IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 27th OF DECEMBER, 2023

CRIMINAL APPEAL No. 1729 of 2015

BETWEEN:-

1. **PRAKASH MISHRA S/O SHRI LAXMI NARAYAN MISHRA, AGED ABOUT 35 YEARS, R/O DADA DHANI RAM WARD, MAHARAJPUR P.S TEH. AND DISTT. (MADHYA PRADESH)**

2. **BABULAL S/O NANDLAL KOL, AGED ABOUT 38 YEARS, OCCUPATION: SERVICE PLATOON COMMANDER 35TH BATTALION SPECIAL ARMS FORCE MANDLA (MADHYA PRADESH)**

3. **RAMBABU S/O RAGHUVEER SINGH JATAV, AGED ABOUT 30 YEARS, OCCUPATION: SERVICE TRADEMAN 35 TH BATTALION SPECIAL ARMSFORCE MANDLA P.S. AND DISTT. MANDLA (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI DURGESH KUMAR SINGRORE - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH POLICE STATION MAHARAJPUR AJAK P.S MANDLA DISTT. (MADHYA PRADESH)

.....RESPONDENT

(BY MS. SHANTI TIWARI - PANEL LAWYER)

This appeal coming on for hearing this day, the court passed the following:

JUDGMENT

At the outset, learned counsel for the appellants informed this court that appellant No. 2 Babulal had died during COVID period, therefore, learned

counsel for the appellants does not wish to press this appeal on behalf of appellant No. 2-Babulal.

2 . Accordingly, this appeal is **dismissed as not pressed** on behalf of appellant No. 2-Babulal.

3. Heard this appeal on behalf of appellant No. 1 Prakash Mishra and appellant No. 3 Rambabu.

4 . This criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (In short "Cr.P.C.") has been preferred against the judgment and order dated 29.06.2015 passed by Special Judge, SC/ST Act, Mandla, in Sessions Trial No.25/2013, whereby appellant No. 1 and 3 have been convicted under Section 341 of Indian Penal Code (hereinafter referred as "IPC") and have been sentenced to fine of Rs. 500/- and Section 323/34 (two counts) of IPC and have been sentenced to undergone RI for 3 months in each counts with fine of Rs. 500/- with default stipulation.

5. The prosecution story, in nutshell, is that on 05.05.2013 at about 7:40 pm, injured Raju @ Hemraj (PW-1) had gone to his mosi Rajjobai's house in Marajpur by Magic vehicle bearing No. MP-51-T-0353. While returning on the way near Dada Dhaniram Ashram, he was stopped by the appellants. They hurled abused by marked his caste and assaulted him with kicks and fists. Incident was reported to Police Station Marajpur, District-Mandla where the offence under Sections 341, 294, 323, 506, 34 and Section 3(1)(x) of SC/ST Act were registered in Crime No. 110/2016. After completion of investigation, charge sheet was filed and trial commenced.

6. Learned trial Court after appreciating the evidence on record vide impugned judgment convicted and sentenced the appellants No. 1 and 3 as

mentioned herein above.

7. Learned counsel for the appellants submits that he does not want to press the findings of conviction recorded by the trial Court against the appellants. As far as the sentence is concerned, he submits that the incident took place in the year 2013. Appellant No. 1 and 3 have no criminal antecedent. They are not involved in any other case. They have faced the trial from last near about 10 years, a lenient view may be taken as regards to the sentence and the same may be reduced to the period already undergone.

8. Learned counsel for the State has submitted that an appropriate order may be passed by this Court in this regard.

9. Heard the learned counsel for the parties and perused the record.

10. The evidence adduced in support of the allegation with regard to offence u/s. 323/34 of IPC is found to be clear, cogent and consistent. The same is free from any material infirmity and anomaly. The testimony of complainant Raju @ Hemraj (PW-1) has supported the FIR and Phoola Bai (PW-2) has also supported the case of prosecution. Medical evidence as adduced by the Dr. R.K. Baghel (PW-6) has further supported the prosecution case. On the scrutiny of material available on record, it cannot be said that the learned trial Court has committed any error in recording conviction for above offence against the appellant No.1 and 3.

11. As regards the sentence, the prayer made on behalf of the appellants appears to be reasonable. The incident belongs way back to 10 years. No criminal antecedents are attributed to the appellant, appellant No. 1 Prakash Mishra has been in custody from 22.05.2013 to 23.05.2013 and appellant No. 3 Rambabu has been in custody from 26.06.2015 to 29.06.2015 as evident from the paragraph 37 of the impugned judgment, therefore, the period of sentence of

appellant No. 1 and 3 deserves to be reduced to the period already undergone.

1 2 Accordingly, this appeal is **partly allowed** on the point of sentence as mentioned herein above. The conviction of the appellant No. 1 and 3 is maintained. As regards the sentence, the same is reduced to the period already undergone. Surety and bail bonds of the appellant No. 1 and 3 are discharged.

13. The record of the learned trial Court along with the copy of the judgment be sent back forthwith to the concerned trial Court for compliance and necessary action.

(BINOD KUMAR DWIVEDI)
JUDGE

L.R

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THE HIGH COURT OF MADHYA PRADESH
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