

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 612 of 2011**

1. Devendra Sinha, aged about 36 years, S/o Late Dhansingh Sinha, Occupation, Agricultural, R/o Village Bhanpuri, P.S. Narharpur, District Kanker (CG)
2. Kuleshwar Sinha, aged about 51 years, S/o late Dhansingh Sinha, Occupation- Agricultural, R/o village Bhanpuri, P.S. Narharpur, District Kanker (CG)

---Appellants**Versus**

- State of Chhattisgarh, Through P.S. Narharpur, District North Baster Kanker (CG)

---- Respondent

For Appellants	Shri Sanjiv Pandey Advocate.
For Respondent/State	Shri Vikas Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

17/02/2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 12.07.2011 passed by the Special Judge (Atrocities), North Baster, Kanker(C.G.) in Special Sessions Trial No.123 of 2010, whereby the appellants have been convicted under Section 294 IPC and sentenced to undergo R.I. for 1 month and to pay fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 1 month; and under Section 323/34 of the IPC, R.I. for 1 month and to pay fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for 3 months.
2. None appeared on behalf of the appellants for arguing this appeal despite repeated calls. In the given facts and circumstances of the

case, in particular the long pendency of the appeal, this Court deems it appropriate to appoint a counsel in this case from the High Court Legal Services Committee for arguing the appeal on behalf of the appellants.

3. Shri Sanjiv Pandey, Advocate, present in the Court empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court appoints Shri Sanjiv Pandey, Advocate to argue the matter on behalf of the appellants. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
4. Brief facts of the case are that on the date of incident i.e. 28th August 2010, complainant Santram along with his wife- Malti was working in his agricultural field, at that time, appellant Devendra Sinha, whose field is adjacent to the field of Santram was throwing stones in the field of Santram. When Santram asked Devendra Sinha as to why he is throwing stones in his field and resisted, appellant Devendra Sinha abused him in the name of caste and pelted a boulder stone on Santram due to which he sustained injury on his head and right hand. Thereafter, again after some time, Devendra Sinha and Kuleshwar assaulted Santram with hands and fists, threatened him to life and pressed his neck and when his father Parshuram came to rescue him, they also assaulted him and caused injuries. F.I.R was lodged by Santram vide Ex.P1 on the same day. Spot map was prepared vide Ex.P3 by the Dy. Superintendent of Police, Rama Patel, AJAK Thana and seized 2 stones thrown by the appellants from the field of Santram vide Ex.P/4. Patwari prepared spot map vide Ex.P6 and P7.

Santram and Parshuram were sent for medical examination. Doctor examined Parshuram and found that he had not received any visible injury, but he was complaining pain in shoulder. Santram sustained injuries, abrasion and swelling on his hands and chest and injuries on occipital region were found. The injuries were simple in nature. His injury report is Ex.P11.

5. After completion of investigation, charge sheet for the offence under Sections 294, 323, 506(Part-II) r/w Section 34 of IPC and Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was filed against the accused/appellants. Thereafter, the trial Court framed charges under Sections 294, 323, 506(Part-II) r/w Section 34 of IPC and Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the accused/appellants prayed for trial and after completion of trial, the appellants were convicted and sentenced as mentioned in para 1 of this judgment.
6. So as to hold the accused/appellants persons guilty, prosecution has examined as many as 9 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them and stated that they have been falsely implicated in the case due to previous land dispute. In defence, they have examined only one witness namely- Gwalram (DW1).
7. Learned counsel for the appellants submits that the appellants have also sustained injuries and counter F.I.R. was lodged by appellant Devendra Sinha against complainant and Santram (PW1) and Parshuram (PW2). Rejuas Tigga(PW6) lodged his

report. The complainant party was aggressor in this case, therefore, the trial Court without considering previous enmity between the parties, has wrongly convicted and sentenced the appellants under the aforementioned Sections. He lastly submits that a counter case was filed by the appellants against the complainant Santrama and Parshuram under Sections 294, 323, 506-B, 34 of the IPC and the appellants have also sustained injuries in the incident and they have already spent 4 days in jail and looking to the facts of the case that the appellants have no criminal antecedents, first offenders, therefore, the accused/ appellants may be given benefit of Probation of Offenders Act and their jail sentence may be reduced to the period already undergone by them.

8. On the other hand, learned counsel for the State/respondent supported the impugned judgment and submits that the trial Court considering the overall evidence has rightly convicted and sentenced the appellants as aforementioned.
9. Santram (PW1) has deposed in para 1 to 4 that when he was working in his field, appellant Devendra Sinha was throwing stones in his field and when he resisted, Devendra Sinha used filthy language saying that "*Mere khet ko kharida hai, godiya sale madarchod, nanga sale jaan se mar dalunga*", threw stone on him due to which he sustained injury on head and right hand. After some time, appellant Kuleshwar Sinha came and caught his hairs, threatened to death and beaten him with hands and fists. When his father came to rescue him, the appellants also assaulted his father. Parshuram(PW2) has also stated same facts as stated by PW1-

Santram. Malti Bai (PW3), wife of Santram has also supported the case of prosecution and stated that both the appellants have beaten her husband Santram and father-in-law, Parshuram. Vishnu Korram (PW4) has also supported the case of prosecution. Ghanshyam Prasad (PW5), Patwari proved Ex.P6, Panchanama and spot map Ex.P7.

10.FIR was lodged by Santram(PW1). Dr. Prashant Kumar Singh (PW9) proved MLC of Santram vide Ex. P11 and he found injuries on hand, little finger, chest and occipital region, which were simple in nature. He also proved MLC of Parshuram vide Ex.P10 and found pain and injury was simple in nature.

11.It is true that as per record, counter case was filed by the appellants on the date of incident against complainant Santram and Parshuram and certified copy of FIR is placed on record of the trial court, but that document is not tendered in evidence by the appellants. Prosecution has proved this fact that the appellants were throwing stones upon the complainant and in the assault they have also received injuries, which is proved vide Ex.D2.

12.As per evidence of Santram (PW1), Parshuram (PW2), Malti Bai (PW3) and Vishnu Korram(PW4), both the accused/appellants have assaulted Santram and his father Parshuram and used filthy and abusive language and caused annoyance, therefore, prosecution has proved its case beyond reasonable doubt that offence under Sections 294, 323/34 of the IPC is made out against the appellants, therefore, the appellants were convicted and sentenced for the offences under Sections 294, 323/34 of the IPC. The trial Court appreciated the oral and documentary evidence and

has reached to the conclusion that on a trivial issue of throwing stones in the field of complainant Santram, a dispute arose and the accused/appellants assaulted Santram and his father Parshuram, in which they sustained injuries and threat. It is also noteworthy that the offence has not been committed on account of the fact that Santram and Parshuram belongs to Scheduled Caste or Scheduled Tribe nor the appellants were having intention to threatened them to commit their murder and mere uttering words, may not amount to offence.

13. Considering the overall facts and circumstances of the case and the evidence on record and the nature of injuries sustained by the complainant Santram and his father Parshuram, which were simple in nature and also the fact that the appellants have spent 4 days in jail i.e. from 29th August, 2010 to 1st September, 2010 and the incident had taken place in the year 2010, almost 10 years back; at present, age of the appellants- Devendra Sinha is 46 years and Kuleshwar Sinha is 61 years, they have no criminal antecedents, therefore, no fruitful purpose would be served in again sending them to jail and the ends of justice would be served if they are sentenced to the period already undergone by them while keeping the fine amount intact with default stipulation as imposed by the trial court.

14. In the result, the appeal is allowed in part. While maintaining their conviction under Sections 294 and 323 read with Section 34 of the IPC, both the sentences to run concurrently, their jail sentence is reduced to the period undergone by them. However, the fine amount of Rs.500/- and Rs.1000/- shall remain intact. The

appellants are reported to be on bail, therefore, their bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A Cr.PC.

Sd/
(Gautam Chourdiya)
Judge

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