

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 221 of 2005**

1. Pyari, D/o Anand Ram Yadav, aged about 20 years,
 2. Chhagan, S/o Anand Ram Yadav, Aged about 20 years,
 3. Anand Ram S/o Man Singh Yadav, Aged about 50 years,
 4. Madan Yadav, S/o Anand Ram Yadav, Aged about 26 years,
- All are R/o Village – Bhursatola, P.S. Mohala, District –
Rajnandgaon, Chhattisgarh

---- Appellants**Versus**

- State of Chhattisgarh, Through Police Station Mohla, District
Rajnandgaon, Chhattisgarh

---- Respondent

For Appellants	:	Shri Basant Dewangan, Advocate on behalf of Shri Anup Majumdar Adv.
For Respondent	:	Shri Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor**Order on board****05.10.2020**

As per the FIR (Ex-P/1) lodged by Haldhar Sai (PW-2), on 07.03.2004 when he was in his house, two women namely Basanti (not examined) and Kuleshwari (PW-4) entered in his house and complained to his wife Rainkunwar (PW-1) that they were being unnecessarily chased by accused/appellant Chhagan. Meanwhile, the accused-appellant Chhagan also happened to be there and when PW-1 asked him as to why he was unnecessarily chasing

PW-4, he started abusing her saying who she was to enquired into all that. FIR also shows that when PW-2 objected to the act of accused-appellant Chhagan, he abused him also and indulged in beating him. On the intervention of Haldhar Sai (PW-2), Chhagan got back but little later he along with other co-accused persons again came to the place of occurrence and started showering *lathi* blows at PW-2. When Rainkunwar (PW-1) try to intervene in the matter, she too was assaulted by accused Pyari. Ramadhin (PW-3) too was assaulted by Pyari with the help of club. It is relevant to mention here that all the accused-appellants were carrying clubs with them. Fakir Sai (PW-6) was assaulted by accused Anand Ram. Apart from assaulting with the help of *Lathi*, all the accused/appellants were hurling filthy abuses at Rainkunwar (PW-1), Haldhar Sai (PW-2), Ramadhin (PW-3), Fakir Sai (PW-6) and Ramesh (PW-7). After completion of investigation charge-sheet was filed against all the accused-appellants under Sections 147, 148, 323, 294, 506 B IPC and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Charge was also framed under the same Sections against each of the accused-appellants.

2. Learned Court below however by the judgment impugned dated 23.02.2005 passed in Special Case No.55/2004 acquitted all the accused-appellants of the charge under Section 3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, but found them guilty under Sections 148, 323 and 294

of the IPC by imposing the sentence of six months R.I. with fine of Rs.100/-, under Section 148 R.I. for three months for Section 323 and payment of fine of Rs.100/- under Section 294 IPC, plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellants submits that the findings recorded by both the Courts below are not based on proper appreciation of the evidence of the witnesses and therefore liable to be set aside. He submits that no seizure at all has been made from the accused/appellants and that the evidence of almost all the witnesses suffers from material contradictions and omissions rendering the case of the prosecution utterly doubtful.

4. State counsel however supports the judgment impugned to be fully justified.

5. Heard counsel for the parties and perused the judgment impugned and record of the Courts below.

6. From the evidence of Rainkunwar (PW-1) and Haldhar Sai (PW-2) it is crystal clear that for none of their faults accused Chhagan abused them by using obscene words and also inflicted club injuries to Haldhar Sai (PW-2). On the intervention of the people present there he left the spot but after a while, he again came back along with other co-accused carrying clubs with them and opened an assault on Rainkunwar (PW-1), Haldhar Sai (PW-2), Ramadhin (PW-3) and Fakir Sai (PW-6). Who assaulted whom with the *lathi* is also described by all these witnesses. Ramadhin (PW-3) and Rainkunwar (PW-1) are stated to have been assaulted

by Pyari, whereas the others were inflicted club injuries by accused Chhagan, Anand Ram and Madan Yadav. Ramadhin (PW-3) suffered swelling on his temple which is evident from medical report Ex-P/7. The Doctor at the same time has also expressed the possibility of the said injury having been caused by fall on a rough and petrified surface. Haldhar Sai (PW-2) suffered scratches on right arm, left knee, right knee and ankle which is evident from medical report (Ex-P/8 A), Rainkunwar (PW-1) suffered incised wound on head and the said injury was bleeding profusely which is evident from medical report (Ex-P/9 A), at the same time Fakir Sai (PW-6) complained pain and there was swelling on his right elbow, which is evident from medical report (Ex-P/10 A). As regards the injury suffered by PW-6, a possibility has been expressed by Doctor that it could have been caused with the club produced before him for examination. The aforesaid injuries suffered by PW-2, PW-5 and PW-6 are evident from the medical reports given by Dr. Shyam Rotela (PW-10) whereas the injuries as regards PW-1 and PW-3 are opined to have been caused by Dr. Hemant Kumar Arya (PW-9). Thus, the prosecution has adduced ample evidence on the basis of which the accused-appellants can be held guilty under Sections 148, 323 and 294 IPC.

7. In this view of the matter, the Court below does not appear to have committed any error in convicting him as referred to above and being so as regards conviction, the findings recorded by the Court below are hereby maintained.

8. As regards sentence, considering the fact that the accused-appellants have already suffered a lot in the wake of incident that had taken place in the year 2005 and that they have already remained in jail for about a week, this Court is not inclined to again send them to jail at such a belated stage and thereby disturbed their well settled family life. Accordingly, their sentence is reduced to the period already undergone. Being already on bail the appellants do not need any order from this Court for being set free or otherwise.

9. The appeal thus succeeds in part to the extent indicated above.

Sd/-
(Vimla Singh Kapoor)
Judge