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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.263 of 2010**

1. Anil Soni S/o Ghasiram Soni, aged about 35 years Profession Farmer R/o vill Pandripani, Karrekotpara, Thana Parpa, Distt. Bastar (CG)
2. Sunil Soni S/o Ghasiram Soni, aged about 3.7 years Profession Farmer R/o Vill. Pandripani, Karekotpara, Thana Parpa, Distt. Bastar (CG)
3. Sanjay S/o Kapilnath Soni, aged about 27 years, Profession Farmer R/o vill Pandripani, Karrekotpara, Thana Parpa, Distt. Bastar (CG)
4. Satish S/o Kapilnath Soni, aged about 30 years, Profession Farmer Rro Vill. Pandripani, Karrekotpara, Thana Parpa, Distt. Bastar (CG)

---- Appellants

Versus

- State Of Chhattisgarh, Through Police Station Ajak, Jagdalpur, Distt. Bastar (CG)

---- Respondent

For the appellants : Shri Alok Dewangan, Advocate
 For the respondent/State : Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****03.10.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 12.3.2010 passed by Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bastar at Jagdalpur (CG) in Session Trial No.34/2008 wherein the said Court convicted all the appellants for the commission of offence under Section 323 read with Section 34 and 323 read with Section 34 of the Indian Penal

Code for causing voluntarily simple hurt to Lakhuram and his wife Somari Bai and sentenced to undergo rigorous imprisonment for six months to each of the appellants.

2. As per the prosecution case, on 06.01.2008 at about 1.00 am in the night at village Pandripara, present appellants assaulted complainant Lakhuram and his wife Somari Bai with hands and fists and also with bamboo stick for committing theft of one motor cycle. The matter was initially settled by the Panchayat, but due to failure of compliance of the order of the Panchayat, the matter was reported to Police Station AJAK Jagdalpur and after investigation, the appellants were charged and convicted and sentenced as mentioned above.

3. Learned counsel for the appellants submits that no medical expert has been examined to establish that injuries were caused on the body of complainant Lakhuram and Somari Bai, therefore, case under Section 323 is not established. He further submits that statement of the witnesses is not sufficient to bring home the guilt, therefore, finding arrived at by the trial court may be reversed.

4. On the other hand, learned counsel for the State while supporting the judgment passed by the trial Court submits that the finding arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be interfered with.

5. To substantiate the charges, the prosecution has examined as many as 9 witnesses. Though Lakhuram (PW-2) and Somari Bai (PW-3) have made bald statement that the appellants

assaulted them, but from their evidence, role of each of the appellants is not clear and their statement is general in nature. When number of persons have been prosecuted, role of each of the accused should be indicated that all of them have done the offence in furtherance of common intention. General statement is not sufficient to bring home the guild.

6. No medical expert is examined in support of the evidence of these witnesses. In absence of medical evidence, it is not established that the real injuries were caused on the body of Lakhuram and Somari Bai. Therefore, it would not be safe to hold that the injuries were caused to Lakhuram and Somari Bai. Looking to the evidence, the finding arrived at by the trial Court regarding commission of offence under Section 323/34 is not sustainable.

7. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellants are acquitted of the charge under Section 323/34 IPC. The appellants are reported to be on bail. Their bail bonds shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE