

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 454 of 2008

1. Putluram, aged 50 years, son of Shri Kundruram Yadav (**Accused No.1**)
2. Saukhilal, aged 35 years, son of Shri Kundruram Yadav (**Accused No. 2**)
3. Ghasiyaram, aged 60 years, son of Shri Kundruram Yadav (**Accused No.3 & appeal abated vide order of this Court dated 17/06/2015**)
4. Samaylal, aged 41 years, son of Shri Kundruram Yadav (**Accused No.4**)
5. Manoj Kumar, aged 23 years, son of Shri Ghasiyaram Yadav (**Accused No.5**)

All are residents of village Churteli, P.S. Dhabhra, District Janjgir-Champa (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, through the Police Station Dhabhra, District Janjgir-Champa (C.G.)

---- Respondent/State

For Appellants	:	Shri Ishwar Jaiswal, Advocate
For Respondent/State	:	Shri Sudeep Agrawal, Deputy Advocate General

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment

14.07.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 16.04.2008 passed by the Sessions Judge, Janjgir-Champa (C.G.) in Special Sessions Case No. 173/2007, whereby the appellants stand convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Appellant- Saukhilal (A-2) : Under Section 148 of Indian Penal Code (for short 'IPC')	R.I. for one year
Under Section 323 read with Section 149 of IPC	R.I. for six months
Appellants- Putluram (A-1): Ghasiyaram (A-3 – Dead):	

<u>Samaylal (A-4) and Manoj Kumar (A-5):</u> Under Section 147 of IPC	R.I. for one year each
Under Section 323 read with Section 149 of IPC	R.I. for six months each
All the sentences to run concurrently	

3. In present appeal, as per order-sheet of this Court dated 17.06.2015, appellant Ghasiyaram (A-3) died on 21.03.2012, as reported by the State counsel, and no any application on behalf of A-3 was filed by any of the relatives to contest the appeal on its merits, the appeal filed on his behalf stood abated on account of his death under Section 394(1) of the Code of Criminal Procedure and the name of A-3 has been deleted from the cause-title.
4. The allegations are that on the date of incident i.e. 22.07.2007 at about 04:30 pm in village Churteli, all the accused persons (A-1 to A-5) formed unlawful assembly with *lathi* and in prosecution of the common object of the said assembly caused injury to Radheshyam Satnami (PW-2). Further allegations against all the appellants are that on the date of incident, on account of breaking of bund (*muhi/medh*) in the field of Mahavir Agrawal, there was scuffle between appellant Putluram (A-1) and Radheshyam Satnami and Putluram fell down, then he called his brothers. When brothers of Putluram came there, Radheshyam ran from there. The appellants chased Radheshyam and caught hold of him, appellant Saukhilal gave him club blows on his head and other appellants (A-1, A-3, A-4 & A-5) assaulted by hands and fists abusing him on his caste. Thereafter, appellants took Radheshyam to Bus Stand where they also assaulted him. Bhuri Bai (mother of Radhesyham) reached there and rescued her son from the appellants. First Information Report (FIR – Ex.-P/1) was promptly lodged by PW-1 Bhuri Bai (mother of injured-Radheshyam Satnami) within two hours in

police station Dhabhra, Janjgir against two accused persons namely Patluram (A-1) and Saukhilal (A-2) which was registered under Sections 294 and 323 read with Section 34 of IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. As per F.I.R (Ex.-P/1), both accused (A-1 & A-2), assaulted Radheshyam Satnami by means of *lathi* and while both of them were assaulting upon Radheshyam Satnami, they were using filthy language about caste of Radheshyam in a public place.

5. Injured Radheshyam (PW-2) was sent for treatment to Community Health Centre, Dhabhra and Radheshyam was medically examined by PW-10 Dr. N.P. Mishra and he gave MLC report Ex.P/18. As per MLC report (Ex.-P/18), Doctor found following injuries on the body of Radheshyam:

- i) Bruise mark was found towards right side of chest in size 4 inch x ½ inch;
- ii) Lacerated wound on upper lip measuring ½ inch x ¼ inch x ¼ inch;
- iii) Lacerated wound on left ear measuring 1 inch x ¼ inch x ¼ inch;
- iv) Bruise mark was found on right shoulder measuring 3 inch x 1 ½ inch;
- v) Bruise mark was found on right scapular region measuring 5 inch x 1 inch;
- vi) Bruise mark was found on right scapular region measuring 3 inch x ½ inch;
- vii) Bruise mark was found on right shoulder measuring 4 inch x 1 inch;
- viii) Bruise mark was found on right scapular region measuring 5 inch x 1 inch;
- ix) Bruise mark was found on left arm measuring 3 inch x ½ inch;
- x) Bruise mark was found of left forearm measuring 3 inch x ½ inch;
- xi) Abrasion on left thumb measuring 1 inch x ½ inch x 1/10 inch; &

- xii) Abrasion on 3rd finger of left hand measuring ½ inch x ¼ inch x 1 cm.

Doctor (PW-10) advised for X-ray of skull, right shoulder, joint of left shoulder & chest, he found that the above injuries on the body of victim/injured were simple in nature and caused by hard & blunt object.

6. During investigation, club (*lathi*) was seized at the instance of appellant Saukhilal (A-2) vide Ex.-P/5; blood stained shirt and full-pant of injured Radheshyam were seized by the police vide Ex.-P/2; Spot map (Ex.-P/11) was prepared by PW-8 M.L. Dahariya, Deputy Superintendent of Police and he seized caste certificate (Ex.-P/12) of Radheshyam vide seizure memo Ex.-P/13. Another spot map/*nazrinaksha* (Ex.-P/3) was prepared by PW-3 Gokul Prasad Dinker, Revenue Inspector on 14.08.2007 in presence of the witnesses. All the accused persons/appellants (A-1 to A-5) were arrested on 28.07.2007 vide arrest memos Ex.-P/6, Ex.-P/7, Ex.-P/8, Ex.-P/9 & Ex.-P/10. Club (*lathi*) sized from appellant Saukhilal (A-2) was sent for its examination to Government Hospital, Dhabhra which was also examined by Dr. N.P. Mishra (PW-10) and he gave his report vide Ex.-P/15 that the injuries sustained by Radheshyam could be caused by the said club. After recording the case diary statements of Bhagat Satnami, Tularam Khunte, Bhuri Bai, Geeta Bai, Radheshyam, Sakhan and Narayan, the investigating officer found guilt of all the accused persons/appellants for assaulting Radheshyam and abusing him in name of his caste.
7. After completion of investigation, charge-sheet was filed against the accused/appellants (A-1 to A-5) by the police for the offence under Sections 147, 149, 294, 506 & 325 of IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. While framing the charge, the Sessions Judge, Janjgir-Champa (C.G.) framed the charge against all the accused/appellants under Sections 148, 294, 506 Part-II & 307 read with Section 149 of IPC and Sections 3(1)(x) and 3(2)(v)

of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The accused persons denied the charges framed against them and prayed for trial.

8. So as to hold the accused/appellants (A-1 to A-5) guilty, the prosecution examined 11 witnesses namely Bhuri Bai (PW-1), Injured- Radheshyam (PW-2), Gokul Prasad Dinker (PW-3), Bhagtu Ram (PW-4), Bhagat Ram (PW-5), Tularam (PW-6), G.B. Sahu (PW-7), M.L. Dahariya (PW-8), Dr. Sunil Ratre (PW-9), Dr. N.P. Mishra (PW-10) and Alok Pandey (PW-11) in support of its case. Statements of all the accused/Appellants 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 and stated that Radheshyam has assaulted Putluram (A-1) therefore a report (F.I.R. - Ex.-D/3C) was lodged against Radheshyam under Sections 323 & 324 of IPC in police station Dhabhra and for this reason they have been falsely implicated in this case. They examined two defence witnesses namely Surya Pal Singh as DW-1 and Raju Chandra as DW-2 in support of their defence.
9. After appreciation of the evidence available on record, the learned Sessions Judge, Janjgir-Champa (C.G.) by the impugned judgment, while acquitting appellant Saukhilal (A-2) of the charges under Sections 294, 506 Part-II & 307 read with Section 149 of IPC and Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, convicted and sentenced him (A-2) under Sections 148 & 323 read with Section 149 of IPC. Further, while acquitting appellants Putluram (A-1), Ghasiyaram (A-3 – Dead), Samaylal (A-4) and Manoj Kumar (A-5) of the charges under Sections 294, 506 Part-II & 307 read with Section 149 of IPC and Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, convicted and sentenced them (A-1, A-3, A-4 & A-5) under Sections 147 & 323 read with Section 149 of IPC, hence

this appeal.

10. Learned counsel for the appellants submits that a counter F.I.R. (Ex.-D/3C) was lodged by appellant Putluram (A-1) against Radhesham Satnami on 22.07.2007 and that fact is mentioned in *Roznamchasahana* (Ex.-D/4C) which was proved by DW-1 Surya Pal Singh and DW-2 Raju Chandra, therefore, all the appellants have been falsely implicated in this case. He further submits that there is no any independent witness who supported the prosecution case. He also submits that F.I.R. (Ex.-P/1) was lodged against only two appellants namely Putluram (A-1) and Saukhilal (A-2) just after the incident by PW-1 Bhuri Bai (mother of Radheshyam Satnami), but later on three appellants (A-3, A-4 & A-5) were involved by the family members of Radheshyam. He also submits that the conviction of appellant Saukhilal (A-2) under Section 148 of IPC is not sustainable because the prosecution has failed to prove basic ingredients against of this appellant (A-2). The trial Court has wrongly convicted the appellants (A-1, A-2, A-4 & A-5) for offence under Sections 147, 148 & Section 323 read with Section 149 of IPC, therefore, they be acquitted from the said charges.

11. Lastly, learned counsel for the appellants submits that looking to the simple injury sustained by injured Radheshyam Satnami, the trial Court has convicted the appellants (A-1, A-2, A-4 & A-5) for the offence under Sections 147, 148 & Section 323 read with Section 149 of IPC, therefore, considering the fact that they were the first offenders, they remained in jail for about two months and they have no criminal antecedents, their sentence may be reduced to the period already undergone by them. In support of his contention reliance has been placed on the decision of this Court in matter of ***Bansingh & Others Vs. State of M.P. (Now C.G.), reported in 2012 (1) C.G.L.J. 102.***

12. On the other hand, learned Deputy Advocate General for the State opposed these arguments and supported the judgment passed by the learned

Sessions Judge.

- 13.** Heard learned counsel for the parties and perused the evidence available on record.
- 14.** It is not disputed by learned State Counsel that appellant Saukhilal (A-2) was acquitted from the charges under Sections 294, 506 Part-II & 307 of IPC and Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act; likewise appellants Putluram (A-1), Ghasiyaram (A-3 – Dead), Samaylal (A-4) & Manoj Kumar (A-5) were acquitted from the charges under Sections 148, 294, 506 Part-II & 307 of IPC and Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and no appeal has been filed by the State against their acquittal from the said charges. Since appellant Ghasiyaram (A-3) has died during pendency of this appellant and appeal on behalf of him stood abated vide order of this Court dated 17.06.2015, therefore, this Court only considers the conviction and sentence of the appellants (A-1, A-2, A-4 & A-5) as mentioned in para-2 of this judgment.
- 15.** PW-2 Radheshyam (injured) has stated in his deposition that all the accused persons (A-1 to A-5) assaulted him by club (*lathi*), abusing him in the name of his caste and he sustained injury and became unconscious. PW-2 has admitted this fact that one F.I.R. (Ex.-D/3C) was also lodged against him (Radheshyam) by appellant Putluram (A-1) and the case is pending against him.
- 16.** PW-5 Bhagat Ram has seen the incident and has supported the evidence of PW-2 Radheshyam that all the appellants assaulted PW-2. PW-5 has stated that all the appellants took Radheshyam in front of house of Sarpanch where they also assaulted Radheshyam by hands, fists and *lathi*. Name of PW-5 is mentioned in the F.I.R. (Ex.-P/1) as eyewitness.
- 17.** PW-6 Tularam has also seen the incident and his name is also mentioned in the F.I.R. (Ex.-P/1) as eyewitness. PW-6 has supported the version of PW-5

Bhagat Ram.

- 18.** Injuries found on the body of Radheshyam (PW-2) were proved by PW-10 Dr. N.P. Mishra. PW-10 also examined the club (*lathi*) which was seized from appellant Saukhilal (A-2) vide Ex.-P/5 and gave his opinion that injuries mentioned in his MLC report (Ex.-P/18) could be caused by the said *lathi*.
- 19.** It is not disputed by Radheshyam (PW-2) that one F.I.R. (Ex.-D/3C) was lodged against him by Putluram (A-1) in police station Dhabhra, but nature of injury caused to Putluram (A-1) was not proved by medical evidence, nor any document produced, nor any evidence adduced by the appellants that he (A-1) sustained injury on his body. In the present case, seized club (*lathi*) was not produced before the trial Court, nor marked as Article and the same was not proved by the prosecution. Therefore, considering the facts and circumstances of the case, the evidence of Radheshyam (PW-2) which finds due corroboration from the eyewitness account of Bhagat Ram (PW-5) and Tularam (PW-6) as also the medical evidence, further considering that the prosecution has failed to prove use of any deadly weapon or arm by appellant Saukhilal (A-2) in rioting, this Court is of the opinion that the conviction of appellant Saukhilal (A-2) under Section 148 of IPC deserves to be set aside and instead he is to be convicted under Section 147 of IPC. Thus, the conviction of the appellant Saukhilal (A-2) under Section 148 of IPC awarded by the trial Court is set aside and instead he is convicted under Section 147 of IPC and his conviction for offence under Section 323 read with Section 149 of IPC is hereby affirmed. Likewise, conviction of appellants Putluram (A-1), Samaylal (A-4) and Manoj Kumar (A-5) under Sections 147 & 323 read with Section 149 of IPC by the trial Court is also affirmed.
- 20.** In *Bansingh* case (*supra*), it was held that "The incident occurred on 9-11-94 due to quarrel between two groups regarding harvesting of the crop. Accused persons are on bail. Looking to the entire facts and circumstances of the case conviction is confirmed; however the jail sentences awarded to

them are reduced to the period already undergone (more than one month).

Fine sentence awarded u/s 323/149 are maintained.”

21. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellants (A-1, A-2, A-4 & A-5) were the first offenders of 50 years, 35 years, 41 years & 23 years of age on the date of incident, they have no criminal antecedents, they remained in jail for about two months and are on bail during pendency of this appeal, the incident took place around 13 years back, keeping in view of the judgment of this Court in the matter of *Bansingh* (supra) wherein conviction of the accused persons was confirmed, however jail sentences awarded to them were reduced to the period already undergone, this Court is of the opinion that in the present case also no useful purpose would be served in again sending the appellants (A-1, A-2, A-4 & A-5) back to the jail at this stage and the ends of justice would be served if they are sentenced to the period already undergone by them.

22. In the result, the appeal is allowed in part. While acquitting appellant Saukhilal (A-2) of the charge under Section 148 of IPC, he is convicted under Section 147 of IPC and his conviction under Section 323 read with Section 149 of IPC is also confirmed and he is sentenced to the period already undergone by him. Likewise, while maintaining the conviction of the appellants (A-1, A-4 & A-5) awarded by the trial Court under Sections 147 & 323 read with Section 149 of IPC, they (A-1, A-4 & A-5) are sentenced to the period already undergone by them. The appellants (A-1, A-2, A-4 & A-5) are reported to be on bail, therefore, their bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge