

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 879 of 2006

1. Panchram, S/o Banwal Kurmi, aged 60 years (dead)
2. Sohitram, S/o Nakuram, aged 24 years,
3. Paddu alias Puniram, S/o Panchram Kurmi, aged 26 years,
4. Footlal, S/o Panchram Kurmi, aged 31 years,

All R/o Village Pendari, P.S. Pamgarh, District Janjgir-Champa, (CG) **-- Appellants**

Versus

State of CG, through P.S. Pamgarh, District Janjgir-Champa (CG). **--- Respondent**

For Appellant : Mr. Atul Pandey, Advocate.

Respondent/State : Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

14.09.2020

The facts exposited by the prosecution in brief are that as Sahdev (PW-4) had assisted one Tarabai in lodgment of report against accused Panchram, the accused/appellants got enraged and hurled not only filthy abuses at him but also abused him in the name of caste calling him Gond, the community to which he belonged to. Accused/appellants are also alleged to have subjected Sahdev (PW-4) to beating with the help of wooden stick as a result of which he suffered abrasions, bruises and swelling on various parts of his body such as middle finger, ring finger, both feet, left shoulder etc. It is further alleged that when Ramanand (PW-1) came to the rescue of PW-4 he too was not spared and was subjected to filthy abuses and also to beating with the help of *Lathis*. This led to lodgment of report (Ex.P-12) by victim Sahdev (PW-4) on the same day on the basis of which offences under sections 294, 323 & 341 IPC and 3 (1) (x) of

the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred to as the “**Special Act**”) were registered against all the accused/appellants herein including one Panchram who died during the pendency of appeal and the appeal in his respect has also been dismissed as abated by order dated 23.04.2013. After medical examination of the witnesses PW-1 and PW-4 charge-sheet was filed against all the accused/appellants under the same sections as contained in the FIR, followed by charge being framed against them under Sections 294 & 323/34 IPC and 3 (1) (x) of the Special Act accordingly.

2. By the judgment Impugned dated 29.11.2006 passed in S.T. No.14/2006, the Court below though acquitted all the accused persons of the charges under Section 294 IPC and 3 (1) (x) of the Special Act but found them guilty under Section 323/34 IPC and sentenced them to undergo RI for 6 months with fine of Rs.1000 each. Hence this appeal.

3. Counsel for the accused/appellants submits that the act of the accused/appellants does not fall under Section 323 IPC and the accused/appellants have been falsely implicated in this case. He submits that when the accused/appellants have been acquitted of the charges under other sections of the Indian Penal Code as also that of the Special Act, they are entitled for acquittal under Section 323 IPC also as no other evidence has been collected by the prosecution on the basis of which he could be convicted under the said section.

4. State counsel however supports the judgment impugned to be just and proper.

5. Sahdev (PW-4) has fully supported the case of the prosecution stating that on the fateful day when the plantation program was going on in the village, one Ganesh Kurmi came over there and started abusing him in the name of caste calling him Gond. He also hurled filthy abuses at him. He has further stated that when objection was raised to the act of the Ganesh Kurmi, he left the spot and thereafter the present appellants came there and started abusing them in the name of caste calling him Gond and also caused injuries with the help of wooden stick on various parts of body including left shoulder, back etc. He has further stated that when Ramanand (PW-1) tried to intervene in the matter he too was subjected to abuses and beating with *Lathis*. Ramanand (PW-1) has also made the similar statement like Sahdev (PW-4) and stated that when he tried to intervene in the matter and save Sahdev (PW-4) from the clutches of the accused/appellants he too was not spared and was subjected to filthy abuses and beating with wooden sticks. Kumar Dande (PW-7) supporting the case of the prosecution has stated that when Ganesh Kurmi got back after abusing Sahdev (PW-4), the accused/appellants came there after sometime and subjected PW-4 to abuses and beating. Thereafter Jairam (PW-8) told PW-7 that the accused persons were again resorting PW-4 to beating with the help of club. Jairam (PW-8) has also stated in the same tone and tenor to the effect that on the date of incident the accused persons had hurled filthy abuses at Sahdev (PW-4) and also subjected him to beating with the help of wooden stick causing injuries on various parts of his body including leg, chest etc. According to PW-7 and PW-8 all this had happened in a plantation program in the village. Dr. D.C. Choudhary (PW-2) who medically examined PW-1 and PW-4

and gave his reports Ex.P-1 and Ex.P-2 respectively has stated that injuries suffered by them were simple in nature and they could be healed up within a period of 7 days. He has further informed that the injuries suffered by PW-1 and PW-4 could be caused by hard and blunt object. Jairam (PW-9) has also supported the case of the prosecution and stated almost the same thing like PW-7 and PW-8. Tahsildar (PW-5) is the witness who gave caste certificate to PW-4 stating that he belonged Gond community. PW-6 is the Police Inspector who reduced to writing the FIR (Ex.P-12).

6. The evidence of the witnesses discussed here-in-above makes it clear that on the date of incident the accused/appellants caused injuries, may be simple in nature, to PW-4 apart from hurling filthy abuses including in the name of caste. Case of the prosecution further reveals that when Ramanand (PW-1) came to the safety of PW-4, he too was subjected to similar treatment of abuses and beating at the hands of accused/appellants. Even the doctor (PW-2) has proved the injuries present on the body of PW-4 holding the same being caused by some hard and blunt object. Though this witness has not ruled out the possibility of injuries being caused on account of fall yet the fact remains that there are number of witnesses including the victims PW-1 and PW-4 who have categorically stated that the accused/appellants first filthily abused at them and then caused injuries with the help of club seized under Ex.P-4 and PW-5. Accordingly, the conviction of the accused/appellants under Section 323/34 IPC appears to be based on the proper appreciation of the evidence adduced by the prosecution and therefore, no interference therewith is warranted in

this appeal. Accordingly, the conviction of the accused/appellant is hereby maintained.

7. As regards sentence, looking to the period of detention which in this case comes to about a week and considering the fact that the accused/appellants have already been battling this case for last 14 years, this Court does not see any reason in further dispatching them to jail and ruining their settled family life. Accordingly, in the interest of justice the sentence imposed on them is reduced to the period already undergone.

8. Appeal is thus allowed in part with the observations made above.

Sd/-
(Vimla Singh Kapoor)

Judge