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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 259 of 2009**

1. Dashrath Yadav S/o Jhujhru Yadav, aged about 45 years
2. Rajju, S/o Tijau Yadav, aged about 30 years,
3. Chhedilal, S/o Tijau Yadav, aged about 30 years,
4. Radheshyam S/o Dashrath Yadav, aged about 29 years,
5. Chaitram, S/o Tijau Yadav, aged about 32 years,
6. Chaitu @ Chai S/o Jhujhru Yadav, aged about 40 years,
7. Dashru @ Paklu S/o Jhujhru Yadav, aged about 60 years,
8. Ramprasad S/o Dashrath Yadav, aged about 35 years,
9. Umendra Yadav S/o Dashrath Yadav aged about 30 years
10. Sewakram S/o Chaitram Yadav, aged about 19 years,
11. Dhalendra S/o Dashrath Yadav, aged about 19 years,
All R/o Village Kusmund, P.S. Aarang, Distt.-Raipur (CG)
12. Pardeshi S/o Dashrath Yadav, aged about 25 years, R/o
village Kagdehi, P.S. Aarang, District Raipur (CG)

---- Appellants

Versus

- State of Chhattisgarh Through Police Station Aarang, Distt.-
Raipur (CG)

---- Respondent

For Appellants	: Smt. Fouzia Mirza, Advocate
For respondent/State	: Shri Arvind Dubey, Panel Lawyer

**DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**

Judgment on Board**Per Ram Prasanna Sharma, J.****17.4.2018**

1. This appeal is directed against the judgment dated 19.2.2009, passed by the Special Judge (the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989)

(henceforth 'the Act, 1989'), Raipur (CG) in Special Sessions Trial No.32/2007 wherein the said Court has convicted and sentenced the appellants in the following manner with a direction to run the sentences concurrently:-

Conviction	Sentence
Under Section 302/149 IPC	Life imprisonment and fine of Rs.25,000/-, in default of payment of fine, three years additional R.I.
Under Section 3 (2) (v) of the Act, 1989	Life imprisonment and fine of Rs.15,000/-, in default of payment of fine, two years additional R.I.
Under Section 323/149 IPC	Rigorous imprisonment for 6 months and fine of Rs.500/-, in default of payment of fine, additional S.I. for one month.
Under Section 323/149 IPC	Rigorous imprisonment for 6 months and fine of Rs.500/-, in default of payment of fine, additional S.I. for one month.
Under Section 147 IPC	Rigorous imprisonment for 6 months and fine of Rs.500/-, in default of payment of fine, additional S.I. for one month.

2. Case of the prosecution, in brief, is that deceased Faguram, injured Melaram and Chaitram were involved in teasing one Sunita Yadav and on that count there was a quarrel between appellant Dashrath who is father of Sunita Yadav, and other appellants on one side and Faguram, Melaram and Chaitram on the other side. It is alleged that the appellants assaulted

Faguram, Melaram and Chaitram. Faguram sustained fatal injuries and succumbed to those injuries whereas Melaram and Chaitram sustained simple injuries. Faguram is a member of Scheduled Caste and therefore, charges were levelled under the Act 1989 against the appellants. The matter was reported by one Aajuram Banse(PW5), the then Sarpanch of village Kusmund and after investigation, the appellants were charge-sheeted, convicted and sentenced as above.

3. Learned counsel for the appellants would submit as under :

(I) Faguram, Melaram and Chaitram are the relatives who had gone to house of the appellant, therefore, they were the aggressors. There they teased and tried to molest the daughter of appellant - Dashrath namely Sunita Yadav, on which, some altercation took place in which persons of both the sides received injuries in free fight, but the appellants have exercised their right of private defence of body.

(ii) As the incident had taken place at about 8.00 pm in the dark, therefore, it was not possible to see as to who has caused the injury to whom.

(iii) Version of prosecution witnesses is exaggeration which is not supported by independent witnesses, therefore, the trial Court ought to have disbelieved their version, but it reached to the conclusion on the basis of

conjectures and surmises, therefore, the appellants deserves to be acquitted.

4. On the contrary, Shri Arvind Dubey, learned Panel Lawyer for the State, supporting the impugned judgment would submit that the finding arrived at by the learned Special Judge is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking jurisdiction of appeal.

5. We have heard learned counsel for the parties at length and have also perused the record of the court below.

6. To substantiate the charge prosecution has examined as many as 19 witnesses. To nullify, the defence has examined 5 defence witnesses namely, Rajju Yadav (DW1), Sunita Yadav (DW2), Smt. Bisahin Bai (DW3), Vimlabai (DW4) and D.R. Verma (DW5).

7. Melaram (PW3), Chaitram (PW4) and Johanlal (PW7) have deposed that all the appellants first assaulted Faguram and when Melaram (PW3) intervened, they assaulted Melaram (PW3) and Chaitram (PW4). Version of these witnesses is unshaken during cross-examination and nothing could be elicited in favour of defence.

8. Dr. Gyanesh Kumar Choubey (PW14) has conducted autopsy of deceased Faguram and noticed the following injuries.

- (i) Contusion marks seen at various parts of body especially back side in the size of 10 x 2 cm, 8 x 2cm, 5 x 2cm over both loin, 7 x 2 cm, 5 x 2 cm, 3 x 2 cm, 2 x 2cm over back of chest.
- (ii) Contusion of 10 x 2 cm on lateral side of left thigh,
- (iii) Abrasion of 6 x 4 cm on the right eyebrow,
- (iv) Abrasion of 3 x 3 cm on the left parietal skull,
- (v) Abrasion of 1 x 1 cm on the exterior elbow left side,
- (vi) Lacerated wound each 2 x 1 cm over lower anterior leg on both sides.

He opined that the cause of death is shock due to excessive bleeding and the death is homicidal in nature. This witness has also examined Chaitram (PW4) and noticed injuries on his body and referred him to Mekahara Hospital.

9. Dr. G.P. Chandrakar (PW10) examined Melaram (PW3) and noticed following injuries :

- (i) Incised wound of 6 cm x 1 cm x muscle deep, blood clot was present on right palm,
- (ii) Contusion of 8 cm x 6 cm on right thigh just above knee joint,
- (iii) Abrasion of 4 cm x 4 cm on right knee joint,

(iv) Lacerated wound of 3 cm x 1 cm on right maxilla of face.

He opined that the injuries were simple in nature and caused since 48 hours of the examination.

10. Now, the point for consideration is whether all the appellants had intention to kill Faguram or they assaulted Faguram with knowledge that it is likely to cause his death. For commission of offence of murder, ingredients mentioned in Section 300 IPC must be established. Definition of 'murder' under Section 300 IPC reads as under:

300.Murder- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

11. From the evidence of prosecution witnesses, it is established that the incident took place because the deceased Faguram and his companion tried to tease and molest Sunita Yadav, who is the daughter of appellant Dashrath. As per version of these witnesses the appellants first assaulted Faguram and

when Melaram intervened, they left Faguram and assaulted him and when Chaitram reached to the spot, they left Melaram and assaulted Chairtram. Melaram and Chaitram sustained simple injuries. Looking to the act of all the 12 appellants, it can be inferred that they gathered to teach lesson to Faguram and his companion, but it is difficult to hold that they formed any unlawful assembly to kill Faguram. If the appellant had intention to kill Faguram, they would not have left him and assaulted Melaram and thereafter to Chaitram. The act of the appellants shows that they wanted to beat all the three persons but, their intention of killing them cannot be gathered from the peculiar facts and circumstances of the case. When intention or knowledge that it is likely to cause death of Faguram, is lacking, the act of the appellants would fall under Section 325 read with Section 149 IPC for voluntarily causing grievous hurt. Therefore, conviction of the appellants for commission of offence under Section 302 IPC read with Section 149 is altered into Section 325 read with Section 149 IPC.

12. It is not established from the evidence that the offence is committed on the basis of caste. The quarrel took place between two sides all of a sudden without premeditation on committing wrong against the family members of appellant Dashrath.

13. For commission of offence under Section 3 (2) (v) of the Act 1989, it has to be established that the offence is committed on the ground that he is a member of Scheduled Caste, but that is not

the case here, therefore, offence under Section 3 (2) (v) of the Act, 1989 is also not established.

14. On overall assessment of the evidence, it is established that the appellants have caused grievous injury to Faguram; simple injuries to Melaram (PW3) and Chaitram (PW4) for which, they have formed an unlawful assembly of more than 5 persons in prosecution of common object. Therefore, the act of the appellants falls within mischief under Sections 325 read with Section 149, 323 read with Section 149, 323 read with Section 149 and Section 147 IPC and they are convicted accordingly. The appellants are acquitted of the charges under Section 302 of IPC and Section 3 (2)(v) of the Act, 1989.

15. From the record it appears that the appellants were in custody during trial from 7.2.2007, 8.2.2007, 14.2.2007, 16.2.2007 to 19.2.2009 and after conviction also they have suffered jail sentence for some period which comes to more than 2 years. Considering all the facts and circumstances of the case and looking to the detention period of the appellants, we are of the view that ends of justice would be served if the appellants are sentenced to the period already undergone by them.

16. Consequently, the appeal is allowed in part. Conviction and sentence of the appellants under Section 3 (2) (v) of the Act, 1989 is set-aside. Now, the appellants are convicted under Sections 323 read with Section 149, 323 read with Section 149 and Section 147 IPC and sentence awarded by the trial Court is affirmed. The appellants are convicted under Section 325 read with Section 149

of the IPC instead of Section 302 read with Section 149 IPC and sentenced to undergo to the period already undergone by them. The fine amount on this count shall remain intact. The appellants are reported to be on bail. Their bail bonds shall continue for a period of six months in view of Section 437-A of Cr.P.C.. The appellants have already suffered jail sentence awarded to them, therefore, no further order regarding their arrest etc. is required.

17. With aforesaid modification, the appeal is allowed in part.

Sd/

JUDGE

(Prashant Kumar Mishra)

Sd/

JUDGE

(Ram Prasanna Sharma)