

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 104 of 2007

1. Bechan Ram, aged about 25 years, S/o Jokhan Ram
2. Prasad Yadav S/o Jokhan Yadav, aged about 35 years
3. Harihar Prasad @ Akalu Yadav, S/o Ganeshi Yadav, aged 28 years

All resident of Village Dhanwar, Thana Chalgali, District Surguja (C.G.)

---- Appellants

Versus

- The State of Chhattisgarh, through the Police Station Chalgali, District Surguja (C.G.)

---- Respondent/State

For Appellants	:	Ms. Varsha Sharma, Advocate appears on behalf of Shri Sunil Tripathi, Advocate
For Respondent/State	:	Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

05.03.2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 22.12.2006 passed by the Special Judge, Atrocities, Surguja (Ambikapur), C.G. in Special Sessions Case No. 157 of 2000, whereby all the above appellants stand convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 323 read with Section 34 of Indian Penal Code (for short 'IPC')	S.I. for one year and pay a fine of Rs.1,000/-, in default of payment to further undergo additional S.I. for three months to each appellants

2. The allegations of the prosecution in the trial against the appellants are that on 11.06.1997 at about 7-8:00 pm, deceased Nadhir S/o Mehar, 35 years of age was present in the house-warming party given by Bechan Ram (A-1) where Appellant- Harihar Prasad @ Akalu Yadav (A-3) told for giving liquor to Nadhir forcibly and then all the appellants started abusing Nadhir by caste and assaulted him (Nadhir) by club and hands. Thereafter, Nadhir went from

Dhanwar to Chalgali police station to lodge the report where zero numbered FIR was lodged under Sections 294, 506(B) and 323 of IPC against the accused persons. Injured Nadhir was sent for medical examination to Community Health Centre, Pratappur. Nadhir was medically examined by Dr. (Smt.) S.K. Paikra on 13.06.1997 and she found one abrasion on the middle of the back side of injured in size of 5 cm x 3 cm; another abrasion on the left side above the stomach in size of 5 cm x 3 cm; injured was complaining of pain on the chest and he was uncomfortable in breathing. Thereafter, the police admitted injured Nadhir in District Hospital, Ambikapur for better treatment where the injured died on 23.06.1997 at about 12:15 pm i.e. after 12 days of the incident. Written information (Ex.-P/13) of death of injured Nadhir was given by Dr. A.K. Agrawal to police station Ambikapur. On the basis of information of death of injured Nadhir, merg intimation (Ex.-P/12) was registered on 23.06.1997 at about 01:15 pm in police station Ambikapur.

3. The Investigating Officer gave notice to the *panchas* for identifying the dead body of the deceased vide Ex.-P/7 and prepared inquest on the dead body of the deceased vide Ex.-P/8. Dead body of Nadhir was sent for postmortem examination to District Hospital, Ambikapur, where the postmortem examination was conducted by PW-4 Dr. V.K. Shrivastava and he gave his report Ex.-P/1. According to his report Ex.-P/1, he found following injuries on the body of deceased Nadhir:-

1. There was tear in fundal part of stomach in size of 1½ inch x ½ inch through & through.
2. Another tear size about 1 inch x ¼ inch x ¼ inch.

Doctor opined that cause of death was septicemia shock due to tear in stomach and liver and duration of death was within 12 to 36 hours. There was no external injury found on the body of the deceased.

4. On 10.07.1997, all the accused/appellants were arrested by the police vide arrest memos Ex.-P/2, Ex.-P/3 & Ex.-P/4. One club (bamboo club) was

seized vide Ex.-P/5 at the instance of accused- Harihar Prasad @ Akalu Yadav (A-3). *Nazrinaksha* (Ex.-P/6) was prepared by Patawari Ramashankar Mishra (PW-7). Spot map (Ex.-P/11) was prepared by PW-9 D.S. Dhurve.

5. After recording case diary statements of the witnesses, charge-sheet was filed by the police for the offence under Sections 302, 294 and 506 (B) of IPC and Sections 3(1)(x) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the appellants/accused. While framing the charge, the Special Judge framed the charges against accused/appellants under Sections 302/34, 294 & 506 (B) of IPC and Sections 3(2)(v) & 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Special Act') which were denied by them and they prayed for trial.
6. So as to hold the appellants/accused guilty, the prosecution examined 12 witnesses namely PW-1 Phoolmaniya, PW-2 Jebli Bai, PW-3 Roopchand, PW-4 Dr. V.K. Shrivastava, PW-5 Shivnarayan, PW-6 Premchand Yadav, PW-7 Ramashankar Mishra, PW-8 R.C. Nishad, PW-9 D.S. Dhurve, PW-10 Mahendra Thakur, PW-11 S.L. Chouhan and PW-12 H.N. Shukla. Statements of the accused person 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 for false implication and in their defence, no witness has been examined.
7. The Special Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the appellants of the charges under Sections 302/34, 294 & 506 (B) of IPC and Sections 3(2)(v) & 3(1)(x) of the Special Act, convicted and sentenced them as mentioned in para-1 of this judgment.
8. Learned counsel for the appellants submits that in this case, no any incriminating evidence was adduced, nor FIR was proved, nor MLC report was proved by the prosecution. She further submits that only on the basis of

evidence of PW-1 Phoolmaniya, PW-2 Jebli Bai, PW-3 Roopchand, the Special Court has wrongly convicted and sentenced the appellants. She also submits that the statements given by PW-1, PW-2 and PW-3 regarding the time of incident are contradictory to each other, therefore, their statements were also not trustworthy and reliable. She submits that as per postmortem report (Ex.-P/1), no external injury was found on the body of the deceased, therefore, the Special Court has wrongly considered the prosecution evidence and convicted the appellants for the offence under Section 323/34 of IPC. Lastly, she submits that looking to the simple injury sustained by the deceased and no any visible injury found in the postmortem report, the Special Court has convicted the appellants for the offence under Section 323/24 of IPC only, therefore, considering the fact that the appellants were the first offenders, they remained in jail for about 3 months & 17 days and they have no criminal antecedents, their sentence may be reduced to the period already undergone by them.

9. On the other hand, learned counsel for the State supports the judgment impugned. He submits that in this case, definitely no FIR was proved, nor the MLC report of the deceased was proved by the prosecution, however, the eyewitnesses to the incident specifically stated that all the above appellants had assaulted the deceased by club, therefore, the conviction of the appellants awarded by the Special Court is in accordance with law which needs no interference by this Court.
10. Heard learned counsel for the parties and also perused the records of the Special Court.
11. PW-1 Phoolmaniya, PW-2 Jebli Bai and PW-3 Roopchand, they are relatives of the deceased. They have stated that the deceased was labour and on the fateful day, he (deceased) had gone to the house of appellant Bechan Ram (A-1) for demanding his wages and on that day, Bechan Ram had organized house-warming party. On account of demand of wages by the deceased

from appellant Bechan, the appellants assaulted the deceased by club. Thereafter, the report was lodged on the next day.

- 12.** In the present case, the incident happened on 11.06.1997 and after 12 days of the incident, the deceased died. Deceased did not die due to injury as per finding given by the Special Court because no such nature of injury was caused by the appellants. The deceased sustained only simple injury and as per postmortem report (Ex.-P/1), cause of death of the deceased was septicemia shock due to tear in stomach and liver.
- 13.** True, it is that it has come in the evidence of PW-1, PW-2 & PW-3 that prior to the date of incident, the deceased was assaulted by persons of Panika community, but in the present case, the incident of assault by the appellants happened after that incident. Looking to the evidence of witnesses (PW-1, PW-2 & PW-3), there are contradictions in their evidence regarding timing of the incident, but it may be natural. It was proved by the prosecution that the appellants had assaulted the deceased by club and the deceased died after 12 days of the incident, therefore, the Special Court has rightly convicted and sentenced the appellants for the offence under Section 323/34 of IPC.
- 14.** As regard the sentence, considering the facts and circumstances of the case, the fact that over trivial issue of demand of wages by the deceased, dispute arose between the appellants and the deceased in which the deceased sustained simple injuries, the fact that the appellants were first offenders, they have no criminal antecedents, they have remained in jail for three months and 17 days and are on bail since 12.02.2007, the incident took place around 23 years back, keeping in view of the judgment of the 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 in the present case also no useful purpose would

be served in again sending them back to jail at this stage and the ends of justice would be served if they are sentenced to the period already undergone by them for the offence under Section 323/34 of IPC.

15. In the result, the appeal is allowed in part. While maintaining the conviction of the appellants awarded by the Special Court under Section 323/34 of IPC, they are sentenced to the period already undergone by them. However, the fine amount imposed on them with default sentence by the Special Court shall remain intact. 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 the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge