

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 91 of 2009

1. Umesh Kumar S/o. Gangaram Vishwakarma, Aged about 25 years,
2. Ramesh Kumar S/o. Gangaram Vishwakarma, Aged about 23 years,
3. Dinesh Kumar S/o. Gangaram, Aged 25 years,

All resident of village Khutiya, Police Station Udaipur, District Surguja (C.G.)

---- Appellants

Versus

State of Chhattisgarh through in charge, Police Station Udaipur,
District Surguja (C.G.)

---- Respondent

For Applicant : Ms. Hamida Siddiqui, Advocate

For Respondent : Mr. Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 07.05.2019

1. This appeal has been filed by the accused/appellant, under Section 374 (2) of Cr.P.C. being aggrieved by the judgment dated 23.12.2008, passed by the Special Sessions Judge (Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act 1989, Sessions Division Surguja Place Ambikapur (C.G.) in Special Sessions Trial No. 69/2007, whereby the appellant has been convicted under Section 436 and 323 IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of

Rs. 500/- u/s. 436 IPC, rigorous imprisonment for 6 months u/s. 323 IPC with a direction to run the sentence concurrently.

2. In brief, the prosecution story is that on 22.01.2006 at about 12.00 PM, the applicants along with other co-accused persons entered in the house of complainants Jumen Bai and Narmada Singh, there they started abusing obscene words in the name of their caste, broke the household articles of the house and burnt the house of the complainants. Further the case of the prosecution, is that the appellants having armed in their hands assaulted the complainants and threatened them to kill. FIR (Ex.P-23) was registered in Police Station Udaipur against the applicants for the offence under Sections 147, 148, 148, 294, 506-B, 323, 307, 435, 436 read with 3(I)(X) of the Prevention of Atrocities Act.

3. After completion of the investigation, charge sheet was filed against the appellants in the Court of Judicial Magistrate First Class, Ambikapur, who, in turn, committed the case to the Court of Sessions Judge under the Special Act Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, who conducted the trial and convicted and sentenced the appellants as mentioned above.

4. Learned counsel for the appellants submits that the appellants are not challenging their conviction. She further submits that she confines her argument to the sentence part only and prays to reduce the jail sentence awarded to the

appellants to the period already undergone by them as they have been facing the case against them since 2006; they are facing the trial for last 13 years. Since the appellant No.1 has already remained in jail about 1 years and 3 months, appellant No. 2 has remained in jail about 6 months and the appellant No. 3 has remained in jail about 4 months, the same be reduced to the period already undergone by them.

5. On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the appellants.

6. I have heard learned counsel for the parties, perused the judgment impugned and the evidence available on record carefully.

7. Complainant- Jugen Bai deposed that on the date of incident at about 2.00 PM, the appellants along with other co-accused persons having armed with lathi, knife, sword and *tanga*, came to her house. Appellant Raju assaulted on her head with *farsha*. Appellant Ramesh assaulted on her back side with *gupti*, Dinesh assaulted her left foot below the knee with *tanga* and Umesh assaulted with hands and she received injuries on her body. The appellants assaulted her son Bhuwanesh with *farsha* and destroyed three bicycles, swing machines, TV, bed and snatched golden locket which she was worn at the time of incident. Appellants have beaten her and thereafter blazed the household goods of the complainant. She immediately lodged FIR Ex.P-24

against the appellants. Thereafter, complainant was sent for medical examination. Evidence of Jugain Bai is corroborated from the evidence of Sahodari Bai, Kamal Singh, Ramlal. They deposed in the same line as deposed by complainant Jugan Bai. From the memorandum statements of appellants Raju (Ex.P-5), Umesh (Ex.P-6), Sanju (Ex.P-7), Baba @ Chandrasekhar (Ex.P-8), Vinod Singh (Ex.P-9) and Rajesh Kumar (Ex.P-10), one sword under Ex.P-11, one knife under Ex.P-12, one Khukri under Ex.P-13, one iron rod under Ex.P-14, one iron rod under Ex.P-15, one bolero vehicle Ex.P-16 and one danda under Ex.P-17 were seized from the appellants. Doctor A.R. Jayant (PW-8) who examined complainant Jugan Bai has submitted his report under Ex.P-28 who noticed the following injuries (i) lacerated wound in the size of 2x1/2 cm on the right side of forehead (ii) lacerated wound in the size of 2x1/2 cm on the right side of leg (iii) bruise in the size of 3x1 cm on the right side of bump (iv) bruise in the size of 2x1 cm on the right side of the leg of the complainant. Other prosecution witnesses have also supported the prosecution case. Thus, I am of the view that the conviction of appellants under Sections 436 and 323 is based on proper appreciation of evidence. Hence, the conviction of appellants are hereby maintained.

8. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 13 years ago and the appellant No.1 has already remained in jail

for a period of 1 year and 3 months, appellant No.2 has remained in jail for a period of 6 months and appellant No.3 has remained in jail for a period of 4 months and they have deposited fine amount imposed on them, in my opinion, no useful purpose is going to be served in again sending them to jail. Accordingly, their sentence is reduced to the period already undergone by them. However, the sentence of fine under section 436 is enhanced from Rs. 500/- to Rs. 2000/-. Let this amount be deposited by the accused/applicant in the trial Court within a period of four months from today. Order accordingly.

9. With the above, the appeal stands allowed in part

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh