

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 700 of 1999

Judgment reserved on 12.09.2019

Judgment delivered on 19.09.2019

1. Dhani Ram S/o. Samai Lal Manikpuri, Aged about 49 years(Deleted)
2. Ganga Das S/o. Siya Das Manikpuri, Aged about 42 years,
3. Ram Das S/o. Samai Das Manikpuri, Aged about 39 years,

All resident of village Gadahidih, Police Station Balodabazar, District Raipur (C.G.)

---- **Appellants**

Versus

State of Madhya Pradesh through Station House Officer, in charge
Police Station Balodabazar, District Raipur (C.G.)

---- **Respondent**

For Appellants : Mr. Y.C. Sharma, Mr. I.Lakra and
Mr. B.P. Rai, Advocates.
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

FIR (Ex.P-10) registered on the basis of Dehati Nalsi (Ex.P-1) goes to show that on 06.09.1997 at about 8 AM when complainant Kanak Ram (PW-1) along with his father Kisun Ram (PW-3) was going to his field for sprinkling manure, on the way accused Ram Das, and one Rohit (who has been prosecuted separately) met them and started hurling filthy abuses at them in the name of their caste and also threatened them to do away with. They also opened an assault at PW-1 and PW-3 with the help of sticks and an iron made pointed instrument (commonly known as "Rafli"). Meanwhile,

accused Ganga Das and Dhani Ram also appeared on the scene and indulged in the same activities. On account of the assault opened by accused Ganga Das, injured Kanak Ram (PW-1) suffered injuries on his head which started bleeding also. Accused Ram Das however caused injuries to PW-1 on his fingers, right arm, back and left thigh. Likewise, Kisun Ram (PW-3) was also caused injuries by accused Ram Das and Rohit with the help of sticks. PW-4 and PW-2 who tried to intervene in the matter also suffered some injuries. After medical examination of the victims, *challan* was laid against the accused persons except accused Rohit under Sections 341, 294, 506, 323, 324, 325/34 IPC and 3 (1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short "the Special Act" for convenience) followed by charge being framed accordingly.

2. After conclusion of trial, learned Special Judge vide judgment impugned dated 25.01.1999 passed in Special Sessions Trial No.121/1997 acquitted the accused/appellants under Sections 294 and 506-B IPC but convicted them all for the offences under Sections 323, 325 IPC and under Section 3 (1) (x) of the Special Act. Hence this appeal.

3. Counsel for the accused/appellants submits that present is a case where the prosecution could not make out its case either under the provisions of Indian Penal Code or under the Special Act but yet the Court below arrived at an abrupt finding of holding them guilty under both the penal provisions including imposition of harsh sentence, which being contrary to the evidence on record, are liable

to be struck down by allowing this appeal. He also holds the medical evidence to be insufficient for maintaining the conviction of the accused/appellants under Section 325 IPC.

4. State counsel however holds the impugned judgment to be in conformity with the evidence adduced by the prosecution under both the provisions i.e. the Indian Penal Code as also the Special Act referred to above. He submits that the evidence here is galore to arrive at the guilt of the accused/appellants and being so, according to him, the judgment impugned is strictly based on proper adherence to the evidence on record and does not call for any interference in this appeal.

5. First of all, this Court is inclined to see whether the conviction of the accused/appellants under the Special Act is sustainable in the eye of law or not. The first requirement to hold one guilty under Section 3(1) (x) of the Special Act is that the incident must have taken place within the public view and further the accused had been nurturing an intention of insulting and humiliating the victim fully knowing him to be belonging to the scheduled caste or scheduled tribe category. Here in this case none of the witnesses has categorically stated that the intention of the accused was of humiliating the victim on the ground that they belonged to any of these categories. All this apart, the prosecution has not even proved the fact that the victim party belonged to either of the castes as no document much less the caste certificate substantiating this fact has been filed by the prosecution. Filing of like certificate in such cases is a *sine qua non* to hold the accused

guilty which in this case the prosecution has utterly failed to comply with. It has not even proved that the place where the incident happened was within the public glare and for this reason also the accused/appellants cannot be convicted under the Special Act. Particularly when the Dehati Nalsi on the basis of which FIR was recorded does not mention that the accused/appellants had abused them knowing full well that they belonged to a particular caste covered under the scheduled caste or scheduled tribe community and their intention behind all that was to humiliate them. In this view of the matter the approach of the Court below in convicting the accused/appellants under Section 3(1)(x) of the Special Act cannot be allowed to stand and, therefore, is liable to be set aside. Order accordingly.

6. As regards conviction of the accused/appellants under Sections 323 and 325 IPC, the injured witnesses being Kanak Ram (PW-1), Tota Ram (PW-2), Kisun Satnami (PW-3) and Tijau Bai (PW-4) have categorically stated that on the date of incident the accused/appellants stopped them on the way, hurled abuses and started assaulting them with sticks and an iron made pointed instrument (commonly known as "Rafli") as a result of which they all suffered injuries - some on head, some on limbs and some on back. According to the doctor (PW-6), who medically examined the injured persons, injured Kisun (PW-3) apart from other injuries had suffered fracture of clavicle bone vide Ex.P-2; injured Tijau Satnami (PW-4) suffered fracture on metacarpal bone and the phalanx of left hand. Injuries suffered by Kanak Ram (PW-1) and Tota Ram (PW-2) were however found to be simple in nature. The doctor however has

stated that some of the injuries caused to PW-3 being fracture of left radius ulna was grievous in nature. That apart, seizure of sticks and an iron made pointed instrument (commonly known as “Raflī”) made under Ex.P-13 and Ex.P-14 also fortifies the case of the prosecution demonstrating the involvement of the accused/appellants in crime in question. Though the injuries suffered by the injured witnesses are opined to have been caused by fall yet looking to the evidence of the witnesses who themselves were the victim of assault, the possibility of fall causing such injuries become a far lying possibility.

7. Totality of the factual aspect of the matter coupled with the evidence adduced by the prosecution and the pin-pointed narration put-forth by the injured witnesses duly corroborated by the doctor who did their medical examination and found the injuries referred to above – some being simple and some being grievous in nature, this Court does not find any irregularity in the conviction of the accused/appellants under Sections 323 and 325 IPC. Court below has rightly appreciated the evidence of the witnesses in forming its opinion and, therefore, conviction of the accused/appellants under these sections is fully justified and is hereby maintained as such.

8. However, as regards sentence, looking to the incident having taken place about 22 years back and also keeping in mind the fact that the accused/appellants have already remained inside for about one and a half month, this Court does not see any reason for again dispatching them inside the prison and thereby unsettling their already settled occupations. Being so, the sentence imposed on

them is reduced to the period for which they have been in detention. Ordered so.

9. Net result of this appeal is the acquittal of the accused/appellants under the Special Act and conviction under sections 323 and 325 IPC. The net result also includes the sentence of the accused/appellants being reduced to the period already undergone as referred to above. Thus the appeal stands allowed in part with the observations made above.

Sd/-

(Vimla Singh Kapoor)
JUDGE