

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 19-7-2019****Pronounced on 22-7-2019****CRIMINAL APPEAL No.251/2005**

(Arising out of judgment of conviction and order of sentence dated 04.02.2005 passed by Special Judge constituted under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 Bilaspur (CG) in Special Case No.106/2004)

1. Kush Yadav, S/o Shri Daras Yadav, aged about 25 years.

2. Dhan Sai, S/o Puru Yadav, aged about 50 years.

Both are resident of village Akaltara, Thana Akaltara, District Janjgir-Champa (CG)

---Appellants**-VERSUS-**

State of Chhattisgarh, through Station House Officer, Police Station Akaltara, District (CG).

---Respondent

For appellants	: Ms. Shipra Biswas, Adv.
For respondent/State	: Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 04.02.2005 passed by Special Judge constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity called as 'SC ST Act, 1989') Bilaspur (CG) in Special Case No.106/2004 whereby and whereunder he convicted and sentenced the appellants as under:-

Appellant No.1 Kush Yadav

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
452, IPC	6 Months	500/-	1 Month
324, IPC	6 Months	500/-	1 Month

Both the jail sentences of appellant No.1-Kush Yadav have been directed to run concurrently.

Appellant No.2. Dhan Sai

Offence u/S.	RI for	Fine Rs.	RI in default of
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			payment of fine
452, IPC	6 Months	500/-	1 Month

2. In brief the prosecution story is that complainant Rajesh Kumar Suryawanshi is the member of Scheduled Caste. Appellants are neither members of Scheduled Caste nor Scheduled Tribe. The said complainant is the resident of Akaltara. On 14.2.2004 at about 19.30 hrs the appellants, co-accused Daras Yadav, Gopal Yadav having club and knife entered into his house. Appellant No.1 Kush Yadav caused blow on his body, he stopped blow as a result his fingers were injured. Other persons beat him by clubs. They also abused him on caste basis. On very day at about 21.30 hrs he lodged an FIR at police station Akaltara. After completion of investigation, a charge-sheet was filed against the appellants and co-accused Daras Yadav and Gopal Yadav for the offences punishable under Sections 452, 323, 324 read with 34 and Section 3(i)(x) SCST Act. The trial Court framed charges against the appellants and co-accused Daras Yadav and Gopal Yadav for the offences punishable under Section 452, 324, 324 r/w 34 of IPC, Section 3(i)(x) SCST Act. To bring home the charges, prosecution has examined 6 witnesses in all. The appellants and co-accused Daras Yadav and Gopal Yadav examined 03 witnesses on their defence. After conclusion of trial, the trial Court acquitted the co-accused Daras Yadav and Gopal Yadav of the charges punishable under Section 452, 324, 324 r/w 34 of IPC, and Section 3(i)(x) SCST Act. The trial Court also acquitted appellant No.2- Dhan Sai of the charges punishable under Section 324, 324 r/w 34 of IPC and Section 3(i)(x) SCST Act, 1989. The trial Court also acquitted appellant No.1-Kush Yadav of the offence punishable under Section 3(i)(x) of SCST Act, 1989. However, the trial Court convicted and sentenced the appellants as aforesaid.

3. Being aggrieved the appellants have preferred this criminal appeal.

4. Counsel for the appellants argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellants are bad in eyes of law. Hence, appellants may be acquitted of the aforesaid charges.

5. Counsel for the State argued that the conviction and sentences of the appellants are based on clinching evidence. The conviction and

sentences of the appellants do not call for any interference by this Court.

6. As per the alleged MLC report Ex. P-5, P.W.-2 Dr. Chhatrapal Singh had examined complainant Rajesh Kumar Suryawanshi and found following injuries on his person-

(i) one incised wound on right index finger size 2 cm x 0.1 cm .

(ii) one incised wound on right middle ring finger and little finger size 2cm x 1.5 cm x 1cm.

7. P.W.-2 Dr. Chhatrapal Singh opined that the aforesaid injuries were caused by sharp object and simple in nature.

8. There is no such evidence on record on the strength of which it can be said that Ex.P-5 is not believable. Thus, this Court believes on Ex.P.5.

9. P.W. -1 complainant Rajesh Kumar Suryawanshi says in para Nos. 2 & 3 of his statement given on oath that, appellants had come in his house. Appellant Kush Yadav caused blow by knife he stopped it by right hand as a result injuries were caused on his fingers.

10. P.W.-3 Smt. Ganga Bai who is the mother of the said complainant says in para Nos. 3, 4 & 5 of her statement given on oath that appellants had entered into her house, appellant No.1-Kush Yadav caused blow by knife, injuries were caused on fingers of said complainant.

11. D.W.-1 Rishi Kumar says in para No. 3 of his statement given on oath that he and other persons of the locality were going to persuade the said complainant. They met with P.W.-3 Smt. Ganga Bai and persuaded her that she would keep said complainant under her control.

12. D.W.-2 Nageshwar Das Vaishnav says in para No. 3 of his statement given on oath that he had gone to drink tea in the hotel of appellant No.2- Dhan Sai where he was present.

13. There is no such evidence on record on the strength of which it can be said that at the time of alleged incident it was impossible for appellant No.2 Dhan Sai to reach on the spot at the time of alleged incident. Thus, this Court disbelieves aforesaid statement of D.W.-2 Nageshwar Das Vaishnav in the context that at the time of alleged incident appellant No.-2 Dhan Sai was not present there and he was present in his hotel.

14. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W.-1 Rajesh Kumar Suryawanshi and P.W.-3 Smt. Ganga Bai are not simple, not natural and not normal.

15. In the case in hand, alleged FIR Ex.P-1 has been lodged promptly and quickly. In Ex.P-1 it has been mentioned that appellants had entered into the house of said complainant. Appellant No.1- Kush Yadav caused blow by knife on his body, he stopped it by his right hand as a result injuries were caused on his fingers of right hand.

16. There is no such evidence on record on the strength of which it can be said that Ex.P-1 is fabricated and lodged with the intention to falsely implicate appellants.

17. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid statements of P.W.-1 Rajesh Kumar Suryawanshi, P.W.-3 Smt. Ganga Bai are simple, natural and normal. Thus, this Court disbelieves aforesaid statement of D.W.-1 Rishi Kumar in the reference that appellants had not allegedly committed aforesaid offences.

18. Looking to the above mentioned facts and circumstances of the case, looking to the statements of P.W.-1 Rajesh Kumar Suryawanshi, P.W.-3 Smt. Ganga Bai, Ex.P-1, Ex.P-5, this Court finds that prosecution has succeeded to prove beyond reasonable doubt charges punishable under Sections 452, 324 of IPC against the appellant No.1- Kush Yadav and charge punishable under Section 452 of IPC against the appellant No.2-Dhan Sai. Thus, this Court finds that trial Court has not committed any illegality in convicting the appellants as aforesaid. Thus, impugned judgment of the conviction affirmed.

19. Now, we will consider the quantum of sentences of appellants.

20. The appellants have already served jail sentences from 17.02.2004 to 25.02.2004.

21. At the time of incident, no minimum imprisonment was provided for the offences punishable under Sections 452, 324 of IPC. Near about 15 years have passed after the incident. At the time of incident appellant No.1-Kush Yadav was 25 years old, now he is 40 years old. Appellant No.2- Dhan Sai was 50 years old, now he is 65 years old. Now, they are in main stream of society. Sending them to jail would

disturb their as well as their family members life. Hence, no useful purpose would be served if they are sent to jail after 15 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa Vs. State of Karnataka** [(2007) 6 SCC 231], this Court is of the opinion that cause of justice would be sub served if R.I. for 6 months is reduced to the period already undergone by them and fine of each of the appellants is suitably enhanced.

22. Consequently, the appeal is partly allowed. The jail sentences of appellant No.1-Kush Yadav for the offences punishable under Sections 452, 324 of IPC, 06 months, 06 months, respectively are reduced to the period already undergone by him. Imposed fine Rs. 500/- on him for the offence punishable under Section 452 of IPC, is enhanced to Rs.5,000/- (Rupees Five thousand only). Imposed fine Rs. 500/- on him for the offence punishable under Section 324 of IPC, is enhanced to Rs.7,000/- (Rupees Seven thousand only). The jail sentence of appellant No.2-Dhan Sai for the offence punishable under Section 324 of IPC, 06 months is reduced to the period already undergone by him. Imposed fine Rs. 500/- on him for the offence punishable under Section 324 of IPC, is enhanced to Rs.7000/- (Rupees Seven thousand only). Out of the total fine amount, Rs.19,000/- if so deposited, Rs.15,000/- (Rs. Fifteen thousand only) be given to the complainant Rajesh Kumar Suryawanshi as compensation after the expiration of prescribed period of the further legal remedy available to the parties.

23. The appellants are granted 2 months time from the date of this judgment for depositing the fine amount. The amount deposited earlier, if any, be adjusted in the aforesaid fine amount.

24. The appellants are reported to be on bail. Their bail and bonds shall continue as per requirements of Section 437-A of Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge