

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO. 844 OF 2015

- State of Chhattisgarh, through District Magistrate Durg (C.G.)

... Appellant

Versus

1. Khemraj Dheemar, S/o Punitram Dheemar, aged about 24 years,
2. Yogendra Kumar Dheemar, S/o Gokul Prasad Dheemar, aged about 26 years,
3. Lokeshwar Yadav, S/o Dujeram Yadav, aged about 20 years,
4. Murli Dheemar, S/o Punitram Dheemar, aged about 28 years,
5. Ishwar Prasad, S/o Gokul Prasad Dheemar, aged about 37 years,
All are resident of Village Oundhi, Police Station Bhilai -3, District Durg (C.G.)
6. Bhushanlal Dheemar, S/o Janaklal Dheemar, aged about 35 years, R/o Village Tekari, Police Station-Dharsiva, District Raipur (C.G.)

... Respondents

For Appellant-State : Mr. Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

30/10/2015

1. The present application has been filed for grant of leave to appeal against acquittal of some of the Respondents and conviction of the others under Section 325/34 IPC in lieu of Section 307/149 IPC, ordered on 3.6.2015 by the Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)], Durg in Special Case No. 9 of 2014.
2. Learned Counsel for the State submits that abusive words of caste name had been uttered in a public place and therefore complete acquittal under the Atrocities Act was unjustified. He next submits that

all the accused ought to have been convicted under Sections 307/149, 148, 506-B IPC. The conviction of Respondents Khemraj Dheemar and Murli Dheemar under Section 325/34 in lieu there of was not justified and the acquittal of the others was also unjustified.

3. We have considered the submissions on behalf of the State and gone through the judgment also.

4. With regard to the allegation that the offence under Section 307 IPC was made out, the Learned Trial Judge has come to the conclusion highlighting more than one inconsistency and omission in the police statement and court evidence of PW-1 Shrawan Kumar who is alleged to have been assaulted, to disbelieve the witness. The Trial Judge has relied upon the evidence of PW-3 Doctor S.M. Afzal who conducted the MLC, PW-6 Doctor Harsh Kumar Goverdhan and PW-7 Doctor K. Thakur to hold that despite allegations of having been assaulted with a rod, *lathi* and fists, there were no external injuries on the body of PW-1 Shrawan Kumar to disbelieve the allegation. PW-2 Vishnu Prasad, the father of PW-1 Shrawan Kumar, has been disbelieved with regard to his presence in the village on the day of occurrence. PW-4 Lakheshwar Yadav and PW-5 Thamman Lal stated to be eye-witnesses, have been found to be inconsistent and unreliable due to contradictions in their versions. In the aforesaid background, we find no reason to interfere with the conclusion that Section 307 IPC has no application. With regard to the allegation for applicability of the Atrocities Act, the Trial Judge has concluded that the prosecution witness was called by his caste name not with any intention to insult or abuse, and no evidence was led in support of the allegation to establish the charge beyond reasonable doubt.

5. In our opinion, the Trial Judge has rightly concluded that if 6 persons had assaulted PW-1 Shrawan Kumar with *lathi*, rod, hand and fists, there had to be some external visible injuries, thus doubting the entire occurrence and its manner which only appears very reasonable, probable and acceptable.

6. The Trial Judge has recorded his satisfaction in paragraph 26 that the evidence available on record was partially sufficient only with regard to the actions of Respondents Khemraj Dheemar and Murli Dheemar and not the others.

7. In conclusion, we find no reason to interfere with the order of acquittal and conviction of the other two under Section 325/34 IPC.

8. The application for grant of leave to appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge