

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 3/11/2020****Judgment delivered on : 19/11/2020****CRA No. 462 of 2006**

1. Tiharu Sahu, S/o Tirithram Sahu, aged 40 years,
2. Prahlad, S/o Balram Sahu, aged 40 years,

Both are resident of Village-Mudpar, Bade, P.S. Sarangarh
(Chowki-Kosir), Distt. Raigarh (CG)

---- Appellants**Versus**

- State Of Chhattisgarh through S.H.O. Sarangarh, P.S. Sarangarh (Chowki-Kosir), Distt. Raigarh (CG)

---- Respondent

For Appellants	:	Shri JK Shastri, Advocate
For Respondent/State	:	Shri Rahul Jha, Govt. Advocate

Hon'ble Shri Gautam Chourdiya, J**CAV Judgment**

1. The appeal has been heard through video conferencing.
2. This appeal is directed against the judgment of conviction and order of sentence dated 5.5.2006 passed by the Special Judge, Raigarh, constituted under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, in Special Case No.56/2003 convicting the accused/appellants as under:

Conviction	Sentence
Under Section 323 of Indian Penal Code	Fine of Rs.1,000/-, in default of payment of fine to undergo S.I. for one month.

3. Case of the prosecution, in brief, is that on the date of incident i.e. 3rd July, 2003 at about 5 pm near Primary School at Village-Bade Mudpar, Dhaniram Sahu, Reshamlal, Prahlad Sahu, Kiritram, Madan Gopal, Thakur Sahu, Niranjana Sahu, Budhram, Itwar, Baratu, Tiharu, Mohan Marar and Ramdas Sahu, all the 13 accused persons were sitting. These accused persons were having club and bamboo stick in their hands. When on the date of incident, complainant Gajpati (PW-5), who lodged Dehati Nalishi on the same day vide Ex.P/26, along with his nephew Adalat and his wife Etwarinbai reached the place of occurrence, all the accused persons started abusing him filthily in the name of his caste saying *Sale Chamra* and they all were threatening to kill them. The accused persons assaulted by means of club and bamboo stick. When his nephew Shambhu, Vijay Kumar, Ajit, Ghasninbai were pacifying the dispute, they were also assaulted by the accused persons. On the basis of said Dehati Nalishi, FIR (Ex.P/68) was lodged at Police Outpost-Kosir on the same day under zero number under Sections 147, 148, 149, 323 of IPC and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against all the 13 accused persons. Thereafter, numbered FIR (Ex.P/58) was registered at Police Station-Sarangarh under Crime No.161/2003 for the said offences against all the accused persons.
4. During the course of investigation, vide Ex.P/1 half shirt of the complainant Gajpati worn at the time of incident having blood stains was seized. From the place of occurrence, stone and roof tiles were seized vide Ex.P/2. From each of the accused

Dhaniram, Niranjan Sahu and Mohan Marar, bamboo sticks were seized vide Ex.P/3, P/4 & P/5 respectively. Caste certificate and domicile certificate of the complainant Gajpati were seized vide Ex.P/7. From accused Chitram, Prahlad Sahu and Kanhaiyalal, bamboo sticks were seized vide Ex.P/8, P/9 & P/10 respectively. Likewise, from accused Budhram, Kiritram and Baratu Sahu, clubs were seized vide Ex.P/11, P/12 & P/13 respectively. One spade was seized from accused Madan Gopal vide Ex.P/14 and one axe was seized from accused Reshamlal vide Ex.P/15.

5. Spot map Ex.P/6 was prepared by PW-10 M.L. Dahariya, SDOP, Sarangarh. Another spot map Ex.P/17 was also prepared by PW-7 Manganlal-Patwari. As per Ex.P/41A, the injury sustained by Vijay Kumar was not dangerous to life. Vide Ex.P/60, injured Gajpati was medically examined by PW-13 Dr. MK Manhar who noticed lacerated wound on right side of forehead of size 2 x 1 cm with pain, contusion over right forearm with pain and another contusion over right thumb with pain. All these injuries were simple in nature, caused by hard and blunt object.
6. PW-13 Dr. MK Manhar also examined injured Ajit vide Ex.P/61 and noticed multiple abrasions on the back of the chest, contusion on the right shoulder joint below small size redness and tenderness. Both the injuries were simple in nature and caused by hard and blunt object.
7. On medical examination of injured Itwarinbai vide Ex.P/62, the doctor (PW-13) found that there was incised wound on occipital region of size 2 x 1 cm and there were multiple abrasions on the

back of chest with redness and tenderness. The injuries were simple in nature and caused by hard and blunt object.

8. Injured Vijay Kumar was medically examined vide Ex.P/63 by PW-13 and he noticed a lacerated wound on the right parietal region of head of size 3 cm x 1 cm, multiple abrasions over left elbow and right side of waist with tenderness. The injuries were simple in nature. Injury No.1 was caused by some sharp edged weapon and other injuries were caused by some hard and blunt object.
9. Upon medical examination of injured Shambunath vide Ex.P/64, the doctor (PW-13) noticed multiple contusions with swelling and tenderness over left forearm and contusion on the occipital region with redness and tenderness. The injured was complaining of pain in waist. The injuries were simple in nature and caused by hard and blunt object.
10. PW-13 also examined injured Ghasnin Bai vide Ex.P/65 and found lacerated wound below right knee of size 1 x 1 cm and abrasion with swelling and tenderness on the waist region. The injuries were simple in nature and caused by hard and blunt object.
11. PW-13 also examined the seized clubs, spade and axe sent to him by the police vide Ex.P/31A to P/40A and opined that the injuries sustained by the injured persons could be caused by the said weapons.
12. After recording statements of the witnesses and

completing the investigation, charge sheet was filed against the accused persons under Sections 147, 148, 149, 323, 294, 506, 307, 427 of IPC and Sections 3(2)(v) and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short "the Special Act"). The trial Court framed charges under Sections 148, 324/149, 323/149, 506 Part-II of IPC and Section 3(1)(x) of the Special Act against the accused persons which were denied by them and they prayed for trial.

13. In order to prove its case, the prosecution examined 17 witnesses in all. Statements of the accused persons were also recorded in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined Dr. Anil Kumar Kushwaha and Dr. Sharad Awasthi as DW-1 and DW-2.
14. The trial Court after hearing counsel for the respective parties and considering the material available on record, while acquitting the other accused persons of all the charges, convicted and sentenced the accused/appellants as mentioned in para 2 of this judgment.
15. Learned counsel for the accused/appellants submits that in this case total 16 persons were prosecuted on the charge as abovementioned and on the same set of evidence, 14 accused persons have been acquitted of all the charges and only the appellants herein have been convicted and sentenced under Section 323 of IPC. Looking to the entire evidence of the witnesses, MLC reports as well as the case diary statements of

the witnesses, it appears that all the accused persons assaulted upon the injured persons but the trial Court wrongly appreciated the evidence and without any basis held only the appellants guilty of causing simple hurt to the injured persons. The trial Court has ignored the material fact that the complainant party was aggressor, they assaulted upon the present appellants and on the basis of report lodged by Reshamlal Sahu at Police Station-Sarangarh, the complainant Gajpati and his 11 associates were criminally prosecuted under Crime No.160/2003. In the said incident, the present appellants and other villagers also sustained injuries and the appellants have been falsely implicated by the complainant party. It is also not disputed by the complainant party that a counter case is registered against them and in the said incident the appellants and other villagers sustained injuries. It is also not disputed that since long there has been land dispute between the present appellants and other villagers on the one side and the complainant party on the other side. There is nothing on record to show as to who caused injuries to Shambhunath and Ghasnin Bai, only general and omnibus allegations have been made against the appellants and other accused persons, there was a free fight between the parties but the trial Court on its own without there being any cogent and reliable evidence, held the appellants guilty under Section 323 of IPC, which is liable to be set aside.

16. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court

considering all the relevant aspects of the matter has rightly convicted and sentenced the present appellants by the impugned judgment which calls for no interference by this Court.

17. Heard learned counsel for the parties and perused the material available on record.

18. True it is that on the report made by injured Gajpati Satnami (PW-5), FIR (Ex.P/58) was registered against 13 accused persons and after investigation, total 16 persons were charge-sheeted and they faced trial. However, by the impugned judgment, out of 16 accused persons, 14 have been acquitted of all the charges and only the present appellants have been convicted under Section 323 of IPC. It is also not in dispute that on the report (Ex.D/4) lodged by one of the accused namely Reshamlal Sahu, the complainant party, total 12 in number, were also prosecuted.

19. From the evidence on record i.e. copy of the plaint, judgment and decree, filed and proved by the accused persons, it is seen that there was old land dispute between the parties. As per medical report proved by DW-1 Dr. Anil Kumar Kushwaha and DW-2 Dr. Sharad Awasthi, the accused party also sustained injuries in the said incident. In the chart prepared by the trial Court in para 21 of its judgment, the name of the injured person and name of the assailant as per court statement and diary statement have been mentioned.

20. PW-1 Shambhunath in his deposition has stated that due to ploughing of land, first incident happened in the morning at 8

am and thereafter again incident took place at 4 pm. In paras 6 & 7 he states that the accused persons Madan Gopal, Resham, Kirit Thakur, Niranjana assaulted upon Ghasnin Bai with stone and club. He admits that all the accused persons assaulted upon the complainant party and if this fact is not mentioned in his diary statement (Ex.D/1), he cannot tell the reason. Thus, as per statement of PW-1 Shambhunath, number of persons assaulted upon injured Ghasnin Bai.

21. PW-17 Ghasnin Bai in para-4 states that about 200 people had assembled near the school godown and *marpeet* took place there. She admits that she has no knowledge as to who assaulted whom. She further admits that at the time of incident, she was not present there, and while she was returning from Tikra, she saw the incident. In para 5 she states that she had disclosed to the police that Tiharu and Baratu assaulted her by means of stone and if the said fact is not recorded in her diary statement (Ex.D/13), she cannot tell the reason. In para-3 she states that all the accused persons assaulted upon her. Thus, from the statements of PW-1 and PW-17, it is seen that none of them has specifically stated as to who caused injuries to them.

22. PW-4 Shrikumar, son of complainant Gajpati, states that at the time of incident there were 200-250 people present and all the accused persons assaulted upon the complainant party, but no any specific allegation has been made by this witness against the appellants.

23. Looking to the contradictions in the diary statements of

PW-1 Shambhunath and PW-17 Ghasninbai i.e. Ex.D/1 and D/13 respectively, and the court statement of PW-4 Shrikumar and other oral evidence on record, this Court finds that none of the witnesses have specifically stated about the role of the present appellants in causing injuries to Shambhunath and Ghasnin Bai. Rather it has come in the evidence that at the place of occurrence, there were 200-250 people present and *marpeet* took place amongst them. Evidence on record also goes to show that there was a long-standing land dispute between the parties, a counter FIR was also registered against the complainant party at the instance of accused Reshamlal Sahu and they were criminally prosecuted and that in the same incident the accused persons also sustained injuries. Though the trial Court has prepared a chart in para 21 of its judgment where the name of the injured and name of the assailant based on the court and diary statements of the witnesses have been mentioned, but from a close scrutiny of the court statements and diary statements of the witnesses, it is seen that they have made only general and omnibus allegations against all the accused persons and not stated about the specific role played by each of the accused. The trial Court has not made it clear in its judgment as to on what basis the said chart has been prepared.

24. On the same set of evidence, the trial Court has acquitted 14 accused persons out of 16 and held only the appellants guilty under Section 323 of IPC. Admittedly, no appeal has been preferred by the complainant or the State against acquittal of other accused persons. Therefore, looking to the nature and

quality of evidence available on record, considering the fact that there was a free fight between the parties due to old land related dispute where both the parties sustained injuries and counter case was also lodged, it cannot be said with certainty that it is the present appellants who caused injuries to Shambhunath and Ghasnin Bai, as has been held by the trial Court. Therefore, the present appellants are also entitled for acquittal by extending them benefit of doubt.

25. In the result, the appeal is allowed. The impugned judgment is hereby set aside in relation to the present appellants and they are acquitted of the charge under Section 323 of IPC. If the fine amount imposed by the trial Court has already been deposited by the appellants, the same shall be refundable to them.

Sd/

(Gautam Chourdiya)

Judge