

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 142 of 2008**

1. Gopi S/o Jayram Banjara, aged about 24 years.
2. Najeetram S/o Kanhaiyalal Banjara, aged about 38 years.
3. Jayram S/o Kanhaiyalal Banjara, aged about 43 years.
4. Jagdish s/o kanhaiya al Banjara, aged about 42 years,

All are R/o Village Khawaspali, Police Station- Basna, District Mahasamund (C.G.)

---- Appellants**Versus**

1. State of Chhattisgarh, through District Magistrate, Mahasamund (C.G.)

---- Respondent

For Appellants	:	Smt Indira Tripathi, Advocate.
For Respondent/State	:	Shri Vikas Shrivastava, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****20/01/2020**

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 25/01/2008 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Mahasamund (C.G.) in Special Session Trial No. 14/2007; whereby the appellants stand convicted and sentenced as under:-

Conviction	Sentence
U/s. 323 of Indian Penal Code (in short "IPC")	R.I. for 2 months & fine of Rs. 500/- in default of fine additional R.I. for 15 days.

- 2) Case of the prosecution in brief is that complainant Thandaram

lodged FIR Ex. P-1 stating that he was residing in his in laws house for the last 4 years and was doing agricultural work on the date of incident i.e. 18/11/2006 at 05:00 PM when he working in the agriculture field, his wife brought Goats near the agriculture field of Ishwar, on which one Gopi Banjara started abusing her wife in filthy language saying as to why she has brought her Goats and thereafter started chasing her whereupon the complainant started running to save his wife. At this point of time father of Gopi, Jairam, who was holding sickle, Najeetram and Jagdish stopped him. All the 3 persons said that they will kill him and Jayram assaulted him with sickle as a result of which he received injury in his left hand. The appellants also indulged in **Maarpet** with the wife of the complainant. The complainant tried to save his wife on which the present appellants attacked him with sickle and hands and fists. Hearing the voice father-in-law of the complainant came to save him on which appellant Jayram also assaulted him with sickle as a result of which he received injury in his hands. The incident was witnessed by Sampat Kolta and Uttar Kolta.

- 3) After completion of usual investigation charge-sheet was filed against the accused persons for the offence punishable under Sections 294, 506, 323 and 341/34 of IPC and Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- 4) The Trial Court framed charges under Sections 341, 294, 506(ii), 323 of IPC and Section 3(1)(x) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 against all the accused/appellants persons. The accused persons abjured their guilt and prayed for trial.
- 5) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Chetan Yadav (Head Constable), PW-02 N.S. Thakur (Tehsildar), PW-03 Dr. R.N. Das, PW-04 Thandaram (Complainant), PW-05 Malti Bai (wife of

complainant), PW-06 Sampatlal Bhoi, PW-07 U.S. Dubey (D.S.P.), PW-08 Uttar Kumar, PW-09 Dr. M.K. Nayak and PW-10 Ramniwas (Head Constable). The statements of the accused 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 implications. However, no defence witness was examined by them in their defence.

- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above in para 1 of this judgment.
- 7) Learned counsel for the appellants submits that no assault was made by the presents appellants. The complainant's wife brought some Goats near the agricultural field of Ishwar and since the Goats were grazing the land, dispute arose between the appellants and the complainant. He submits that in the present case the accused persons have lodged counter FIR against the complainant. The accused persons have also sustained injuries as per MLCs vide Ex. D-1 and Ex. D-2. The complainant in para 8 of his cross examination has stated that on the date of incident his Goats were grazing in the agricultural field of the accused persons because of which dispute arose between them, therefore, the complainant is the aggressor in the present case. The complainant also admits in para 8 of his cross examination that the dispute arose between them as his Goats were grazing the agricultural field of the accused persons, therefore, the Trial Court has wrongly convicted the appellants under section 323 of IPC.
- 8) He lastly submits that since both the parties have received injury in the same incident which are simple in nature, ends of justice would be served if the appellants are sentenced to the period already undergone by them.

- 9) On the other hand learned counsel for the respondent/State supports the impugned judgment and submits that dispute arose on account of grazing of the field of the appellants by the Goats of the complainant, however, the complainant was not an aggressor party. Firstly the quarrel took place between the wife of the complainant and the accused persons in which the accused persons tried to assault her whereupon the complainant ran to save his wife. Therefore, the Trial Court has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) It is not disputed that PW-09 Dr. M.K. Naik proved the injury found on the body of complainant Thandaram. As per MLC Ex. P-3, he found two abrasions of size 2cmx1/4cm and 3cmx1¼ cm respectively and the injuries are simple in nature. Father-in-law of the complainant (Bhagirathi) has been examined vide Ex. P-5 by Dr. R.N. Das PW-03. He noticed one lacerated wound of size 3cmx 0.5cmx0.1cm on the anterior surface of proximal over left index finger and the injury is simple in nature.
- 12) PW-01 Chetan Yadav is constable who has proved the FIR Ex. P-1.
- 13) PW-04 Thandaram is the complainant. PW-04 Thandaram has stated that he lodged the complaint on the next day of incident as his child was not well. But in his cross examination he stated that if the accused persons had not lodged any report against him, he would also not have reported the matter to the Police.
- 14) PW-05 Malti Bai is the wife of the complaint she reiterated the contents of the evidence given by complainant PW-04 Thandaram thus the evidence of PW-04 is duly corroborated by PW-05 Malti Bai.

- 15) PW-06 Sampatlal Bhoi also supported and corroborated the evidence of PW-04 complainant. PW-08 Uttar Kumar corroborated the evidence of PW-04 complainant to the extent that there was quarrel between complainant and the accused persons.
- 16) PW-01 Chetan Yadav is the I.O who has conducted the investigation.
- 17) Therefore, in view of the evidence of PW-04 Thandaram and PW-05 Malti Bai, it appears that during dispute/quarrel the complainant party was first assaulted by the accused appellants as the Goats belonging to the complainant were grazing the field of the accused persons. In the same incident the complainant received injuries which are simple in nature. PW-04 Thandaram, PW-05 Malti Bai and PW-08 Uttar Kumar supported the case of the prosecution and there is no reason to disbelieve their evidence. Their evidence is further supported by the injury sustained by the complainant vide Ex. P-2.
- 18) So far as the sentence part is concerned, considering the facts and circumstances of the case, the fact that the incident took place 14 years back, the age of the appellants at the time on incident, they have remained in jail from 05/12/2006 to 11/12/2006, the fact that they have no criminal antecedents, dispute arose between the party over a trivial issue of grazing of Goats in which the complainant party as well as the accused persons suffered injuries which are simple in nature, they are on bail since 2008, keeping in view the judgment of Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that the ends of justice would be served if the appellants are sentenced to the period already undergone by them while

keeping the fine amount with default stipulation as imposed by the Trial Court intact.

- 19) In the result the appeal is allowed in part. While maintaining the conviction of the appellants under Section 323 of IPC, their jail sentence is reduced to the period already undergone by them. However, the fine amount of Rs. 500/- with default sentence as imposed by the Trial Court upon the appellants shall remain intact. Since the appellants 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 provision of Section 437A of Cr.P.C. The appellants shall appear before the higher Forum as and when directed.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant