

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 900 of 2001**

1. Radheshyam Kaushik S/o- Manohar Kaushik, aged about 39 years.
2. Munna @ Ramdutt Kaushik S/o- Harlal Kaushik, aged about 32 years.
3. Dadua @ Rameshwar Kaushik S/o- Johanlal Kaushik, aged about 29 years.
4. Shiv Kumar S/o- Harlal Kaushik, aged about 40 years.
5. Mantri @ Chandra Kant Kaushik, S/o- Shiv Kumar Kaushik, aged about 20 years.

All the appellants R/o- Village- Nagoi, Police Station- Thakhatpur, Tah& Distt.- Bilaspur (C.G.).

---- Appellants**Versus**

- State Of Chhattisgarh Through- station House Officer, Police Station- Thakhatpur, District- Bilaspur (C.G.).

---- Respondent

For Appellants : Shri Rajeev Shrivastava, Advocate alongwith
Shri Malay Shrivastava, Advocate.
For Respondent/State : Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****02/12/2019**

This appeal arises out of the judgment of conviction and order of sentence dated 12.09.2001, passed by the Special Judge (Prevention of Atrocities), Bilaspur, Chhattisgarh in Special Case No. 92/2000 whereby the appellants were convicted and sentenced as under:

Conviction	Sentence

Under Section 147 of IPC	Simple imprisonment of 4 months with fine of Rs. 100/-each, in default of payment of fine to further undergo simple imprisonment of 1 month.
Under Section 148 of IPC	Simple imprisonment of 4 months with fine of Rs. 100/-each, in default of payment of fine to further undergo simple imprisonment of one month.
Under Section 323/149 of IPC	Simple imprisonment of 4 months with fine of Rs. 100/-each, in default of payment of fine to further undergo simple imprisonment of one month
	All the sentences were ordered to run concurrently

02. Brief facts of the case are that on the date of incident i.e. 17.08.1999 at about 6.00 pm (evening), all the five accused persons have assaulted complainant- Ramnarayan, as a result of which, he sustained multiple injuries. The incident was witnessed by Narbad Sahu (PW-3), Balwant Singh (PW-2) and other villagers. On the next day a prompt FIR vide Ex. P/1 was lodged by complainant- Ramnarayan to this effect. MLC (Ex. P/4) was conducted by Dr. K. Nahrel (PW-6) and he found 13 injuries on his knee joints and these injuries were caused by hard & blunt object.

03. After usual investigation, charge-sheet under Sections 147, 148, 149 294, 506-B & 323 of Indian Penal Code (henceforth "IPC") &

Section 3 (1) (X) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 (henceforth "SC/ST Act, 1989") were filed against the accused appellants. After filing of chargesheet, the trial Judge framed charges against the accused persons under Sections 147, 148, 294, 506(B), 323 read with 149 of IPC & Section 3 (1) (X) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 (henceforth "SC/ST Act, 1989").

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 8 witnesses namely- Ramnarayan Gond (PW-1), Balwant (PW-2), Narbad (PW-3), Deviprasad (PW-4), K. B. Singh (PW-5), Dr. K. Nahrel (PW-6), Balmukund Singh Kumra (PW-7) and Ganpat Pandey (PW-8). 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 two defence witness namely- Monahlal (DW-1) & Wishwanath Sahu (DW-2) have been examined on behalf of the accused persons/appellants.

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 appellant as mentioned in para-1 of this judgment.

06. Learned counsel appearing for the appellants submits that complainant- Ramnarayan Gond (PW-1), in paragraph 6 of his cross-examination, has admitted that when he lodged the report in the said report, due to fear he concealed the fact that he was frequently making

false and insulting comments against the daughters namely Jayanti & Mandlin of accused persons & only told that dispute arose on being asked by the Balwant (PW02) to him (Ramnarayan) that “ whose goats are grazing on the bund (*med*)”. He also submits that any independent witness has not supported the case of the prosecution. As per defence witness- Mohanlal (DW-1), conduct & behavior of complainant- Ramnarayan was not good; his reputation in the village was also not good and he is teasing the girls of the village by writing letters and several complaints were made against the complainant to this effect. Before the incident, complainant- Ramnarayan has made some insulting comments to the daughter of Mandal and for this reason, the relatives of complainant -Ramnarayan warned him not to do so, but complainant did not stop the same and continuously passing the insulting comments to the daughter of Mandal. He further submits that there are various contradictions and omissions in the statement of complainant- Ramnarayan (PW-1) & statement of Mohanlal (DW-1). He lastly submits that the trial Court did not appreciate the statements of defence witness and complainant himself that he made insulting comments upon the niece of accused/appellant No. 2-Munna, therefore, learned trial Court is absolutely erred in convicting the accused/appellants for the aforesaid offences and it is prayed that the appellants may be acquitted of the charges leveled against them or give them benefit of probation of offender Act.

07. On the other hand, learned counsel for the State while supporting the impugned judgment submits that there is no any contradiction & omissions has been made by the complainant in his

Court statement & in the facts mentioned in the prompt FIR. He also submits that the statement of the complainant is corroborated with his medical report Ex. P4-A and FIR Ex. P/1, therefore, conviction of the appellants are based on proper appreciation of the evidence available on record 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. Complainant- Ramnarayan (PW-1) has stated in his evidence that he was sitting near village tank along with Narbad and Balwant Yadav where accused- Munna came and abused him by stating that why you are commenting about the girls of the village, thereafter Balwant Yadav, Radheshyam & Narbad all went towards the village, thereafter Narbad came at the place of occurrence and informed him (Ramnarayan) that all the accused persons are making plan for beating you; so you should flee from here but at the same point of time, all the accused persons came there and assaulted him with the help of club from backside, as a result thereof, complainant sustained injuries on his thigh & other parts of the body leading to filing of the FIR (Ex. P/1).

10. It is relevant to mention here that no other prosecution witnesses have supported the case of the prosecution.

11. Balwant (PW-2) & Narbad (PW-3) have turned hostile and not supported the prosecution case at any stage of their examination.

12. In this case Deviprasad (PW-4) is not the eyewitness to the incident. He was informed by Narbad & Shankar that all the accused

persons assaulted and beaten the complainant, then he reached at the place of occurrence and hospitalized the complainant at Takhatpur Hospital. He never asked from complainant that why he was beaten by the accused persons.

13. Dr. K. Nahrel (PW06) conducted the MLC (Ex.P/4) of the complainant- Ramnarayan and he opined that total 13 injuries are found on the body of the complainant and it was caused by hard and blunt object.

14. Only the statement of the complainant- Ramnarayan (PW01) is available on record for considering the facts & circumstances of the case. The injuries caused to him by the accused persons and his evidence is supported by the MLC report (Ex.P/4). The complainant- Ramnarayan (PW-1) has admitted in para 6 of his deposition, that he concealed the fact that the complainant was frequently making false and insulting comments against the daughters namely Jayanti & Mandlin of accused but he stated that 5 accused persons were assaulted by clubs and due to which he sustained injuries. Looking to the fact & circumstances of the case, it is quite clear that it is not a sudden and grave provocation, at the time of incident accused/appellants, near the tank, started using abusive language against the complainant and, thereafter all accused assaulted the complainant, as a result of which, he sustained injuries, therefore, trial Court has rightly convicted the accused persons/appellants for the aforesaid offences.

15. As regards the sentence, in the totality of facts and circumstances of the case, the manner in which the incident occurred,

the fact that the incident took place around 20 years back, the age of the appellants at the relevant time, who must be at present 55-60 years, offence under Sections 147 & 148 of IPC both relate to rioting and offence under Section 148 graver than the one under section 147 of IPC, this Court is of the opinion that there is no need to impose separate sentence under Section 147 of IPC and the ends of justice would be served if the jail sentence imposed upon the appellants under Section 148 & 323 read with Section 149 is set aside and instead suitable fine amount is imposed upon them with a further direction for disbursement of a part thereof as compensation under Section 357 of Cr.P.C. to the complainant.

16. Resultantly, the appeal is allowed in part. While maintaining conviction of the appellants under Section 148 & 323 read with 149 of IPC, each of them is sentenced under Section 148 of IPC to pay fine of Rs. 2,000/- and under Section 323 read 149 of IPC to pay fine of Rs. 1,000/-. In default of payment of fine amount Rs. 2,000/- and Rs. 1,000/- they shall suffer additional simple imprisonment for three months and one month respectively. On such fine amounts being deposited by the appellants, out of the said amount, Rs. 5,000/- amount shall be given to the complainant as compensation under Section 357 of Cr. P.C. after due verification by the trial Court.

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 Chourdiya)
Judge

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