

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 48 of 2000**

1. Shankar Bhaskar son of Girwar Bhaskar Satnami aged about 25 years.
2. Dhawankumar son of Dasaruprasad Mandle Satnami aged 28 years.
3. Pradeep Kumar son of Jagan Kurre Satnami aged 22 years. (in compliance of Hon'ble Court order dated. 24.11.09, the instant appeal in respect of appellant No. 3 is abated as the appellant No. 3 died on 08.05.2003).
4. Bhuwan son of Motilal Tande Satnami aged 31 years.
5. Jagan son of Jatiram Kurre Satnami aged 41 years.
6. Ganesharam son of Chhotelal Tandan Satnami aged 41 years.
7. Dilipkumar son of Mohanlal Satnami aged 35 years.
8. Gendoo @ Gendlal son of Mohanlal Satnami aged 27 years.
9. Bheem Yadao son of Nankoo aged 47 years.
10. Kartikram son of Nankoo Yadao aged 42 years.

All residents of village Ameri P.S. Chakarghata Tah. & District Bilaspur (C.G.)

---- Appellants**Versus**

- The State of Chhattisgarh, through : District Magistrate, Bilaspur.

---- Respondent

For Appellants	: Shri Sumit Singh, Advocate
For Respondent/State	: Mrs. Madhunisha Singh, Panel Lawyer

And
CRA No. 25 of 2001

- Rajesh son of Shri Tij Ram Banjare, Satnami, aged about 24 years resident of Village Ameri, P. S. Chakarbhata, Distt. Bilaspur (C.G.).

---- Appellant

Versus

- The State of Chhattisgarh, through : District Magistrate, Bilaspur.

---- Respondent

For Appellant : Mrs. Ranjna Jaiswal, Advocate.
For Respondent/State : Mrs. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya
Judgment On Board

26/09/2019

Since both these criminal appeals filed under Sections 374 of the Code of Criminal Procedure (henceforth “Cr.P.C.”) arise out of the common judgment of conviction and order of sentence dated 29th November, 2000 passed by Additional Sessions Judge & Special Judge, for Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 in Sessions Trial No. 122/2000, they are being decided by this Common judgment. In the judgment impugned the appellants stand convicted and sentenced as under:

Conviction	Sentences
Under Section 147 of IPC	Five months R.I. to each
Under Section 323 read with 149 of IPC (regarding causing injuries to Nemdas)	Three months R.I. to each
Under Section 323 read with 149 of IPC (regarding causing injuries to Ful Bai)	Three months R.I. to each
Under Section 436 read with 149 of IPC	Five Years RI and Rs. 5,00/-each in default R.I. for six months to each
	(all sentences were directed to run concurrently)

02. Case of the prosecution, in brief, is that on the fateful day i.e. 04.05.1999, at about 09.00 pm at villlage- Ameri, accused persons namly- Jagan, Dilip Kumar, Pradeep Kumar, Ganesh, Gendoo @ Gendlal, Bheem Yadao and Baua with a common intention by forming an unlawful assembly reached the home of complainant- Nemdas and demanded chicken from him and when he refused to give them chicken, after some hot-talk, they all assaulted him by hand, fist and clubs, in between when fulbai, wife of the complainant restricted them from doing so, they assaulted the wife of complainant also and house of the complainant was set on fire in the same night i.e. on 05.05.1999 at 00.35 am. After the incident, FIR (Ex. P/4) was lodged by the complainant against seven accused persons. After lodging of FIR, spot map (Ex.P/5) was prepared. As per MLC report (Ex. P/6), there is no injury found on the body of Fulbai, wife of the complainant. As per Ex. P/7 MLC report of complainant- Nemdas, only one swelling abrasion in the size of 3"x2" on upper right eye was found. Thereafter, during investigation, statement of the complainant was recorded under Section 161 of Cr.P.C., in which the complainant named eleven persons.

03. After usual investigation, charge sheet was filed against the 11 accused persons under Sections 147, 323, 294 & 436 of IPC. After filing of chargsheet, the learned trial Judge framed charges under Sections 147, 294, 323 read with Section 149 and 436 read with 149 of IPC against the appellants/accused persons, who abjured their guilt and prayed for trial.

04. So as to hold the accused/appellants guilty, the prosecution

examined as many as 10 witnesses namely Devcharan Patle (PW-1), Chandrakumar (PW-2), Firanta (PW-3), Nemdas (PW-4), Fulbai (PW-5), Shantibai (PW-6), Kamlesh Bai (PW-7), Dr. Santosh Kumar Mishra (PW-8), P.N. Jangde (PW-9) and Vivek Shukla (PW-10). Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. The defence witnesses namely Janakram Yadav (DW-1), Anupdas (DW-2), Santosh Kumar (DW-3), Dukalha (DW-4) Sunder (DW-5) and Rajesh Kumar Shrivastava (DW-6) were examined on behalf of the accused persons.

05. 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 accused appellants as mentioned in para-1 of this judgment.

06. Learned counsel appearing for the appellants/accused persons submits that case of the prosecution is based on the statement of complainant Namdas (PW-4), his wife namely Fulbai (PW-5), Shanti Bai (PW-6), wife of Lendas and other family members of the complainant. In the FIR (Ex.P-4) lodged by the complainant, he named the seven accused persons namely Jagan, Dileep, Ganesh, Gendu @ Gendlal, Pradeep Kumar, Bheem and Bakla *whereas* during the course of recording of his statement under Section 161 Cr.P.C., the complainant implicated the 11 accused persons namely Jagan, Dileep, Ganesh, Gendu @ Gendlal, Shankar, Dhawan, Pradeep Kumar, Bhuvan, Rajesh Banjare, Bheem Yadav and Kartik Yadav but prior to

his statement recorded under Section 161 Cr.P.C, only the name of seven persons were mentioned in the FIR. Thus, looking to the entire evidence of the family members available on record, their evidence needs to be appreciated with great care and caution. The complainant did not mention the name of the person, who set on fire his house. For the first time, the complainant, in his statement recorded under Section 161 of Cr.P.C., named 11 accused persons. In his statement recorded under Section 161 Cr.P.C. (Ex. D/1), he stated that when accused persons assaulted him and his wife by hand, fist & club, they fled away from the place of incident, thereafter, some accused persons fired his home, but the name of Kartikram was not mentioned in his statement. Thus, according to the statement of complainant and his wife, all accused persons came at the night to the house of the complainant and demanded chicken and after refusal they were abusing complainant and his wife and thereafter assaulted them by hand, fist & club. As per MLC report no injuries were found on the body of Fulbai. If all accused persons assaulted Fulbai, some severe injuries should have been found on her body, but in her medical record, not a single abrasion was found on the body of the Fulbai, therefore, statement of Fulbai recorded before the Court below is not trustworthy. Fulbai and her husband- Nemdas both have stated that all accused persons assaulted them but the injuries, which was found on the body of complainant- Nemdas (suffered only one abrasion) was simple in nature & no injuries found on the body of his wife.

He also submits that looking to the previous enmity between the complainant party and the accused persons and previous conviction

and sentence of Landas & Chhabildas by the 5th Additional Sessions Judge vide judgment dated 24th July, 1999 filed by the accused/appellants in support of their case, complainant party has launched this false case against the accused/appellants. Therefore, the appellants be acquitted of the aforesaid charges leveled against them.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellants is based on proper appreciation of the evidence and as such, there is no scope for interference in the judgment impugned.

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

09. In this case the appellants/accused persons have produced one document (Annexure A-1) in support of their case i.e. judgment dt. 24.07.1998 of 5th Additional Session Judge, Bilaspur in Sessions Trial No. 51/99, in which Landas, cousin brother of complainant -Nemdas and Chhabildas, uncle of the complainant were convicted under Sections 436 and 323 of the IPC. Both the appellant were sentenced to undergo rigorous imprisonment of five years under Section 436 of IPC, to undergo rigorous imprisonment of six months under Section 323 of IPC for injuries caused to Rajim Bai whereas to further undergo rigorous imprisonment for six months under Section 323 of IPC for the injuries caused to Kartikram. Further the accused- Nemdas was convicted for the offence punishable under Section 325 of IPC and sentenced to undergo rigorous imprisonment of two years whereas the accused- Chhabildas acquitted from the charge under Section 325 of

IPC and all the sentences were ordered to run concurrently. The above said judgment shows that between the accused persons and the complainant there was previous enmity.

10. The independent witnesses namely Devcharan Patle (PW-1), Chandrakumar (PW-2) and Firanta (PW-3) have not supported the case of the prosecution.

11. Complainant- Nemdas (PW-4) admitted this fact in his statement in para 21 that he signed on the map that was prepared by the Patwari but in the records only one map (Ex. P/5) is enclosed and the said map is prepared by the Investigating Officer not by the Patwari. Nemdas in paragraph 20 of his Court statement specifically mentioned that Kartik set on fire his house but this fact was not stated in his statement under Section 161 of Cr. P. C. (Ex. D/1) which was recorded soon after the incident neither mentioned in the FIR (Ex.P/4) therefore, there is major contradiction & Omission in his Court statement and Ex. D/1 & FIR (Ex.P/4). Therefore, the statement of complainant is not trustworthy. He has also admitted this fact that Lendas, Shanti Bai (PW-6) are the relative and Chaindas and Kamlesh Bai (PW-7) are the neighbours and they all were present at the place of occurrence.

12. Fulbai (PW-5) stated in her Court statement that at the time of incident, all accused persons came to her house at the night and demanded chicken and after refusal they were abusing her husband (complainant) and herself and thereafter assaulted them by hand, fist & club but as per MLC report not a single injury was found on the body of Fulbai. If all accused persons assaulted Fulbai, some severe injuries should have been found on her body, but in her medical record, not a

single abrasion was found on her body. She also stated that the accused persons were telling that let the house of the complainant burn but this fact is not mentioned in her statement under Section 161 of Cr.P.C. which was recorded soon after the incident. Therefore, statement of Fulbai recorded before the Court below is also not trustworthy.

13. Shantibai (PW-6), has stated in her evidence, that her husband - Lendas was also present at the time of incident but neither Lendas was examined in this case nor as a witness he was incorporated in the chargesheet. As per statement of Shantibai (PW-6), her husband was also assaulted by the accused persons but he (Lendas) was neither examined by the doctor nor any MLC report was produced before the court in respect of him. As per document Ex. D/3 she also narrated the incident before the police authority that she was also assaulted by the accused persons but in her cross-examination she denied that she was assaulted by the accused persons.

14. Kamlesh Bai (PW-7) has also stated in paragraph 4 of her statement that accused persons assaulted her husband but no medical report was produced before the trial Judge in this regard. There are material contradictions & omissions in her diary statement (Ex.D/4) and Court statement.

15. Dr. Santosh Kumar Mishra (PW-8), prepared the MLC report of the complainant & his wife. He has stated in his statement, that one abrasion with swelling was found on upper side of the right hand caused by hard and blunt object in the body of complainant, but in MLC report Ex. P/7, one injury in the size of 3'x2" was found on the right

upper side of the eye. Thus, difference between the statement of the doctor and MLC report can be a human error while recording the statement before the trial Court. In the MLC reports of the complainant & his wife he found that no injuries found of the body of Fulbai (wife of complainant) and the injury found on the body of the complainant is simple in nature. Looking to the fact that eleven accused persons are said to have assaulted the complainant and his wife, it does not appear to reason that but the complainant sustained only one abrasion with swelling, which is simple in nature and no any injury was found on the body of the Fulbai (complainant's wife) whereas she was also said to be assaulted by the accused persons.

16. P. N. Jangde (PW09), investigating Officer has stated in paragraph 6 of his statement that when the matter was inquired by him he had not seized any article like burnt clothes or any burnt material ash from the place of occurrence. He has also not prepared any inquest report nor it is proved by him regarding loss of any properties or value the property.

17. Thus, minute scrutiny of the evidence and documents available on record makes it clear that statements given by the complainant and relative witness to this incident are contrary and there are lots of contradictions & omissions in their Court & diary statements. The medical report, available on record & the statement of the doctor, also proved this fact that the injuries sustained by the complainant is simple in nature. In the FIR Ex. P/4, name of only seven persons are mentioned but in the statements of the witnesses they mentioned the 11 persons' name. However, no any independent witness has

supported the case of the prosecution. Therefore, looking to the entire facts and circumstances of the case and the evidence available on record, the prosecution has failed to prove its case beyond reasonable doubt.

18. In the result, the appeal is allowed and the impugned judgment is hereby set aside. The appellants are acquitted of the charges under Sections 147, 323 and Section 436 read with Section 149 of the IPC. The appellants are reported to be on bail, therefore, their bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chaudriya)
Judge

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