

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.169 of 2010**

1. Dwarika @ Manthir, S/o Latkhor Dhankar, Aged about 28 years,
2. Latkhor, S/o. Awadh Ram Dhankar, aged about 50 years,
3. Sundar Dhankar, S/o. Rajnu Dhankar, aged about 45 years,
4. Kumar Dhankar, S/o. Ganesh Ram Dhankar, aged about 35 years,
5. Laxminarayan S/o. Ghansyam Dhamkar, aged about 29 years,
All R/o Vill. Aamatola, Thana Ambagarh Chauki, Rajnandgaon

---- Appellants**Versus**

- State Of Chhattisgarh, Through Police Station Ambagardh Chauki, Distt. Rajnandgaon

---- Respondent

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

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****20.8.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 17.02.2010 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Rajnandgaon (CG) in Special Case No.01/2007 wherein the said Court convicted the appellants under Section 325 read with Section 34 of Indian Penal Code and sentenced them to undergo Simple Imprisonment for six months and to pay fine of Rs.250/- and also sentenced them with fine under Section 323 read with 34 of IPC with default stipulations.

2. As per the prosecution case, all the appellants with common intention of assaulting one Targen Prasad (PW-2) and

Ashwanta Bai (PW-3) reached at Bitalghar Amtola on 20.11.2006 at about 17.00 hours and after using obscene words assaulted them with club and stick. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellants as mentioned above.

3. Learned counsel for the appellants submits that the prosecution has not proved that the appellants have assaulted the injured, the version of the complainant has not been supported and corroborated by any independent witnesses, hence his statement is not trustworthy and reliable. There are material contradictions and omissions and improvement in the version of the complainant and witnesses.

4. On the other hand, learned counsel for the State submits that the judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available on record.

6. To substantiate the charges, the prosecution has examined as many as 10 witnesses. Targen (PW-2) and Smt. Ashwanta Bai (PW-3) are the victims and as per their version all the appellants were present at the time of commission of offence, they assaulted Targen Prasad and Ashwanta Bai. Version of these witnesses have been supported by the version of Phulmat Bai (PW-4), Narayan Sahu (PW-5), Aatmaram (PW-6) & Kanchan Bai (PW-7).

All these witnesses have been subjected to searching cross-examination, but the versions put forth in examination-in-chief is not rebutted. Dr. RR Dhurve (PW-1) and Dr. YK Tiwari (PW-10) are medical experts who examined Targen Prasad and Ashwanta Bai. As per the version of Dr. Dhurve, both have sustained injuries in vital parts of the body. As per the medical evidence, injury caused to Ashwanta Bai was simple in nature. As per the report of Dr. YK Tiwari, Targen Prasad sustained injuries and fracture on 5th metacarpal bone. Version of this medical expert is unshaken in the cross-examination. There is no other expert opinion in the record contrary to the version of these medical experts.

7. Looking to the overall evidence, it is established that the appellants have caused grievous injuries to Targen Prasad and simple injuries to Ashwanta bai in furtherance of common intention and, therefore, their mischief falls under Section 325/34 and 323/34 IPC. The trial Court has evaluated the evidence in its true perspective and the same is not interfered with invoking the jurisdiction of the appeal. Therefore, conviction of the appellants for the said offence are hereby affirmed.

8. In the present case, date of offence is 20.11.2006 and the appellants have faced trial for four years and injury sustained on the hand of Targen Prasad is not on vital part and therefore, it would not be proper to send them back to jail again. However, sentence part regarding commission of offence under Section

323/34 is related to fine only and the same is not liable to be disturbed. Sentence part for the commission under Section 325/34 so far as it relates to corporal punishment, the same is reduced to the period already undergone by them. The fine amount 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 CrPC.

9. With these modifications, the appeal is allowed in part.

Sd/-
(Ram Prasanna Sharma)
JUDGE