

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 184 of 2009

1. Khilesh S/o. Nateram Yadav, Aged about 28 years, Occupation Hotel, Resident of village Gadadih, Police Station Utai, District Durg (C.G.)
2. Jalendra @Jannu S/o. Netram Yadav, Aged about 20 years, occupation Hotel, Resident of village Gadadih, Police Station Utai, District Durg (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Police Station, Utai, District Durg (C.G.)

---- Respondent

For Appellant : Mr. Praveen Dhurandhar, Advocate
For Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 25.06.2019

1. This appeal has been preferred against the judgment dated 24.02.2009 passed in Special Case No. 24 of 2008, by the Special Judge/Additional Sessions Judge, Durg District Durg, convicting and sentencing the accused/appellants under Section 325/34 IPC and sentenced them to undergo RI for 2 years and to pay fine of Rs. 1000/- with default stipulations.
2. It is alleged by the complainant (PW-1) that on 15.03.2007 at about 10.00 AM, when he was in his shop, the accused/appellants came there for selling used bottles of liquor where some bottles were broken and he refused to accept it. On this, the appellants abused and assaulted him with hands and

fists, on account of the fight, the complainant received injuries in his lip and one tooth was also broken. FIR (Ex.P-3) was lodged in the police Station against the appellants. After completion of investigation, charge sheet was filed against the appellants under Section 325/34 IPC and 3(1) (X) of the Prevention of Atrocities Act.

3. To prove the prosecution case, Pradeep Kumar (PW-1), Dr. S.K. Singh (PW-2), Yogeshwar (PW-3), Tulsiram Kosre (PW-4), Ramkaran Dewangan (PW-5) Balram Mishra (PW-6), Smt Sweta Shrivastava Sinha (PW-7) and Narayan Oti (PW-8) were examined and statements of the appellants were recorded under Section 313 Code of Criminal Procedure.

4. After trial, the Trial Court acquitted the appellants of the charges under Section 3(1) (X) of the Prevention of Atrocities Act and convicted and sentenced them as mentioned above. Hence, this appeal.

5. Learned counsel for the appellants submits that the Trial Court has misconceived the law involved in the case and has wrongly appreciated the evidence on record. He submits that trial Court ought to have disbelieved the statements of PW-4, PW-5, PW-2 and PW-3 and convicted the appellants. He further submits that the findings of convicted recored by the trial Court is bad in law and the judgment is liable to be set aside.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below

convicting and sentencing the accused/appellants as mentioned above are based on the proper appreciation of the evidence on record and, therefore, no illegality or infirmity is traceable in the same worth interference in this appeal.

7. On hearing both sides and on perusal of the entire materials, I find that the prosecution has well proved the case on facts. PW-4 is the person who sustained injuries in the alleged incident. His evidence is definite that on a trivial dispute the applicants opened an assault on the complainant causing injuries with hand and fits on his mouth, and in the said assault one tooth of complainant's was broken under Ex.P-1 and one lacerated wound was found on the lip in the size of 2x1x0.5 under Ex.P-2. PW-3 who was witness to the incident also gave definite evidence proving the alleged assault made by the accused/appellants on the complainant. Evidence of PW-4 is corroborated from the evidence of PW-5, which shows that the involvement of the appellants and in this regard FIR (Ex.P-3) was lodged and proved by the PW-4, this Court is of the opinion that the conviction recorded by the trial court below as described above is strictly on the basis of evidence on record and there is nothing worth interference with the same. Conviction is thus maintained.

8. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 12 years ago and the appellants have already remained in jail for

a period of 15 days and deposited fine amount imposed on them, in my opinion, no useful purpose is going to be served in again sending them to jail. Accordingly, his sentence is reduced to the period already undergone by them. In lieu of this, the appellants however, would be required to pay an enhanced sum of fine of Rs. 5000/- from that of Rs. 1000/-. Let this amount be deposited by the accused/appellants in the trial Court within a period of four months from today. Order accordingly.

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

Sd/-

(Vimla Singh Kapoor)

JUDGE