

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 850 of 2001

1. Rajjan @ Raj Kumar, S/o. Ramanuj Nai, aged about 35 years.
2. Lala @ Devi Prasad, S/o. Raj Kumar Nai, aged about 20 years.
3. Budhram @ Ramashankar, S/o. Ramanuj Nai, aged about 26 years.

All resident of village Sitamani Korba, Police Station Kotwali, District Korba (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Police Station Kotwali, District Korba (C.G.)

---- Respondent

For Appellants	:	Ms. Aprajita Gayakwad, Advocate appears on behalf of Ms. Renu Kochar, Advocate
For Respondent	:	Mr. Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

11.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 31.08.2001 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 (for short 'Act 1989' Bilaspur District Bilaspur (C.G.) in Special Criminal Case No. 6/2001, wherein the said Court convicted the appellants under Sections 451, 323, 324 read with section 34 and 323 of the IPC and sentenced them to undergo S.I. for 3 years each, to pay fine of Rs. 300, to pay fine of Rs. 300, to pay fine of Rs. 200/- respectively with default stipulation.

2. In the present case, name of the victim is Dileram (PW-1) and Kantibai (PW-2). As per version of both the witnesses, all the appellants entered into their house on the date of incident and assaulted them with hands and fists. It is also stated that Budhram bite the thumb of left hand of Dileram (PW-1) by his teeth and caused teeth injury. The matter was reported to Police Station Kotwali, Korba. The matter was investigation and charge sheet was filed, the trial Court framed the charge against the appellants in which the appellants pleaded innocent and thereafter the trial was conducted, after examination of the prosecution witnesses statement of the accused/appellants under section 313 of the Cr.P.C. was recorded. After hearing the parties, the trial Court convicted and sentence the appellants as mentioned above.

3. To substantiate the charge prosecution has examined as many as 9 witnesses in their support.

4. Dileram (PW-1) and Kantibai (PW-2) both the witnesses deposed that all the appellants entered into their house on the date of incident and assaulted them with hands and fists. Version of these witnesses is unshaken during the cross examination and supported by version of Dr. A. Nayak (PW-8) who found one human teeth bite injury on the left thumb of Dileram (PW-1).

5. Causing injury by teeth is an offence punishable under Section 324 of the IPC and causing simple injury by hands is an offence punishable under Section 323 of the IPC. It is not a case of the appellant falls under any exception of the IPC, therefore, it was within the knowledge of the appellants that their assault may cause pain to Dileram (PW-1) and his wife Kantibai (PW-2), therefore, the trial Court has rightly convicted the

appellants for both the offence under Sections 324 and 323 of the IPC and the findings of the trial Court for both the offences are not liable to be disturbed while invoking jurisdiction of the appeal.

6. The core issue is whether the appellants entered the house of Dileram (PW-1) for committing any offence, from the evidence it is clear that the appellants were not having any weapon with them. All are residents of same locality and knowing to Dileram (PW-1) and his family, therefore, mere entering into the house is not sufficient to establish that they have entered into the house for committing any offence, in absence of any incriminating evidence, the offence under Section 451 of the IPC is not established.

7. Taking into consideration the facts, the conviction and sentence awarded by the trial court for offence punishable under Section 451 of the IPC is set aside and the appellants are acquitted of the said charge. However, conviction and sentence awarded by the trial court for offence punishable under Sections 324 and 323 of the IPC are hereby maintained.

8. Accordingly, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE