurred in the morning at 8:00 a.m. of 15.11.1996 also needed to be specifically proved by the defence. No question was put regarding occurrence of incident at 8:00 a.m. of 15.11.1996 to Tuleswar Sahu PW/5, Kejuram PW/6, Ramswaroop PW/7 and Bhelas PW/8 S.I. C.L Tiwari PW/9 has

admitted in his cross-examination, that appellant Nirmal Jain was sent for medical examination but denied that any report was lodged by appellant Nirmal Jain at 8:00 a.m. on the date of incident that he was assaulted by PW/5 and others and also denied the suggestions about falsely implicating the appellant.

13. It is submitted by the learned counsel for the appellant that no explanation has been given, as to how the injuries were caused to appellant Nirmal Jain, hence, looking to the presence of injuries on the body of appellant Nirmal Jain, a case of right of private defence is made out.

14. Reliance has been placed on the judgments of **Ravishwar Manjhi and others Vs. State of Jharkhand** reported in **(2008) 16 SCC 561** and **Mano Dutt and another Vs. State of Uttar Pradesh** reported in **(2012) 4 SCC 79**. The principle laid down in these cases by the Apex Court is clear that the onus is on the person claiming the right of private defence. It was not proved in this case that appellants exercised the right of private defence. No question was put to any of the witnesses about the injuries caused to the appellant Nirmal Jain. Further, no witness was examined in defence.

15. Learned counsel for the appellant submits that the failure to explain injuries on the person of accused affects the credibility of prosecution case. Reliance has been placed on **Anil Kumar Vs. State of Uttar Pradesh** reported in **(2004) 13 SCC 257** and

Sucha Singh and another Vs. State of Punjab reported in **(2003) 7 SCC 643**. It was held in Sucha Sing's case that Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence.

The prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

16. It is fact that appellant-Nirmal Jain was found to have suffered injuries, but there is no explanation whether the injuries were caused to him in the same incident or not. In defence evidence Anand Ram DW/1 has stated that at about 8:00 to 8.30 a.m., he was on his way to mines when he saw that Tuleswar PW/5 and other were assaulting and beating the appellant Nirmal Jain. Police-man also arrived on the spot and they also gave beating to Nirmal Jain, who was taken to the police-station. In cross-examination, he has denied any knowledge about the incident that took place with Tuleswar PW/5 and also denied adverse suggestions, though he has admitted that he is giving statement for the first time. Nain Kunwar Bai DW/2 stated that she saw Tuleswar PW/5 and others beating appellant Nirmal Jain in front of her shop. No date and time has been given by her. Bharat Sahu DW/3 has stated similarly. On perusing and scrutinizing the

defence witnesses, it is nowhere made out that any incident of this kind which has happened according to these witnesses was connected with the incident that took place that complainant Tuleswar PW/5 on 15.11.1996. After categorical denial by investigator of the case S.I. C.L. Tiwari PW/9 about lodging of any a report by appellant Nirmal Jain, the evidence brought in defence seems to be unconnected with the present incident.

17. As per the defence case, the injuries were caused to appellant- Nirmal Jain in a separate incident that took place at 8:00 a.m. of 15.11.1996 and defence has totally failed to establish that it was the only incident that took place on 15.11.1996 at 8:00 a.m. Secondly, the defence of right of private defence has also failed as no plea was taken in defence that appellant was defending himself in the incident that took place at 1:00 a.m. on 15.11.1996. Hence, after scrutinizing and analyzing the evidence of prosecution and defence, it is found that there is no reason to disbelieve the prosecution evidence and similarly there is no any substance in the defence raised by the appellants side.

18. The conviction of appellants under Section 367 of IPC needs examination under Section 367 of IPC

the necessary ingredient to be proved in this case is that abduction of a person in order that abducted person may be subjected to grievous hurt, or slavery or the unnatural lust of any person.

There is absolutely no evidence on this point that the

intention of the appellants had been of this kind while forcefully taking or abducting the complainant Tuleswar PW/5. On the contrary, the evidence of prosecution discloses that appellant forcefully wanted to take the complainant Tuleswar PW/5 in a meeting for resolution of some dispute, which is not a reason to be considered as ingredient of Section 367 of IPC. Hence, the case of appellant falls under the definition of abduction under Section 362, which is punishable under Section 363 of IPC.

19. Although, it appears to be a case of abduction which falls under the definition of Section 362 of IPC, but the abduction could not materialize in real sense as Tuleswar PW/5 was dragged and forcefully made to sit on the jeep when his brothers and other witnesses came to his rescue and rescued him. This is a circumstance in this case, which seems to be a point for consideration for reduction of sentence.

20. Considering the fact that the incident took place on 15.11.1996, more than 20 years have elapsed after the date of incident and that the purpose of appellants in forcefully taking the complainant Tuleswar PW/5 had been to ensure his appearance in a meeting for resolution of some dispute between them, this can not be regarded as a hardcore criminal act on the part of the appellants. Hence, this is a case where awarding of minimum sentence will be a sufficient punishment for the appellants.

21. In the result, considering all the facts, and circumstances and

the law applicable in this case this appeal is allowed in part. The conviction and sentence under Section 367/149 of the IPC in the impugned judgment is interfered with and set aside the conviction under Section 147 of IPC is maintained but sentence is set aside instead of that appellants are convicted under Section 363 read with Section 149 of IPC. For the offence under Section 147 of IPC all the appellants are sentenced with fine of Rs.1000/-, in default of payment of fine they shall further undergo S.I. for 1 month, for offence under Section 363 read with Section 149 of IPC, each of the appellant is sentenced with imprisonment of till rising of the Court and fine of Rs.2000/-, in default of payment of fine they further undergo S.I. for 2 months. Appellants are directed to give appearance before the trial Court on **08/05/2017** for undergoing the sentence of imprisonment and for payment of fine as ordered by this Court. The sentence of fine awarded by the trial Court if already paid shall be adjusted with fine to be realized from the appellant/accused persons as ordered by this Court.

Sd/-

(Rajendra Chandra Singh Samant)

Judge