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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 21 of 2007

Judgment reserved on 29.10.2020

Judgment delivered on 07.01.2021

Sukhlal S/o. Padalu, aged about 44 years, occupation agriculture, R/o. Panaraguda, Koynor, PS Parapa, District Bastar (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through P.S. A.J.A.K. Jagdalpur, District Bastar (C.G.)

---- Respondent

For Appellant : Mr. Subhash Yadav, Advocate.
For Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

Case of the prosecution in brief is that on 13.11.2005 at about 12.00 PM, Laxman Singh (PW-4) went to the field for harvesting the crops along with his family members. At that time, the appellant along with other co-accused persons came there and forcibly entered into the field and when the complainant asked him as to why he along with other have encroached upon his thrashing field then the accused persons started abusing him in the name of his caste and also caused a club injury on his head. As a result of which he fell on the ground and blood was oozing from his head.

Thereafter the appellants threatened him not to disclose the incident to anyone and fled from there. Subsequently, FIR (Ex.P-3) came to be lodged against the appellant and other co-accused and on the basis of which offence under Sections 147,294,323,506-B IPC and 3(i) (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "Special Act") were registered against them. After completion of investigation charge sheet was filed for the said offence followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 25/11/2006 passed in Sessions Trial No. 35 of 2006 acquitted the appellant of the charge under the Special Act but convicted him under Section 323 IPC with imposition of sentence of six months SI with fine of Rs. 500/- under Section 323, pulse default stipulations.

3. Counsel for the appellant submits that the judgment of conviction and order of sentence passed by trial court is arbitrary, illegal and contrary to the evidence collected by the prosecution. He submits that trial Court has acted illegally in holding the appellant guilty for the offence under Sections 323 IPC on wholly uncorroborated statement of complainant PW-4. He would submit that the appellant has been falsely implicated, therefore, he deserves to be acquitted.

4. Learned counsel for the State would submit that apart from the eye-witnesses, the appellant's memorandum statement and

consequent recovery of *danda* is proved against him, therefore, the conviction is fully borne out from the record.

5. PW-4 Laxman Singh has stated that the appellant came there with other co-accused and had tried to encroach upon his field when they were harvesting the crops with his family members. He further states that he objected the accused persons as to why they have encroached upon his field then the accused/appellant started abusing him in the name of his caste and assaulted on his head with *Danda* and threatened not to disclose the incident thereafter he fell on the ground. He further states that after the incident the appellant having seen him dead left on the spot and run away from there. He further states that after the incident he along with Jaganath (PW-1) Raitu (PW-3) have come to police station in an auto and lodged the report against the accused. In cross-examination this witness remained firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful. (PW-1) Jagannath, Raitu (PW-3) and Mansingh (PW-2) are the eyewitness to the incident, who have also supported the prosecution case, they have stated that appellant Sukhlal assaulted on the head of complainant with *danda*. They further stated that after the assault they snatched the *danda* from the hand of the appellant. Medical evidence, however, suggests that two incised wounds in the size of 6dmx.5dmx.5cm on the left side of head and in the size of 3cmx.5cmx.5cm on the right toe of the complainant was seen. This witness has stated that the

complainant complaining pain on his body and submitted his report Ex.P-4.

6. Thus the evidence on record clearly establishes the act of the accused/ appellant of causing injuries to PW-4 with the help of *danda* duly seized under Ex.P-2 and fortified by the evidence of doctor (PW-8). After looking into the evidence of the doctor, there remain nothing on the basis of which conviction of the accused/appellant under Sections 323 IPC could not be disturbed. Being so, it is hereby maintained. However, looking to the incident being of the year 2005, and that since then the accused has already faced a long drawn prosecution and even remained inside for one month and 20 days, interest of justice, in the opinion of this Court, would be served if his sentence is reduced to the period already undergone. In lieu of this, the appellant however, would be required to pay an enhanced sum of fine of Rs. 5000/- from that of Rs. 500/. Let this amount be deposited by the accused/appellant in the trial Court within a period of four months from today. Order accordingly.

7. Appeal is thus allowed in part to the extent indicate above. As the appellant is already on bail, his bail bonds stand discharged.

Sd/-

(Vimla Singh Kapoor)
JUDGE