

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 89 of 2006

1. Lakhan Lal Sahu S/o Ramji Sahu, aged about 29 years, R/o Village Tundri, Police Station Bilaigarh, District Raipur C.G.
2. Guru @ Shivmangal S/o Ramlal Verma, aged about 29 years, R/o Village Tundri, Police Station Bilaigarh, District Raipur C.G.

---- Appellants

Versus

1. State of Chhattisgarh through : the Police Station, Bilaigarh, Distt. Raipur, C.G.

---- Respondent

For Appellants – Mr. Rakesh Pandey and Mr. Abhishek Pandey, Advocates.
For Respondent – Ms. M.Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

22/01/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 09-01-2006 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989'), Raipur, C.G. in Special Case No.124/2004 whereby and whereunder the learned Special Judge after holding appellant Lakhan Lal Sahu (A-1) guilty under Section 3(1)(x) of the Act, 1989 and Sections 294 and 323/34 of the Indian Penal Code (for short 'the IPC') and appellant Guru @ Shivmangal (A-2) under Section 323/34 of the IPC, sentenced appellant Lakhan Lal Sahu (A-1) to undergo rigorous imprisonment for 6 months and to pay fine of Rs.500/-, in default of payment of fine, to further undergo rigorous imprisonment for 1 month; fine of Rs.500/-, in default of payment of fine, to undergo rigorous imprisonment for 1 month; and fine of Rs.500/-, in default of payment of fine, to undergo rigorous imprisonment for 1 month; and sentenced appellant Guru @ Shivmangal (A-2) to pay fine of Rs.500/-, in default of

payment of fine, to undergo rigorous imprisonment for 1 month. The trial Court also awarded benefit of set off to Appellant Lakhan Lal Sahu (A-1).

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 the case of prosecution, on 31-08-2004, at about 8.00 p.m. at village Tundri, P.S. Bilaigarh, the appellants intimidated complainant Ghanaram Tandan (PW-2) and also abused him by telling obscene words and assaulted and caused him simple injury knowing well that the complainant is a member of scheduled castes community. Thereafter, the matter was reported to Police Station Bilaigarh and FIR (Ex.-P/2) was lodged. Complainant Ghanaram Tandan (PW-2) was examined by the Doctor who noticed simple injuries over the body of the complainant. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code').

4. After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Balodabazar, C.G., who, in turn, committed the case to the Court of Sessions, Raipur, C.G., the learned Special Judge received the case on transfer and conducted the trial. During the trial, appellant Lakhan Lal Sahu (A-1) was charged for the offence under Sections 506B, 294, 323, 323/34 of the IPC and Section 3(1)(x) of the Act, 1989 and appellant Guru @ Shivmangal (A-2) was charged for the offence under Sections 323 and 323/34 of the IPC.

5. In order to prove the guilt of the appellants, the prosecution examined as many as 8 witnesses. Statement of the appellants were recorded under Section 313 of the Code, wherein they denied the charges and pleaded innocence and false implication in crime in question. The appellants examined two defence witnesses namely Santosh Kumar (DW-1) and Hanuman Prasad (DW-2) in their defence. As per the defence witnesses, the complainant during

scuffle fallen on the ground and received simple injuries and the appellants are falsely implicated.

6. After providing opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellants as mentioned in para 1 of this judgment.

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 submit that as directed they are not assailing conviction of appellant Lakhan Lal Sahu (A-1) under Sections 294 and 323/34 of the IPC and also not challenging the conviction of appellant Guru @ Shivmangal (A-2) under Section 323/34 of the IPC. Learned counsel for the appellants vehemently argued that as the prosecution failed to prove the essential ingredients as required under the law to convict appellant Lakhan Lal Sahu (A-1) for offence under Section 3(1)(x) of the Act, 1989, his conviction under Section 3(1)(x) of the Act, 1989 is not sustainable and therefore, appellant Lakhan Lal Sahu (A-1) may be acquitted from the charge under Section 3(1)(x) of the Act, 1989. It is further submitted that during the scuffle and dispute, on account of earlier dispute, word चमार is allegedly narrated by appellant Lakhan Lal Sahu (A-1). To support, Ex.-P/6, alleged caste certificate, has been seized which is issued by Sarpanch of Village Panchayat; he is not authorized to issue caste certificate; and also as the same was not issued by revenue authorities, reliance cannot be placed upon it. It is further submitted that as word चमार has been used during the dispute and quarrel between the parties, it cannot be held that the complainant has been intentionally insulted or intimidated with intent to humiliate a member of scheduled castes category. Also there is no any certificate as required under the definition clause of Section 2(1)(c) of the Act, 1989. As the prosecution failed to prove that the said word was spoken intentionally or with intent to insult or humiliate, the

prosecution failed to prove ingredients essential and required for proving the case under Section 3(1)(x) of the Act, 1989 against appellant Lakhan Lal Sahu (A-1), hence, appellant Lakhan Lal Sahu (A-1) may be acquitted for the charge framed under Section 3(1)(x) of the Act, 1989.

9. Per contra, learned counsel for the State/respondent has opposed the submission made in this behalf and has argued that the judgment of conviction and sentence for offence under Section 3(1)(x) of the Act, 1989 passed by the Court below is well founded and the same requires no interference. Therefore, the appeal may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence adduced on behalf of the parties for offence under Section 3(1)(x) of the Act, 1989.

11. As prayed, learned counsel for the appellants are not contesting this criminal appeal for conviction and sentence of appellant Lakhan Lal Sahu (A-1) under Sections 294 and 323/34 of the IPC and also they are not challenging the conviction and sentence of appellant Guru @ Shivmangal (A-2) under Section 323/34 of the IPC. Even otherwise, from perusal of the entire evidence, I do not see any illegality or impropriety committed by the Court below while convicting and sentencing both the appellants for these offence.

12. So far as conviction and sentence awarded to appellant Lakhan Lal Sahu (A-1) under Section 3(1)(x) of the Act, 1989 is concerned, from perusal of the entire evidence and minute examination, it goes to show that appellant Lakhan Lal Sahu (A-1) used word चमार against complainant Ghanaram Tandan (PW-2). From perusal of Ex.-P/1 and the statement of Ghanaram Tandan (PW-2), it goes to show that on account of earlier dispute there was quarrel and exchange of words between the parties and assault; and as per statement of Ghanaram Tandan (PW-2), during this incident appellant Lakhan Lal Sahu (A-1) had used word चमार. Both the parties belong to two different groups, there

were enmity on account of election in the village. The complainant has not supported the seizure, Ex.-P/3 and caste certificate, Ex.-P/6, though as per seizure memo (Ex.-P/3), the same has been seized at the instance of complainant Ghanaram Tandan (PW-2). Also Ex.-P/6 is not duly issued by revenue authorities authorized to grant any certificate for the caste. Further, the same is not in accordance with definition clause as to show that under which clause or sub-clause the complainant belongs. Also during dispute, scuffle and verbal duo, the word चमार has been used by appellant Lakhan Lal Sahu (PW-1), hence, it cannot be held that the same is with intent to or intention to insult or intimidate the complainant.

13. From close scrutiny, it appears that the prosecution failed to prove the essential ingredients as required for the offence under Section 3(1)(x) of the Act, 1989. Therefore, conviction and sentence awarded to appellant Lakhan Lal Sahu (A-1) under Section 3(1)(x) of the Act, 1989 requires interference.

14. Consequently, the appeal filed by the appellants is partly allowed. Conviction and sentence awarded to the appellant Lakhan Lal Sahu (A-1) under Section 3(1)(10) of the Act, 1989 is hereby set aside and appellant Lakhan Lal Sahu is acquitted from the charge framed thereunder. The other conviction and sentence passed by the Court below against both the appellants require no interference, hence, they are affirmed. The trial Court is directed to refund the fine amount to appellant Lakhan Lal Sahu (A-1), if deposited for the offence under Section 3(1)(x) of the Act, 1989. The trial Court is further directed to execute the other sentences as awarded by the trial Court itself regarding the fine sentences, and default sentences if fine is not paid as per the judgment passed by the Court below.

15. The appeal partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE