

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 633 of 1999

1. Ram Bagas Son of Mehtar Sahu, aged about 40 years,
2. Mangtin Bai, wife of Ram Bagas, aged about 38 years,
3. Bati Bai, wife of Latkhor Sahu, aged about 45 years,

All the above named appellants are resident of Village – Bhothali, Police Station – Gurur, Tahsil – Gurur, District Durg, M.P. (now C.G.).

(Name of appellant Latkhor was deleted as per order of this Court dated 14-11-2014 as he died during pendency of this appeal and the appeal stands abated against him)

---- Appellants

Versus

1. The State Of M.P. (now State of C.G.)

---- Respondent

For Appellants – Shri M.D.Dhote, Advocate.

For Respondent – Shri Akhilesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

13/03/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22-02-1999 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989'), Durg, M.P. (now C.G.) in Special Sessions Trial No.245/97 whereby and whereunder the Special Judge after holding the appellants guilty for voluntarily causing grievous hurt to deter a public servant Patwari Shyam Lal Netam (PW-2) from his duty and intentionally insulting by stating name of his caste to humiliate a member of Scheduled Castes in a place within public view convicted the appellants under Section 333/34 of the Indian Penal Code (in short 'the IPC') and Section 3(1)(x) of the Act, 1989 and sentenced them rigorous imprisonment for 2 years and rigorous imprisonment for 6 months, fine of Rs.200/- and fine of Rs.200/-, in default of payment of fine, additional

rigorous imprisonment for 15 days and additional rigorous imprisonment for 15 days, respectively.

2. Conviction is impugned on the ground that without there being any iota of evidence, the court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. As per case of the prosecution, complainant Shyam Lal Netam (PW-2) was working as Patwari. On 15-07-97 at village Bhothali, P.S. Gurur, at about 6.00 p.m., all the appellants including co-accused/co-appellant Latkhor (died during pendency of this appeal and the appeal filed by him stands abated under Section 394 of the Code of Criminal Procedure, 1973 vide order of this Court dated 14-11-2014) reached to the office of the complainant and on account of allegation for wrong doing demarcation, after making dispute, assaulted him by hands and fists and also stated the caste of the complainant to humiliate and insult him. On the same day, at 11.30 p.m., the complainant reached to the Police Station Gurur and lodged the First Information Report (Ex.-P/1), which was registered vide Crime No.159/97 against all the 4 accused and the Investigating Officer started investigation. During investigation, the complainant was sent for medical examination. Doctor S.R.Bhardwaj (PW-7), after examination, noticed swelling at the left side of the chest and also noticed swelling over the right side of the back near vertebral column and at the arm, he also noticed pain upon applying pressure. As per opinion, the injuries were caused by hard and blunt object. He gave his report vide Ex.-P/9. Radiologist Doctor G.S.Thakur (PW-8) conducted X-ray and noticed linear fracture over 8th rib of left side. He gave his report vide Ex.-P/10 including X-ray plate Ex.-P/10A. During the investigation, caste certificate, duty certificate and transfer certificate (Ex.-P/2, Ex.-P/3 and Ex.-P/7) were seized vide seizure memo Ex.-P/4. The complainant also gave a written complaint addressed to the concerned Magistrate regarding enquiry of *marpeet* and

obstruction while committing his duty as a public servant vide Ex.-P/5. The Investigating Officer prepared spot map vide Ex.-P/8. He also recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code').

4. After completion of the investigation, charge sheet was filed by ASI Khorbahra Ram Puraina (PW-6) before the Judicial Magistrate First Class, Balod, who, in turn, committed the case to the Court of Sessions/Special Judge, the learned Special Judge conducted the trial. All the accused were charged for the offence under Section 3(1)(x) of the Act, 1989 and Sections 333/34, 342/34 and 506B/34 of the IPC. The appellants denied the charges and prayed for trial.

5. In order to prove guilt of the appellant, the prosecution examined 8 witnesses. The statements of the accused were recorded under Section 313 of the Code where they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question. The accused also examined one defence witness Aganuram (DW-1). As per this witness, the accused not committed any *marpeet* and not abused in the name of the caste of the Patwari.

6. After providing opportunity of hearing to the parties, learned Special Judge acquitted all the accused from the charges framed under Sections 342/34 and 506B/34 of the IPC and convicted and sentenced them as aforementioned.

7. I have heard learned counsel for the parties and perused the judgment impugned and record of the court below.

8. Learned counsel for the appellants submitted that the incident is of 15-07-95 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Rules, 1995 came into force on 31-03-1995. As per the Rule 7, an

offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police appointed by the State Government /Director General of Police/Superintendent of Police. In the present case, the FIR was written by Sub-Inspector R.K.Sharma (PW-4) and thereafter the entire investigation was conducted by ASI Khorbahra Ram Puraina (PW-6). Both are not the officer of the rank of Deputy Superintendent of Police. As the case was not investigated by the authority authorized to conduct such investigation, the trial under Section 3(1)(x) of the Act, 1989 stands vitiated and the appellants may be acquitted for the offence under Section 3(1)(x) of the Act, 1989. Even on merits, assuming for the sake of argument, the word of caste Gadva was told by the appellants during a dispute. Simply being spoken the word of caste Gadva does not itself constitute offence under Section 3(1)(x) because it lacks intentionally insult or humiliation. Also the caste certificate issued by the Sarpanch may not be held as certificate given under the authority; for this a revenue officer has to give certificate after due enquiry regarding the caste. Learned counsel for the appellants further submitted that on the basis of aforesaid argument and facts offence under Section 3(1)(x) of the Act, 1989 is not proved and the trial Court not examined these aspects.

So far as offence under Section 333/34 of the IPC is concerned, on behalf of the appellants it is submitted that in the present case two appellants are women; only general allegation made against the appellants that they assaulted by hands and fists. On the basis of general and vague allegation, it may not be held as to who assaulted coupled with the facts that there are variations and omissions in the statement of the complainant and other eye-witness Patwari Aas Kumar (PW-3) present at the time of incident has not supported the prosecution's case, it would not be safe to convict the appellants on the basis of complainant's improved statement which does not inspire

confidence for the conviction. Learned counsel for the appellants further submitted that the appellants may be given an opportunity by acquitting them from the offence charged giving benefit of doubt.

9. On the other hand, learned counsel for the State/respondent opposed the argument advanced on behalf of the appellants and supported the conviction and sentence passed against the appellants and submitted that the FIR is lodged in time, there is no delay. No reason for false implication; and if all the appellants are held guilty jointly under the provisions of Section 34 of the IPC, every participants are responsible for the offence. A linear fracture was caused at the time of the incident, as per the medical report. The complainant was in his office doing his duty as public servant. The trial Court rightly convicted and sentenced the appellants, hence, the appeal may be dismissed as not maintainable.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties.

11. So far as offence under Section 3(1)(x) of the Act, 1989 is concerned, it is apparent from the statement of the witnesses that there is violation of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Rules, 1995. It is requirement of the law that offence under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police duly authorized. But in the present case, Sub-Inspector R.K.Sharma (PW-4) and ASI Khorbahra Ram Puraina (PW-6) are not the officer of the rank of Deputy Superintendent of Police. As these Rules came into force on 31-03-95, at the time of the incident, the Rules were in force, and therefore, the trial being based on the investigation not conducted through Deputy Superintendent of Police, in view of this Court, vitiates and loses its edge. For the other aspect also, in the entire FIR and in the statement of Shyam Lal Netam (PW-2)/complainant, it is not indicated that intentionally to insult or humiliate the

complainant, the appellants stated his caste during the incident. As per the evidence, word 'Gadva' was stated by the appellants, if the element of intention to insult a member of reservation category is lacking, then the first foremost important limb of Section 3(1)(x) of the Act, 1989 is not attracted. Hence, with this, the appellants may not be held to be guilty for the offence under Section 3(1)(x) of the Act, 1989. Even otherwise, the caste certificate (Ex.-P/2) was seized by Khorbahra Ram Puraina (PW-6); upon bare perusal, it is apparent that the said certificate was issued by some Sarpanch. The maker of the caste certificate is not examined by the prosecution before the court concerned so as to provide opportunity in cross-examination regarding the competency of the authority to give certificate and regarding the facts narrated in the said certificate. By this also Ex.-P/2 is not duly proved and cannot be taken into consideration for assessment of the caste of the complainant. As per view of this Court, the trial Court by not examining all these facts committed illegality and has failed to appreciate that the evidence present in the case are not sufficient, adequate and appropriate to convict the appellants under Section 3(1)(x) of the Act, 1989. Therefore, in considered view of this Court, conviction of the appellants under Section 3(1)(x) of the Act, 1989 cannot be maintained and the requires interference.

12. So far as offence under Section 333/34 of the IPC is concerned, the complainant duly supported the facts stated by him in the FIR that he was held by the appellants and one other co-accused and was assaulted by hands and fists and thereby he received the injuries. The complainant lodged the FIR without any delay before police. The injury received by him was duly corroborated by the evidence of Doctor S.R.Bhardwaj (PW-7) and Doctor G.S.Thakur (PW-8). Upon minute scrutiny of the evidence, it goes to show that when the complainant was in his office, there only the incident started by making dispute by the appellants and thereafter *marpeet* was committed.

Though there is no specific allegation as to whom assaulted which part of the body, but if all the accused gathered taking part in the assault they were sharing common intention and are responsible for the act. Upon minute consideration, I do not find any reason to disbelieve complainant Shyam Lal Netam (PW-2) and his evidence supported by Doctor R.S.Bhardwaj (PW-7) and Doctor G.S.Thakur (PW-8) and also by the evidence of Peon Nohar Singh (PW-5). Therefore, by convicting the appellants under Section 333/34 the trial Court has not erred and the same does not require any interference.

13. So far as sentence for the offence committed by the appellants are concerned, it goes to show that the incident is about 18 years old. The appellants are the first offender with no previous criminal history for any offence. Out of them two are women. There were dispute regarding not committing demarcation properly, also there was allegation regarding giving illicit money by the persons benefited with the act of the complainant. There was serious issue for the demarcation. The appellants are for the present more than 58 years, 56 years and 63 years of age and as submitted the appellants also not involved themselves in any other criminal activity after this incident. Only one linear fracture in the 8th rib was noticed, no other complication reported by the doctors. The linear fracture may be caused on account of any pressure or other activities. Looking to the entire facts and circumstances, as the appellants remained in jail and has served a part of sentence during trial from 31-07-97 to 05-08-97 (6 days), they also deposited the fine amount, it would be appropriate to give them an opportunity so that in future they may not involve in any other offence. For last 18 years the appellants are facing trial and contesting this appeal and also are waiting for final outcome of the appeal filed by them. Looking to the entire facts and circumstances the period already undergone by them would meet the ends of justice.

14. Consequently, the appeal filed by the appellants are partly allowed. The

appellants are acquitted from the charge under Section 3(1)(x) of the Act, 1989. Their conviction under Section 333/34 is hereby affirmed. Sentence for conviction under Section 333/34 awarded by the trial Court to the appellants is hereby reduced to the period already undergone by them along with fine of Rs.400/- to each of the appellants. The fine amount already deposited by the appellants shall be adjusted in the fine imposed today by this Court. It is reported that the appellants are on bail. They be released forthwith. Their bail bond shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-

JUDGE

