

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 492 of 2014

- Shiv Dayal Patel & Ors. S/o Shri Ganga Prasad Patel Aged About 32 Years R/o Village Kanchanpur, Ps Baramkela, Distt. Raigarh C.G.
- Ganga Prasad Patel S/o Shri Gorakhnath Patel Aged About 59 Years R/o Village Kanchanpur, Ps Baramkela, Distt. Raigarh C.G.
- Raju Yadav S/o Shri Dev Prasad Yadav Aged About 21 Years R/o Village Jashpur, Ps Sarangarh, Distt. Raigarh C.G.
- Nayeem Khan S/o Ismaeel Khan Aged About 25 Years R/o Kondapara, Baramkela, Ward No. 12, Ps And Tah. Sarangarh, Civil And Rev. Distt. Raigarh C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through Officer In Charge Of The Ps Ajak, Raigarh, tah. And Distt. Raigarh C.G.

---- Respondent

For the Appellants : Shri Abhishek Saraf, Advocate for the appellants.

For the Respondent : Shri Adil Minhaj, PL for the State/respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment

13/07/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 06.05.2014 passed by the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') Raigarh (C.G.) in Special case No.04/2014 whereby and whereunder the learned trial Court after holding all the appellants guilty for causing annoyance by uttering obscene words and also for causing simple injury, convicted the appellants under Sections 294, 323, 506/34 of the IPC and 3(1)(x) of the Act of the Indian Penal Code (for short 'the IPC'), sentenced appellants to rigorous

imprisonment for 1 month, RI for 6 months and to pay fine of Rs.100/- and Rs.1,000/-, in default of payment of fine, to further undergo additional RI for 7 days and 1 month with a direction that both this substantive jail sentences shall remain concurrently to each of the appellants, and the period of detention be set off with the sentence.

2. Conviction is impugned on the ground that without there being any iota of evidence the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, in brief, on 17.08.2013 at about 8.00 am when the complainant Santosh Kumar Chouhan (PW-1) a driver of Samleshwar bus service, was driving the said bus, all the appellants reached to the spot bus stand Baramkela, uttered obscene words to annoy and also assaulted him by hands and feet. The complainant immediately gave a written complaint to Police Station, Baramkela. On the basis of said written complaint Ex.(P-1), Police of Baramkela registered the FIR Ex.(P-2) against all the accused/appellants thereafter, during investigation prepared the spot map Ex.(P-3) the caste certificate were seized at the instance of complainant Santosh Kumar Chouhan(PW-1). Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code') and Section 3(1) (x) of the Act. The Police Station of Ajak, Raigarh registered the Crime No.23/2013 against all the accused/appellants. The complainant was sent for medical examination, simple abrasion and simple contusion were found over the body of victim. All the accused/appellants were arrested and after reinvestigation charge-sheet has been filed.
4. Learned Special Judge, S.C./S.T.(Prevention of atrocities) Act, conducted the trial all the accused/appellants were charged for the offence under Sections 294, 506B, 323 read with Section 34 of the IPC and 3(1) (x) of the S.C./S.T (Prevention of atrocities Act), 1989, the appellants denied for the charges and

prayed for trial.

5. In order to prove the guilt of the accused/appellants, the prosecution examined as many as 12 witnesses. Statements of all 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.
6. After providing opportunity of hearing to the parties, the learned trial Court acquitted the accused/appellants for the charges 506B of the IPC and 3(1)(x) of the Act, convicted and sentenced the accused/appellants as mentioned above. Against the said acquittal the respondent/State has not preferred any appeal.
7. Being aggrieved by the conviction and sentence awarded to appellants, appellants have preferred instant criminal appeal.
8. I have heard learned counsel for the parties and perused the record of the Court below.
9. Learned counsel for the appellants prayed that as directed he is not assailing the instant criminal appeal for the conviction awarded by the trial Court. They are assailing the instant criminal appeal for the quantum of substantive jail sentence. It is submitted that all the appellants had deposited the entire fine amount, the incident is about 3 years old and all the appellants are first offender with no previous criminal antecedent. The present incident happened on account of competition for operation of bus service. After this incident, appellants are not involved in any other offence and they are living peacefully in the society. The complainant has received minor abrasion and one contusion. Looking to the entire facts and also with effect that appellants serve the sentence for two days, there is no any minimum sentence prescribed for the offence and they will not commit any offence in future. Hence, they may be sentenced sympathetically.
10. Per contra, learned counsel for the respondent/State has opposed the argument made in this behalf and would submit that on account of competition for taking

the passenger in the bus and bus operation all the appellants joint in by sharing common intention, assaulted simple injuries to the complainant and also uttered obscene words which makes annoy. Hence, the trial Court awarded the sentence which cannot be held as excessive, hence, the judgment of the trial Court is well founded and the appeal filed by the appellants may be dismissed.

11. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution before the trial Court. On perusal of the statement of complainant Santosh Kumar Chouhan (PW-1) and the statement of other eyewitnesses Pintu Chouhan (PW-3), Gadesh Sahees (PW-4), Karuna Sagar Sahu(PW-5) and Tinku Sahu (PW-6) have not supported the prosecution case. Raju Chouhan (PW-2) supported the case of prosecution for the charges under Section 294 of the IPC, he has not said anything regarding the alleged *marpeet* by the accused/appellants. Dr. Sanjay Agrawal (PW-10), who examined the complainant noticed minor abrasion and one contusion simple in nature caused by the complainant hereby object. He gave his report Ex.(P-11). But looking to the entire statement of Santosh Kumar Chouhan (PW-1), partly supported by Raju Chouhan (PW-2), in the considered view of this Court as the medical evidence is corroborated by Santosh Kumar Chouhan (PW-1) there is no reason to disbelieve the statement of PW-1.

12. Consequently, in the considered view of this Court the trial Court has rightly convicted the appellants for the offence under Sections 294, 323 of the IPC also on behalf of the appellants the appeal is not assailed during argument on merits of the instant criminal appeal regarding conviction part. Consequently, the judgment of conviction passed by the trial Court against all the appellants under Sections 294, 323 of the IPC is hereby affirmed.

13. So far as quantum of sentences are concerned it appears that incident is about three years old all the accused/appellants are the first offender and the incident happened on a dispute regarding operation of their respective bus services and

as submitted accused/appellants have not involved in any similar offence after this incident. They remained in jail for two days and also deposited the entire fine amount of Rs.1,100/- to each of the appellants.

14. Looking to the entire facts and circumstances and the manner in which incident happened and also with the fact that though the appellants are four in numbers but the complainant received only three minor injuries i.e. two abrasions and one contusion which are simple in nature.

15. This Court is a view that the period already undergone by the appellants would serve the purpose so that they may be given an opportunity to remain peaceful in the society.

16. Consequently, the appeal filed by the appellants is partly allowed. Conviction and sentence against all the appellants for the offence under Sections 294 and 323 of the IPC is hereby affirmed. Instead the sentence part awarded by the trial Court, the same is modified and the appellants are sentenced fine of Rs.100/- for the offence under Section 294 of the IPC and also sentenced RI for two days i.e. the appellants already serve that sentence and hence, already undergone along with fine of Rs.1,000/-, in default of payment of fine to further undergo additional RI for 7 days and 1 month with this extent further sentence part awarded by the trial Court is modified.

17. As the appellants have deposited the entire fine amount, they are in bail they be set at liberty forthwith. The bail bonds shall remain in force for further 6 months from today as required under Section 437A of the Cr.P.C.

18. The appeal is partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge