



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 925 of 2000

1. Bhaiyyalal, S/o Vishal Sahu, aged about 45 years,
2. Rama S/o Rewaram Sahu, aged about 36 years,
3. Devnath S/o Rewaram Sahu, aged about 23 years,
4. Bhaghirathi S/o Rama Sahu, aged about 18 years,
5. Narath S/o Sauk Sahu, aged about 35 years,
6. Sauk Ram S/o Jheru Sahu, aged about 55 years,
7. Loknath S/o Rewaram Sahu, aged about 28 years,

All resident of Village Dhora-Bhatha, P.S. Magarlod, Distt. Dhamtari (M.P.) (Now Chhattisgarh)

---- Appellants

Versus

- The State of Madhya Pradesh (Now Chhattisgarh), Through P.S. Magarlod, District Raipur, (C.G.) (Now District Dhamtari, Chhattisgarh)

---- Respondent

For Appellant :

Shri A.K. Prasad, Advocate

For Respondent/State :

Shri Vijay Bahadur Singh, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

03/01/2017

1. This appeal has been preferred against the judgment passed by Special Judge, Special Court, Raipur constituted under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Special Sessions Case No. 14/97, passed on 25/03/2000, whereby the

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deceased-appellants No. 1 & 2 and remaining appellants were convicted under Section 147 of Indian Penal Code and sentenced with RI for 8 months, under Section 452 of IPC and sentenced with RI for two years and fine of Rs. 250/- with default stipulation and under Section 323 of IPC awarding sentence of six months RI to each of the convicted accused persons respectively.

2. The case of the prosecution in brief is that on 06/01/1997 at about 6.30 a.m. in the morning complainant Gitaram (PW-1) was taking bath in the village pond of village Dhourabhatha, at the same time village girls Ramhin Bai, Narmada Bai and Padmini Bai came to the pond for washing the rice, complainant told them to not to wash rice in the pond. Deceased appellant Manju Ram Sahu along with Bhaiya Lal appellant No.3 came on the spot and started abusing the complainant using filthy words. Deceased appellant Manju Ram started beating with fist the complainant, at the same time appellant Bhaiyaram Sahu was exhorting him. Complainant rushed from the spot and entered into the house of Arjun Sahu to save himself, at the same time appellants Mehttar (deceased), Bhaiyyalal, Manju Ram (deceased), Loknath Sahu, Bhaghirathi Sahu, Devnath Sahu, Narad Sahu, Sauk Ram Sahu and Rama Sahu trespassed the house of Arjun Sahu, and gave beating to the complainant with club, fist and by using their feet causing injuries to the complainant.

3. Gitaram (PW-1) lodged FIR Ex.P/1 in P.S. Magarload on the same day at 11.30 a.m. Dr. K.K. Som (PW-6) examined Gitaram (PW-1) and gave his report vide Ex.P/4 about the injuries of complainant.

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One club was seized vide Ex.P/2 from possession of Arjun (PW-2), spot map Ex.P/3 was prepared by Investigation Officer. Seized article club was examined and reported vide Ex.P/5 by Dr. K.K. Som. After completion of investigation appellants were charge-sheeted for trial under Section 147, 148, 294, 506 B, 323, 452, 149 of IPC and under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. The trial Court charged the appellants under Section 147, 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 294, 452, 323, 323/149 and 506 of IPC. The appellants denied the charges in trial. Prosecution examined seven witnesses, on examination under Section 313 of CrPC, appellants denied all the circumstances in evidence against them and pleaded innocence. They submitted in defence, that in the same incident complainant Gitaram assaulted the appellants and abused the appellant Manju Ram and has falsely implicated the appellants-accused persons. Two witnesses were examined in defence. By impugned judgment trial Court has acquitted the appellants from charges under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 294, 506 B and 323/149, but the appellants were convicted under the rest of the offences and sentenced as mentioned above.

5. The grounds in this appeal are these, that the impugned judgment is contrary to the law, facts and circumstances of this case there had been no reliable evidence to hold the conviction against the appellants. Prosecution has failed to prove the case against the

appellants beyond all reasonable doubt and the trial Court should have believed the theory of false implication, it is prayed that the appellants be acquitted.

6. During pendency of the appeal, appellants Mehattar and Manjaram have expired, hence their appeal has abated.

7. It is submitted by counsel for the appellants, that all the witnesses have supported the prosecution are interested witnesses. There had been previous enmity between the complainant and appellants, this fact has not been considered by the trial Court. The main allegation of complainant was against the appellant No. 1 and 2, who have expired. The statement of witnesses is full of contradictions and omissions, hence not believable, apart from that no offence is made out under Section 452 of IPC on the basis of evidence laid by the prosecution before the trial Court. The appellants are entitled for benefit of doubt, in the alternative it is prayed that it is a 19 years old case. On the report of appellants complainant Gitaram has also been prosecuted and has been convicted by the Court. Hence it was not case where the appellants were the aggressor. Considering all these facts, if this Court is not inclined to acquit the appellants, in that case the sentence awarded to the appellants may be modified to sentence of fine only.

8. Counsel for the State has opposed the grounds urged in the appeal and argument submitted by the appellants side. It is submitted that prosecution has successfully proved the case against the appellants beyond all reasonable doubt and there is no scope for interference in the judgment of the trial Court.



9. 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?

10. Gitaram Kotwar (PW-1) has stated, that on the date of incident when he was taking bath in village pond, girls Ramhin Bai, Narmada came to the pond and started washing rice to which he objected. After some time Manju (deceased) and Bhaiya Lal came near the pond and started abusing with filthy words. Manju started beating him with fist, at the same time by exhorting of Bhaiyalal remaining accused persons also came to the spot. Seeing this, he ran from the village pond but appellants-accused persons cornered him in Ganesh Chowk and out of fear he went inside the house of Arjun Sahu. Appellants chased and entered the house of Arjun Sahu and assaulted him with club and fist causing injuries to him. Due to which he became unconscious, after coming to consciousness, he went to the Police Station and lodged report Ex.P/1.

11. In cross-examination Gitaram (PW-1) has remained firm on his statement in examination-in-chief about the incident according to which appellants assaulted him and chased him into the house of Arjun Sahu and again assaulted him. On questions put to him in defence, he has admitted that on report of appellant Manju Ram one case is pending before a Court in Dhamtari. He has also admitted about the previous enmity with the appellants. He was confronted with the previous statement Ex.D/1. The discrepancy has been established that while

running from the spot he was cornered by appellants near Ganesh Chowk, which is new statement and improvement, this improvement is insignificant as an extra detail given about the incident which cannot be given any weightage.

12. Arjun (PW-2) has stated that on the date of incident, at about 07.30 a.m. he was inside the compound of his house when he saw, that appellants were chasing complainant Gitaram (PW-1) who entered his house. At the same time appellants entered his house and assaulted Gitaram (PW-1) with club, shoes and slippers. He tried to intervene and save the complainant, but appellants threatened him, due to which he got scared. In cross-examination he has stated that when he saw the appellants he did not try to stop them, because the appellants came to shouting prepared to assault the complainant Gitaram (PW-1). This statement in examination-in-chief about the incident remains un-rebutted. Budhvantin Bai (PW-3) has supported the prosecution case, she is wife of Arjun (PW-2) in cross-examination her statement remained un-rebutted, though she has admitted that appellant Mehtar had assaulted her son Shriram with an axe and she herself was beaten on the village road by Rama (appellant No.4) and one Sadhu, but her statement has not verified about the date, time and place of this incident when she was beaten and shamed on road by appellant Rama and one Sadhu. For this reason, this statement does not seem to have any connection with the statement about the evidence, although the statement can be considered on the point of enmity with the prosecution witnesses and the appellants.

13. Punitram (PW-4), who is father of complainant he came to know about the incident from Arjun (PW-2).

14. Dr. K.K. Som (PW-6) examined Gitaram (PW-1) on 06/01/1997 at 3.30 p.m. and found that he had one swelling with pain on right axillary organ. One contusion on wrist of left hand, one contusion on right hand triceps muscle, complaint of pain on lower waist, number of abrasion on left leg, abrasion on right knee and abrasion on right side of right ear. He has reported vide Ex.P/4 that injuries were simple in nature, caused by hard and blunt object. C.P. Singh (PW-7) is DSP has stated about the investigation conducted by him. One club was seized vide Ex.P/2 from the possession of Arjun (PW-2), no statement has been given by Arjun that on what context this club was seized from his possession, although this club has been examined and reported by Dr. K.K. Som (PW-6), but there is no statement by any of the witnesses that this club was used to assault the complainant Gitaram (PW-1).

15. considering all the evidence of prosecution at length, it appears, that the statement of Gitaram is well supported by statement of Arjun (PW-2) and Budhwantin Bai (PW-3) as the eyewitnesses and according to this evidence it is clear that something transpired between the complainant and the appellants on the spot near the village pond, after which complainant Gitaram (PW-1) took to heels to find shelter in the house of Arjun (PW-2), appellants as well, at first assaulted the complainant near the village pond and thereafter chased and entered the house of Arjun (PW-2) and again assaulted him with club and fists, this is the case.

16. The defence witnesses examined to show a parallel story of this case. Narmada Bai (DW-1), is the witness whose name has been mentioned by Gitaram (PW-1) in FIR Ex.P/1 as well as in his Court statement, which makes it clear that she was the witness of the spot. She has stated in defence, that on the date, time and place of incident when she along with other girls were washing rice in the village pond, Gitaram (PW-1) who was taking bath on the spot objected to their washing rice and asked them to move away, at this they asked Gitaram (PW-1) to take his bath elsewhere. Hearing this Gitaram (PW-1) used abusive words for the girls. Manjoram came to intervene, then Gitaram (PW-1) assaulted Manjoram with a utensil on his head and fled from the spot. She is not the witness of incident that took place, later on Abhayram (DW-2) has not stated anything about the incident which is of no relevance. Considering the aspect presented by the defence witness and the submission and arguments by the counsel for the appellants, that for the similar incident complainant Gitaram (PW-1) was also prosecuted, convicted and punished by the criminal Court, discloses that there had been one more case of this incident.

17. Considering the evidence of prosecution and defence it seems to have been established that deceased appellants and remaining appellants were party to assault in which complainant Gitaram (PW-1) was assaulted and caused simple injuries. Now the question raised in this appeal that offence under Section 452 is not made out on the basis of this evidence needs consideration. Appellants placed reliance on the judgment of Madhya Pradesh High Court in '**Chandrika Prasad v. State of Madhya Pradesh**' 2009 (3) M.P.H.T. 188 in which it was

held, that in that incident the appellant during the course of quarrel had picked out a bamboo stick from the complainant's 'Badi' and assaulted the complainant. For this reason the ingredients of Section 452 of IPC was not found proved and the appellant was given benefit of doubt.

18. Section 452 of IPC has the ingredients of house-trespass, having made preparation for causing hurt to any person or assaulting any person, or wrongfully restraining any person, which has been made punishable. Hence, in the present case it is a fact that appellants forcefully entered the house of Arjun Sahu (PW-2) but the preparation part is lacking, the reason is this assault started near the village pond which continued and ended in the house of Arjun (PW-2) in the word 'preparation' in any assault which has begun earlier and in its continuation ends in the house of any person does not find place here so as to make sense as it is provided under Section 452 of IPC. Hence the argument on behalf of the appellants in this respect, that the only offence against the appellants for this Act that is made out is under Section 448 of IPC, is acceptable.

19. In conclusion, for the reasons aforementioned and on the basis of findings arrived at in this appeal, it is held that the conviction of appellants under Section 147 and 323 of IPC by the trial Court needs no interference, but the conviction under Section 452 of IPC is not held on legally admissible evidence, which has to be interfered with. Hence, this appeal is allowed in part. The conviction of appellants under Sections 147 and 323 of IPC is upheld. The conviction under Section 452 of IPC against the appellants is set-aside and instead of that

appellants are convicted under Section 448 of IPC.

20. On the prayer of appellants for modification of sentence after considering of the facts and circumstances of the case it is found that this is a fit case where the sentence awarded to the appellants should be modified. Hence, the sentence of the trial Court for offence under Section 147 and 323 of IPC is set-aside. In the present state of things and after the lapse of long time, no purpose which be served if the appellants are awarded sentence of imprisonment. Hence, under these circumstances, sentence of fine will suffice. Appellants are sentenced under Section 147 of IPC and to pay fine of Rs.1000/-, under Section 448 of IPC and to pay fine of Rs.1000/- and under Section 323 of IPC and to pay fine of Rs.1000/- each in default of payment of fine for each offence one month simple imprisonment shall be required to be undergone by each of the appellants. Appellants are directed to appear before the trial Court within a month for depositing the fine amount.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE