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IN THE HIGH COURT OF JUDICATURE AT JABALPUR, M.P.

Criminal Appeal No 1321 /1999

CRIMINAL APPEAL UNDER SECTION 374(2) CRIMINAL PROCEDURE
CODE AGAINST ORDER DATED 19-4-99 PASSED BY SHRI B.P. MISHRA
SPECIAL JUDGE (ATROCITIES), BILASPUR IN A SPECIAL CRIMINAL
CASE NO 77/96.

Conviction Under
Section

Sentence

323 I.P.C.

Six months R.I.

341 I.P.C.

15 Days Simple Imprisonment

3(1)(10) SC/ST
Atrocities Act

Six months R.I. and Fine
of Rs 500/- in default of
payment, two months R.I.

All the Sentences to run concurrently.

APPELLANT:

Chuni Lal son of Prem Narayan
Patel Aged about 57 years
R/o Sakti, Police Station Sakti
District Janjgir Champa, M.P.

Versus

RESPONDENT:

State of Madhya Pradesh
Through Police Station Sakti
District Janjgir Champa MP

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K. V. S. Narayan

Advocate

Rto. A. R.

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench : Hon'ble Shri Justice C.B.Bajpai

Criminal Appeal No.1293 of 1999

Appellants Satish Kumar and another

Versus

Respondent State of Madhya Pradesh (now State
of Chhattisgarh)

Criminal Appeal No.1321 of 1999

Appellant Chunni Lal

Versus

Respondent State of Madhya Pradesh (now State
of Chhattisgarh)

{Criminal Appeals under Section 374(2) of the Code of Criminal Procedure,
1973}

Appearance:

Mr. V.C.Ottalwar and Mr. B.P.Gupta, Advocates for the appellants.

Ms. Sangeeta Mishra, Panel Lawyer for the State/respondent.

JUDGMENT

(07-01-2015)

1. Since both the appeals arise out of the common judgment, they are being disposed of jointly by this common judgment.
2. Challenge in both these appeals is to the judgment of conviction and order of sentence dated 19-04-1999 passed by the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act, 1989'), Bilaspur, M.P. (now C.G.) whereby and whereunder the learned Special Judge convicted and sentenced the appellants in the following manner with a direction to run the sentences concurrently :-

Conviction	Sentence	Appellants
Under Section 323 of the Indian Penal Code (for short 'the IPC')	Rigorous imprisonment for 6 months	Chunni Lal, Satish Kumar and Bharatlal

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Under Section 341 of the IPC	Simple imprisonment for 15 days	Chunni Lal, Satish Kumar and Bharatlal
Under Section 3(1)(x) of the Act, 1989	Rigorous imprisonment for 6 months and to pay fine of Rs.500/-, in default of payment of fine, to further undergo rigorous imprisonment for 2 months	Chunni Lal, Satish Kumar and Bharatlal
Under Section 3(1)(ii) of the Act, 1989	Rigorous imprisonment for 6 months and to pay fine of Rs.500/-, in default of payment of fine, to further undergo rigorous imprisonment for 2 months	Satish Kumar and Bharatlal

3. The conviction is impugned on the ground that without there being any iota of evidence, the trial court has convicted the sentenced the appellants as aforementioned and thereby committed illegality.

4. As per case of the prosecution, on 21-07-1992, complainant Heeralal (PW-3) at about 09.40 p.m. gave a written complaint (Ex.-P/3) before Sakti police. In the said complaint, he stated that on 21-07-1992, at about 08.40 p.m. and 09.30 p.m., the appellants were throwing used water after cleaning utensils, he objected the same, thereafter, when he was going out for his official work, all the appellants abused him using filthy language in the name of mother and sister and also to annoy and insult him stated the name of his caste as he was a member of Scheduled Castes and also assaulted him. He was injured. The incident was witnessed by Gendram (PW-4), Hetram (PW-5) and one Shrirampratap, they intervened and saved him. Sakti police registered the First Information Report (Ex.-P/4) against all the appellants by registering crime No.161/92 under Sections 341, 294, 323, 506B/34 of the IPC and Sections 3(2,8,10) of the Act, 1989. After registration of the FIR, Rajendra Singh Thakur, Sub-Inspector (PW-6) started investigation. During investigation, the complainant was sent for medical examination. Doctor D.D.Mishra (PW-2), noticed swelling below the left eye at the cheek of 2 x 2 cms., backside of the left thigh of 7 x 4 cms. and over left thigh of 5 x 4 cms. and in the middle finger of the left hand; and abrasion in all the above 3 injuries. As per opinion, the injuries were caused by hard and blunt object, simple in nature. The doctor

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gave his report vide Ex.-P/2A. The doctor also examined during the course of investigation the articles sent for examination to him and opined that the injuries caused over body of the complainant could be caused by the articles sent to him and gave his report vide Ex.-P/3. During the investigation, Sub-Inspector Rajendra Singh Thakur (PW-6) recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). He seized one scale from appellant Bharatlal vide seizure memo Ex.-P/6, one belt from appellant Satish Kumar vide seizure memo Ex.-P/7.

5. After completion of the investigation, the I.O. arrested the appellants on 22-07-1992 and in due course filed the charge sheet before the Judicial Magistrate First Class, Sakti on 17-08-1992. The Judicial Magistrate First Class, Sakti, in turn, committed the case to the Court of Sessions, Bilaspur, the learned Special Judge received the case on transfer and conducted the trial. During the trial appellants Bharatlal and Satish Kumar were charged for the offence under Sections 323, 341 and 294 of the IPC and under Sections 3(1)(x) and 3(1)(ii) of the Act, 1989 and appellant Chunni Lal was charged for the offence under Sections 323, 341 and 294 of the IPC and under Section 3(1)(x) of the Act, 1989. All the appellants denied the charges and prayed for trial.

6. In order to prove the guilt of the appellants 6 witnesses were examined on behalf of the prosecution. The statements of the appellants were recorded under Section 313 of the Code wherein they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.

7. After providing opportunity of hearing to the parties, the learned Special convicted and sentenced the appellants as aforementioned.

8. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

9. Learned counsel for the appellants submitted that in the present case no

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caste certificate was ever collected or adduced during the course of investigation. There is no proof that the complainant belongs to Scheduled Castes but for his oral submission. The complainant was a public servant, he could very well provide caste certificate during investigation or the Investigating Officer may investigate regarding the caste certificate. Though the caste certificate in writing was not mandatory, but in the present case, looking to the facts and circumstances, caste certificate was necessary because as per the statement of complainant Heeralal (PW-3), at para 8, he was not known to the appellants prior to the incident; it goes to show that there was no occasion for the appellants to know regarding the caste of the complainant and unless with intent to humiliate or insult the words are spoken, the offence under Section 3(1)(x) and Section 3(1)(ii) of the Act, 1989 are not made out. Not proving of the caste of the complainant makes the prosecution's case under the cloud. The complainant was not resident of Sakti but he was a public servant came on transfer, hence there is no occasion for the appellants to know about his caste. As per the admission of the complainant that prior to the incident the appellants were not known to him. Further argued on behalf of the appellants that offence under Section 3(1)(ii) of the Act, 1989 held against appellants Satish Kumar and Bharatlal is not proved as by the same set of evidence appellant Chunni Lal was acquitted for the said offence and appellants Satish Kumar and Bharatlal were convicted for the said offence without assigning any reason. Further to prove the offence under Section 3(1)(ii) of the Act, 1989, there should be an act to throw waste water after cleaning of utensils as well as there must be intention towards insult or annoyance. In the present case, as per the written report, it is mentioned that the appellants were throwing that waste water in the road. Complainant Heeralal (PW-3) admitted at para 8 in his cross-examination that there is no drainage (नाली) in front of the house of the appellants and there was no vacant place and the area was such as they had, at the most, no option but to throw the said water in the road, if at all proved. It

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is further submitted that the incident was witnessed by Gendram (PW-4) and Hetram (PW-5) along with other persons. Gendram (PW-4) and Hetram (PW-5) not said anything regarding the throwing of the water after cleaning of the utensils, it goes to show that the allegations in the complaint is not supported by the witnesses present. Amarnath Agrawal (PW-1) though present and the complainant informed him regarding the incident, but he not supported the prosecution's case. As there was no intention to insult or annoy by throwing the waste water in the road, the offence under Section 3(1)(ii) of the Act, 1989 is not made out. The same thing is also true regarding the offence under Section 3(1)(x) of the Act, 1989 since the caste of the complainant is not proved; there was no occasion for the appellants to know the caste of the complainant. Both appellants and the complainants were not known to each other prior to the incident and there was no intent to humiliate or intention to insult or intimidate the complainant who was a member of certain category. It is further submitted that as per the complainant, the appellants told him ".....नीच जाति का है सबर्णों के मोहल्ला में रहते हैं....." is not supported by Gendram (PW-4) and Hetram (PW-5). In absence of any support to above alleged statement it cannot be proper to hold that the above sentence was stated by the appellants therefore, the fact that the appellants spoke the above sentence to the complainant cannot be said to be proved. It is further submitted that Gendram (PW-4) stated that the appellants told the complainant that "...साले भाग जाओं यहां से नहीं तो मार डालेंगे।.....", this fact is missing in the statement of complainant Heeralal (PW-3). Hetram (PW-5) deposed in his examination-in-chief as "...अपने आप को सी0एम0ओ0 दिखाता है, ज्यादा होशियारी दिखाता है.....", was not supported by complainant Heeralal (PW-3) and Gendram (PW-4). These all go to show that there are material contradictions, omissions and differences in the statement of the witnesses regarding the word spoken by the appellants; these show that fact of intentionally insult or intent to humiliate a member of reserved category is not proved beyond doubt. Hence, the prosecution failed to prove its case so far as

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Section 3(1)(ii) and 3(1)(x) are concerned.

So far as offence under Section 323 and 341 of the IPC are concerned, the learned counsel for the appellants submitted that as per written report, he was assaulted by *lathi*, but during examination before the Court, the complainant categorically denied that he was beaten by the stick, he simply deposed that he was slapped by the appellants. They further submitted that it is not the case of the prosecution that every appellant was having belt and assaulted by belt. As per the prosecution's case, a belt was seized from appellant Satish Kumar only. The complainant gave a general statement that he was assaulted by all the appellants through belt which cannot be accepted especially when the complainant admitted that he was slapped by the appellants as per para 9 of his cross-examination. Therefore, the complainant was assaulted by stick and belt is not proved, hence, the prosecution failed to prove its case beyond all doubt that the appellants assaulted the complainant. Hence, the appeal may be allowed and the appellants may be acquitted from the charges.

10. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the appellants and duly supported the judgment of the trial Court and submitted that there was no reason for false implication. The complainant was a public servant, the incident happened with him and he immediately informed police, there also he specifically stated incident regarding his caste and other facts, there is no reason to disbelieve the complainant, therefore, both these appeals may be dismissed and the judgment of conviction and order of sentence passed by the trial Court may be affirmed.

11. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced during the trial.

12. So far as offence under Sections 3(1)(x) and 3(1)(ii) of the Act, 1989 are concerned, no reason is assigned as to why appellant Chunni Lal was

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acquitted from the charges under Section 3(1)(ii) of the Act, 1989 as the same offence are surfaced against all the appellants. Even otherwise, unless with intent to insult or annoyance such throwing of waste water in the premises or the neighborhood of the complainant is proved, one may not be held guilty in the present case. As per written report (Ex.-P/3) which was the first information given to police, the appellants were throwing waste water in the road and the complainant himself admitted at para 8 that there is no drainage (नाली) in front of the house of the appellants and there is no vacant place. It is not the matter that the appellants were throwing all these waste water in the premises or in the neighborhood. They were throwing it only because there was no drainage (नाली) or any empty place, it is quite obvious since there is no open place, no other option left but to throw the said water in the road. One point to note is that as per the evidence adduced the said water was remaining water after cleaning the utensils, it cannot be said as excreta or waste mater or any other obnoxious substance as per subject of the said provision of the Act, 1989. Normally, in every house, utensils are cleaned and the waste water are drained, in the present case, since there was no drainage (नाली) and no intent to cause any injury or to insult or annoy, in the considered view of this Court, Section 3(1)(ii) of the Act, 1989 is not made out.

13. So far as conviction under Section 3 (1) (x) is concerned, as per settled law, unless there is intentionally insult or intimidation with intent to humiliate a member of reserved category in any public place, offence cannot be held proved. In the present case, the caste of the complainant was not proved; as he was a public servant holding a public office, it was very easy for him to provide the certificate of his caste, it can even be procured by the extract of the service book or information from the superior authorities. Also as per admission by Heeralal (PW-3)/complainant at para 8 that he did not know the appellants prior to this incident. He was not a permanent resident of that area, hence there is remote chances that the appellants were knowing his caste, otherwise

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also, this all incident started on a petty dispute of throwing dirty water. Upon considering the entire facts, circumstances and evidence, it goes to show that element of intentionally insult or intent to humiliate is missing in the present case. Also if we consider the other facts whatever deposed by Heeralal (PW-3) in para 4, as submitted in the argument on behalf of the appellants, is not supported by the other witnesses, whatever Gendram (PW-4) is stating in the Court is not corroborated either by the complainant or by Hetram (PW-5). Hetram (PW-5) only stated that the appellants were telling the complainant that he is showing him as CMO and thereby shows more cleverness but this fact is not supported by the complainant or the other eye-witness present Gendram (PW-4). It goes to show that all the three witnesses stating different words. Amarnath (PW-1) not supported the prosecution's case. Also in the course of any dispute, if for the moment, word of caste is spoken the same cannot be taken as intentionally insult or to be stated with intent to humiliate. In the present case that fact is also missing. It was the duty of the I.O. to collect the caste certificate. This unexplained fact goes to show that there are clouds over the fact that the complainant belongs to member of Scheduled Caste.

14. Upon entire appreciation of the facts, circumstances and the evidence, in view of this Court, in totality, the prosecution has not been able to prove the ingredients of Section 3(1)(x) of the Act, 1989 against all these appellants i.e. appellants Satish Kumar, Bharatlal and Chunni Lal and the said conviction required interference along with conviction under Section 3(1)(ii) of the Act, 1989 of appellants Satish Kumar and Bharatlal.

15. So far as offence under Section 341 of the IPC is concerned, upon consideration of the entire facts and circumstances, it is not proved that the appellants wrongfully restrained the complainant, at the most, it can be held that the incident happened, but the complainant was not wrongfully restrained. By not adducing the specific facts, the prosecution not proved the offence under Section 341 of the IPC.

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16. So far as offence under Section 323 of the IPC is concerned, as per the statement of the complainant and other witnesses, the appellants assaulted the complainant. During the medical examination, the Doctor noticed one swelling along with 3 abrasions simple in nature. The complainant admitted at para 9 of his cross-examination that he was slapped by the appellants. Upon considering the facts and circumstances, as far as the ingredients of Section 323 of the IPC are concerned, in view of this Court, the same is proved that all the appellants assaulted and slapped the complainant and during the course of this incident the complainant received the above mentioned injuries thereby the prosecution proved the offence under Section 323 of the IPC.

17. Consequently, both the appeals filed by appellants are partly allowed. Appellants Chunni Lal, Satish Kumar and Bharatlal are acquitted of the charges framed under Section 341 of the IPC and Section 3(1)(x) of the Act, 1989. Also appellants Satish Kumar and Bharatlal are acquitted from the charge framed under Section 3(1)(ii) of the Act, 1989. Appellants Chunni Lal, Satish Kumar and Bharatlal are held guilty under Section 323 of the IPC and their conviction under Section 323 of the IPC is hereby affirmed.

18. So far as quantum of sentence is concerned, present is a case which is about more than 22 years old, the appellants were the first offenders, on a petty dispute this incident arose, all these appellants remained in custody for one day on 22-07-1992; all the appellants paid the fine sentence as ordered by the trial court. It would not be proper to send the appellants in jail after a long passage of time of more than 22 years. Accordingly, appellants Chunnilal, Satish Kumar and Bharatlal are sentenced for the period till rising of the Court and also to pay fine of Rs.1000/- each, in default of payment of fine, the appellants shall undergo rigorous imprisonment for 4 months. Since the appellants already remained in jail for one day, their sentence of till rising the court is complete. They have paid the fine amount after conviction, the fine amount paid by them shall be adjusted in the fine amount ordered today by this

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Court.

19. It is stated that the appellants are on bail. They be set at liberty forthwith. Their bail bond shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
Chandra Bhushan Bajpai
Judge