

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 117 of 2010**

1. Koushal s/o Shri Trilochan Sahu, aged about 25 years, occupation Farming,
2. Trilochan s/o Shri Ramsingh Sahu, aged about 46 years, occupation Farming,
3. Dwarika s/o Shri Trilochan Sahu, aged about 22 years, Occupation Private Teacher,

All are resident of village Bhusrenga, Police Station Ranchirai, District Durg (CG)

---- Appellants

Versus

State of Chhattisgarh Through Station House Officer, Police Station Ranchirai District Durg(CG)

---- Respondent

For Appellants : Shri Shikhar Bakhtiyar, Advocate

For the respondent/State: Shri Sanjeev Pandey, Govt. Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****30/8/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 23/01/2010, passed by the Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,(for short the SC/ST Act) Durg, District Durg(CG) in Special Case No. 28/2009, whereby, the said Court has convicted all the three appellants for commission of offence under Sections 323, 323 and 452 of the

I.P.C. for causing voluntarily simple injury to Dhansingh and Smt. Sulen and again for committing house trespass after preparation of making assault on the above named persons and sentenced to undergo R.I. for 3 months, R.I. for 3 months and R.I. for 1 year and fine of Rs.200/- respectively with default stipulations.

2. As per the case of prosecution, all the appellants entered into house of Dhansingh on 12.2.2009 at about 8.00 pm, situated at village Bhusrenga and assaulted Dhansingh and Smt. Sulen and they entered into the house with club and one wooden article/plank (Patia). The matter was reported and after completion of investigation, the appellants were charge-sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellants as aforementioned.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellants submits as under :

(i) There are several material contradictions and omissions in the statement of Dhansingh (PW1) and Smt. Sulen (PW4), but the trial Court has overlooked the same and came to a wrong conclusion

(ii) As per version of the victims, the appellants assaulted them with fists which is inconsistent with the theory of having club and wooden article.

(iii) Looking to the entire evidence offence under Section 452 and 323 I.P.C. is not made out.

5. On the other hand, learned counsel for the State supporting the judgment submits that the Court below has rightly convicted and sentenced the accused/appellants and the conviction is not liable to be interfered with.

6. To substantiate the charge prosecution has examined as many as 8 witnesses.

7. For commission of offence under Section 452 of the I.P.C., preparation of offence is condition precedent. Preparation is done before commission of the offence and after preparation attempt to commit offence is the next stage and if they succeed in attempt, the offence is complete. Though prosecution has examined 8 witnesses, but no one has deposed regarding preparation before commission of the offence. All the witnesses have deposed regarding the incident, but no one has deposed regarding prior stage of commission of offence which is preparation.

8. It is not clear from the record as to when the preparation is made for commission of the above offence. Possessing club or any wooden article is very common in village life and same is not sufficient evidence to conclude that possession of any wooden article is preparation of offence, therefore, finding of the trial Court that as they were possessing wooden article, they have made

preparation for commission of offence, is not correct. Charge under Section 452 I.P.C. is not established.

9. From the evidence of Dhansingh(PW1), it is established that the appellants have assaulted him with club and fists. Version of Dhansingh(PW1) is supported by the version of Smt. Sulen(PW4) and again it is supported by the version of Dr. A.S.P. Dubey (PW8), who found injury and scratch on left knee of Dhansingh(PW1), which was simple in nature. Version of this witness is unshaken during cross-examination and there is nothing on record to discard the evidence of these witnesses. It is not a case that the appellants have acted in right of self defence of body and therefore, the case does not fall in any of the exceptions mentioned in the Indian Penal Code. Again, they knew that the assault will cause pain in the body of Dhansingh(PW1) and therefore, act of the appellants is voluntary in nature. Voluntarily causing simple injury is an offence under Section 323 I.P.C. for which the trial Court has convicted the appellants and same is hereby affirmed.

10. So far as assaulting Smt. Sulen (PW4) is concerned, she did not state that anyone has assaulted her. She deposed that appellant No.1- Koushal pulled her Sari, but this version is missing in her earlier statement recorded under Section 161 Cr.P.C., therefore, exaggerated version of this witness is not acceptable in absence of any explanation. Causing voluntarily injury to Smt. Sulen (PW4) is not established as per evidence adduced by the

prosecution. Consequently, the appellants are acquitted of the charges under Sections 452, 323 I.P.C. for causing voluntarily hurt to Smt. Sulen (PW4). Their conviction for these two offences is set aside.

11. All the appellants are convicted for commission of offence under Section 323 I.P.C. for causing voluntarily injury to Dhansingh. They have suffered jail term from 13.2.2009 to 25.2.2009 i.e. for 13 days and ends of justice would meet if they would sentence for 13 days, accordingly, the sentence for causing simply injury to Dhansingh(PW1) under Section 323 I.P.C. is reduced to the period already undergone by them.

12. With this modification, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)
JUDGE