

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2963 of 1999****Judgment Reserved on 16.07.2018****Judgment Delivered on 27.07.2018**

1. Vishwanath son of Jhari, Uraon, aged 30 years, Occupation Agriculture.
2. Sidhnath son of Jhari, aged 28 years, Occupation Agriculture.
3. Kishun son of Jhari, aged 35 years, Occupation Agriculture.
4. Jhari son of Ratiya, aged 50 years, Occupation Agriculture.
5. Smt Sukhmaniya, W/o Jhari, aged 45 years, Occupation Agriculture.
6. Bishun son of Bhola @ Mola, aged 34 years, Occupation Labour.
7. Shani son of Sandhu @ Santu, aged 45 years, Occupation Agriculture.
8. Minu son of Dashrath, aged 30 years Occupation Agriculture.
9. Bhola @ Mola, son of Ratiya, aged 45 years, Occupation Agriculture.
10. Vimal son of Mirthu, aged 30 years, Occupation Agriculture.
11. Naresh son of Radhelal, aged 30 years, Occupation Agriculture.

All resident of Village Kardoni P.S. Dhorpur, District Sarguja,
(C.G.)

----Appellants**Versus**

- State of Chhattisgarh, Through P.S. Dhorpur, District Sarguja, C.G.

---- Respondent

For Appellants	Shri Aditya Chopra, Advocate.
For State	Ms. K. Tripti Rao, P.L.

Hon'ble Shri Justice Gautam Chourdiya
C A V Judgment

1. This appeal arises out of the judgment of conviction and order of sentence dated 14.10.1999 passed by First Additional Sessions Judge, Ambikapur, District Sarguja, M.P. (Now C.G.), in Sessions Trial No. 408/95, whereby, the appellants stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 147 of Indian Penal Code (for short 'IPC')	One year R.I. to each.
Under Section 333 R/W Section 149 of IPC	3 years R.I. and fine of Rs.1000/- to each in default of payment 6 months R.I. more to each.
Under Sections 506-B of IPC	One year R.I. to each.

2. As per prosecution case on 02.04.1995 at about 4:30-5:00 P.M. Head Constable Ramnath Yadav along with Adal Sai complainant went to village Kardoni for execution of warrant against Vimal and Minu Yadav. After execution of warrant,

Head Constable Ramnath Yadav handed over accused Vimal & Minu Yadav to Home Guard Adal Sai and Kuman (Chowkidar) then he went to other way. Thereafter, Adal Sai with Kuman (Chowkidar) was going for Police Station Bariyo with two warantee namely- Vimal and Minu and villagers assaulted Adal sai at the outskirts of the village. After information received from Puran Yadav and Bharan Yadav, Head Constable came back to Dhwarka Yadav's house where Adal Sai narrated the story that accused/appellants Vishwanath, Sidhnath, Kisun, Meenu, Maula, Vimal, Naresh, Shani, Jhari, Wife of Jhari Sukhmaniya Bai and Bishun came on the way of complainant Adal Sai and threatened him to cause death, abuses filthy language, assaulted him and Accused Sidhnath threw Towel (*Gamcha*) around the neck of him, pulling his neck and assaulted him by Lathi, hands and legs. Accused Minu Yadav also assaulted him with belt. The incident was seen by Ramlal, Nargesh, Munni, Harijan, Bharat, Puran and other villagers. Immediately after the incident, information received from Adal Sai complainant; Dhorpur, Outpost lodged FIR and registered as 44/95. On the same day, Ex.P-10 spot map was prepared by R.K. Mishra (PW-9). As per seizure memo Ex.P-11 Belt and torn clothes of complainant were seized and one belt of Adal Sai complainant was also seized from accused Vishwanath. As per Ex.P-12A Complainant Adal Sai was examined by

PW-10 Dr. Sharad Grawal, who noticed following injuries on the body of the complainant:-

i) Abrasion on occipital bone, blood oozed & Dry up size $\frac{1}{4}$ cm, Breadth 1cm, long swell up surrounding area, tender.

ii) Abrasion on cheek size 1cm, Breadth and 2cm long tender.

iii) Abrasion on little finger, posteriorly at the metatarsal $\frac{1}{4}$ x $\frac{1}{4}$ cm.

iv) Abrasion on right seapulla horizontal $\frac{1}{4}$ cm. Breadth and 9cm long redness over surrounding skin, tender.

v) Swelling over left seapulla, redness of skin tender.

vi) Laceration 2 inches above the left ankle joint laterally, tenderness, blood oozed and dry up $\frac{1}{4}$ cm x $\frac{1}{2}$ cm.

vii) Swelling & tenderness of right calf muscles.

As per Ex-P13 X-ray report was prepared by PW-11 Dr. M.K. Jain where he opined fracture of impacted nature seen at lower end of tibia.

3. After completion of investigation charge sheet was filed against the accused/appellant under Sections 147, 148, 149, 333, 506B of IPC. However, while framing charge the trial Court framed charge against the accused/appellants under Sections 147, 333 read with 149 and 506B of IPC.

4. So as to hold the accused persons guilty, the prosecution examined as many as 15 witnesses. Statement of the accused persons were also recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witnesses have been examined by the appellants/accused.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted and sentenced the appellants/accused as mentioned in para-1 of this judgment.

6. Learned counsel for the appellants submits as under:-

i) the impugned judgment of the trial Court is contrary to facts, law and circumstances available on record.

ii) There is no reliable evidence on record.

iii) Prosecution case was not proved beyond all reasonable doubt.

iv) Statements of complainant and other witness i.e. Head Constable Ramnath Yadav are not reliable because statements suffer many material contradictions and omissions.

v) no eye witness supported the prosecution case, therefore, they may be set free forthwith.

vi) Complainant himself unable to identify the accused persons.

7. On the other hand, supporting the impugned judgment it has been argued by the State counsel that Adal Sai PW-4 is a reliable witness and also supported by medical evidence. Hence, the conviction of the accused/appellants is in accordance with law and there is no infirmity in the same.

8. Heard counsel for the respective parties and perused the material on record.

9. Adal Sai (PW-4) in Para 1, 2 & 3 of his statement stated that when he went with Head Constable Ramnath Yadav for search of warrantee persons and thereafter, when he was going back to the police station with the accused Minu and Vimal, villagers came on the way of him and threatened him to cause death, abuses filthy language, assaulted him and Accused Sidhnath threw Towel (*Gamcha*) around the neck of him, pulling his neck and assaulted him by Lathi, hands and legs.

10. Statement of PW-4 Adal Sai was not supported by any eye witnesses i.e. PW-1 Munni Lal, PW-2 Kuman Chowkidar of village, PW-3 Bharat, PW-5 Puranchand, PW-6 Ramlal, PW-7 Raman, PW-8 Bholu all are declared hostile and not supported the prosecution case.

11. In this case, on the date of incident, PW-4 Adal Sai & PW-15 Ramnath Yadav were authorized for execution of arrest warrant against Vimal and Minu and for this there is

no documentary evidence was produced before the Court and there is no evidence that warrantee Minu and Vimal was in the execution of warrant arrested by Adal Sai or Head Constable Ramnath Yadav PW-15.

12. PW-15 Ramnath Yadav in para 7 of his statement specifically stated that he has no knowledge about arrest of the warrantee, name of warrantee or case number in which the warrant was required. He also stated that he has no knowledge about that warrant was executed against warrantee was bailable warrant or non bailable warrant.

13. PW-15 Ramnath Yadav admitted this fact in para 10 of his statement that on the date of incident he was not executed any warrant and not handed over any warrantee i.e. Minu and Vimal to Adal Sai and he was not authorized Adal Sai for executing warrant and Adal Sai has no authority to execute any warrant. PW-15 Ramnath Yadav as per Ex. P/17-C Head Constable No.800 also stated that in Crime No. 152/94, for execution of warrant, who is the person against the warrant was required he has no knowledge. He also admitted in para No.5 of his statement that he went to village Kardoni and after some time he went to other way then Adal Sai went for search of other accused persons as per statement of PW-15 Ramnath Yadav Head Constable. He was neither executed any warrant against Minu and

Vimal nor he sent to Adal Sai for search of warrantees. He also admitted that he has not handed over any warrantee to Adal Sai. Statement of PW-15 Ramnath Yadav and PW-4 Adal Sai itself a major contradictory.

14. PW-4 Adal Sai stated that on the date & time he was taking warrantee person Minu for Police Chowki the village Chowkidar PW-2 Kuman was also accompanied with Adal Sai, but village Chowkidar PW-2 Kuman has been declared hostile and denied any incident happened with Adal Sai in presence of him.

15. For the purpose of conviction of appellants the identification of accused was also an important matter that who are specifically constituted unlawful assembly for rioting and who was given life threat to public servant/complainant and cause grievous hurt when public servant acting in the discharge of his duty or that public servant prevent or deter him from discharging his duty as a public servant. In this case Adal Sai PW-4 is unable to identify accused persons who were committing a crime.

16. PW-4 Adal Sai stated in para no.7 of his statement that he was unable to identify accused persons who were present in the Court because he had not personally known these persons. He was also not an authorized person to arrest Minu and Vimal in compliance of warrant issued by

any court. There is no arrest warrants produced before the Court nor exhibited.

17. PW-15 Ramnath Yadav, who is an authorized person as a constable of police for executing the warrant is specifically admitted in his statement that he was not executed any warrant against any warrantee. He is unable to identify the name of warrantee and also unable to mention the warrant was bailable or non bailable. In these circumstances and evidence available on record, it is very difficult to say that the prosecution has proved any arrest warrant issued against Vimal and Meenu.

18. PW-4 Adal Sai is not an authorized person to execute the warrant and he is also unable to identify the accused persons as per his statement in para 7 of his deposition. There is no eyewitness to identify the accused persons who was committing crime against a public servant who was discharging his duty. According to statement of Adal Sai PW-4, in para 7, he identified the Naresh as Sidhnath and Sidhnath was identified as Vishwanath. In the Dock Identification Test he has also not identified the accused persons who assaulted him. In para 4 of his statement, he also admitted that he is unable to identify accused Bigun and Naresh. Thus, for the foregoing reasons, this Court is of the opinion that the prosecution has utterly failed to prove its

case beyond reasonable doubt.

19. In the result, the appeal is allowed and the conviction and sentences imposed upon the appellants are set aside and the appellants are acquitted from all the charges levelled them as mentioned in para 1 of this judgment.

20. The appellants are on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellants shall appear before the higher Court as and when directed.

Sd/
Gautam Chourdiya
Judge