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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

Single Bench: Hon'ble Shri Radhe Shyam Sharma, J.

Criminal Appeal No.977 of 2004

Appellants

1. Rasiklal, S/o Kurso Sahu, aged about 60 years, occupation agriculture,
2. Vidyadhar, S/o Rasiklal Sahu, aged about 34 years, occupation agriculture
3. Molabai, W/o Vidyadhar Sahu, aged about 30 years, occupation housewife,  
All residents of Pharhamuda, Bajinpali, Zootmil, District Raigarh (C.G.)

versus

Respondent

State of Chhattisgarh

Present:

Shri Govind Dewangan, counsel for the appellants.

Shri R.R.Sinha, Panel Lawyer for the State/respondent.

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure

**ORAL JUDGMENT**

(Delivered on 31<sup>st</sup> October, 2012)

This appeal is directed against judgment dated 28-10-2004 passed by Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act, 1989'), Raigarh in Special Case No.21/2003. By the impugned judgment, accused persons/appellants Rasiklal, Vidyadhar and Molabai have been convicted and sentenced in the following manner:-

Conviction

Under Section 294 IPC

Sentence

To pay fine of Rs.500/- each, in default of payment of fine, to undergo

imprisonment for 1 month

Under Section 323/34 IPC To pay fine of Rs.750/- each, in default of payment of fine, to undergo imprisonment for 1 month

Under Section 323/34 IPC To pay fine of Rs.750/- each, in default of payment of fine, to undergo imprisonment for 1 month

Under Section 323/34 IPC To pay fine of Rs.750/- each, in default of payment of fine, to undergo imprisonment for 1 month

2. Case of the prosecution, in brief, is as under:-

Complainant Balicharan (PW-1) is *Chamar* (Satnami) by caste, which belongs to Scheduled Caste. Appellant No.1 Rasiklal belongs to general category. Appellant No.2 Vidyadhar is son of appellant No.1 Rasiklal and appellant No.3 Molabai is wife of appellant No.2 Vidyadhar. On 20-2-2003, at about 4:30 P.M., complainant Balicharan (PW-1) was repairing his broken wall. At that time, the appellants said complainant Balicharan (PW-1) why was he repairing the wall and further said him to do the work of *Chamaar* Caste to which the complainant Balicharan (PW-1) belongs. The appellants disgraced the complainant of his caste, abused him in filthy language and threatened to kill him. The appellants committed *marpeet* with the complainant and injured him. When Indrabhan (PW-7, son of the complainant) and Phoolbadan (PW-2, brother of the complainant) tried to intervene, the appellants assaulted them too. Complainant Balicharan (PW-1) lodged First Information Report (Ex.P-1) in Police Station Kotwali, Raigarh. Complainant Balicharan (PW-1), Phoolbadan (PW-2) and Indrabhan (PW-7) were sent to

K.G. Hospital, Raigarh for medical examination vide Ex.P-7A, P-8 and P-6A, respectively. Dr. S.Lakda (PW-4) examined Balicharan (PW-1) and Indrabhan (PW-7) and gave his reports (Ex.P-7 and P-6, respectively). In Ex.P-7, he found following injuries on the body of injured Balicharan (PW-1):

- (i) abrasion over left ring finger 1cm long,
- (ii) lacerated wound,  $1\frac{1}{2}'' \times 1\frac{1}{2}'' \times \frac{1}{2}''$  between thumb and index finger of left hand,
- (iii) lacerated wound,  $\frac{1}{2}'' \times 1\frac{1}{4}'' \times \frac{1}{2}''$ cm on right temporal area 2" above of right ear and
- (iv) lacerated wound  $1\frac{1}{4}'' \times 1\frac{1}{4}'' \times \frac{1}{2}''$ cm on left parietal area

He opined that all the above injuries were caused by hard and blunt object and simple in nature. He advised for X-Ray of skull of Balicharan (PW-1).

In Ex.P-6, he found following injuries on the body of injured Indrabhan (PW-7):

- (i) contusion,  $2\frac{1}{2}'' \times 1\frac{1}{4}''$  over right side of skull,
- (ii) bruise,  $\frac{1}{2}'' \times \frac{1}{2}''$ cm over tip of nail of left hand ring finger and
- (iii) pain over chest caused by blunt hard object impact

He opined that all the above injuries were caused by hard and blunt object and simple in nature.

Dr. R.K.Agrawal (PW-6) examined injured Phoolbadan (PW-2) and gave his report (Ex.P-8A), in which, he found:

- (i) bruise,  $1'' \times \frac{1}{2}''$  situated over lateral aspect of left upper arm in middle lying horizontally, red in colour,
- (ii) bruise,  $2'' \times 1''$  situated on posterior aspect of middle of right forearm lying horizontally and

- (iii) bruise, 1"X1" situated on lower side of left forearm on posterior aspect

He opined that all the above injuries were caused by hard and blunt object and simple in nature.

In further investigation, spot map was prepared vide Ex.P-4. Caste certificate (Ex.P-3) of Balicharan (PW-1) was seized vide Ex.P-2. Bamboo (*Danda*) was seized vide Ex.P-5.

After completion of the investigation, charge sheet was filed against the appellants in the Court of Chief Judicial Magistrate, Raigarh, who in turn, committed the case to the Court of Special Judge under the Act, 1989, Raigarh, who conducted the trial and convicted and sentenced the appellants as mentioned above.

3. Shri Govind Dewangan, learned counsel for the appellants, argued that there are material contradictions in the evidence of prosecution witnesses. Phoolbadan (PW-2) is brother of complainant Balicharan (PW-1) and Indrabhan (PW-7) is son of the complainant. They are highly interested witnesses. Their evidence is not cogent, trustworthy and reliable. He further argued that the prosecution has failed to prove its case beyond all reasonable doubts. He further argued that the appellants are falsely implicated. Therefore, the appellants deserve to be acquitted.

4. Shri. R.R.Sinha, learned Panel Lawyer for the State/respondent, supporting the impugned judgment of conviction and sentence, submitted that the same is impeccable and does not warrant interference by this Court.

5. I have heard learned counsel for the parties at length and have also perused the record of Special Case No.21/2003. The conviction of the appellants is based on the evidence of complainant Balicharan (PW-1), Phoolbadan (PW-2), Ramnarayan (PW-3) and Indrabhan (PW-7).

6. Balicharan (PW-1) deposed that he is *Chamar* (Satnami) by Caste, which belongs to Scheduled Caste. He further deposed that on 20-2-2003, at about 4:30 P.M., he was repairing his broken wall. At that time, the appellants asked him why was he repairing the wall. He told to the appellants that his wall had broken, therefore, he was repairing it. Then, the appellants said him that he could not repair the wall. He replied the appellants that they should not have objection as he was working on his own land. He further deposed that the appellants abused him of his Caste and asked him to run away from there and threatened him of life. He further deposed that appellant No.2 Vidyadhar assaulted him on his head with *Lathi* and appellant No.1 Rasiklal assaulted him on his head with *Fawada*. When appellant No.2 Vidyadhar assaulted again, complainant Balicharan (PW-1) resisted it by his left hand, due to which, he sustained injury on his thumb. He further deposed that he had sustained injuries on his hands and legs. He further deposed that his clothes were smeared with blood. He further deposed that when his brother Phoolbadan (PW-2) and his son Indrabhan (PW-7) tried to intervene, appellant No.1 Rasiklal assaulted them with *Lathi*. At that time, appellant No.3 Molabai had assaulted him with stone. He further deposed that after committing *marpeet* and abusing him, the

appellants fled from there. Phoolbadan (PW-2) and Indrabhan (PW-7) also deposed in similar fashion.

7. Ramnarayan (PW-3) deposed that about 9-10 months prior to the date of his deposition, at about 4:30 P.M., he was taking breakfast. At that time, he heard noise emanating from the house of Balicharan (PW-1), therefore, he went to the house of Balicharan (PW-1). At that time, the appellants were present there. He further deposed that Phoolbadan (PW-2) and Indrabhan (PW-7) were also present there. Appellant Vidyadhar assaulted with *Lathi* and appellant Rasiklal assaulted with the *bent* of *Rampa* on the head of Balicharan (PW-1). He further deposed that Balicharan (PW-1) had sustained injuries on both sides of his head, on both the hands and on thumb. He further deposed that Molabai had abused and assaulted with stone on back of Balicharan (PW-1).

8. Dr. S. Lakda (PW-4) deposed that he examined injured Balicharan (PW-1) and Indrabhan (PW-7). He further deposed that he found multiple lacerated wounds on the body of Balicharan (PW-1) and abrasion and contusion on the body of Indrabhan (PW-7). He further deposed that the injuries were simple in nature. He further deposed that he had advised for X-Ray of skull of injured Balicharan (PW-1).

9. Dr. R.K.Agrawal (PW-6) deposed that he examined injured Phoolbadan (PW-2) and found multiple bruise on his body. He opined that the injuries were caused by hard and blunt object and simple in nature.

10. The evidence of Balicharan (PW-1), Phoolbadan (PW-2) and Indrabhan (PW-7) are cogent, trustworthy and reliable and are duly corroborated by the evidence of Ramnarayan (PW-3) as also by medical evidence. The same can be based for the conviction.

11. Therefore, the impugned judgment of conviction and sentence passed by the learned Special Judge based on the above evidence does not call for any interference by this Court.

12. For the foregoing reasons, I do not find any substance in this appeal. The appeal deserves to be and is hereby dismissed.

Sd/-  
**R.S. Sharma**  
**Judge**