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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 533/1999

1. Narayan Prasad son of Bodhram aged 42 years, occupation service
2. Rajesh Kumar son of Parmanand, aged 28 years, occupation student
3. Arvind Kumar son of Parmanand aged 22 years, occupation student

All residents of village Sonbarsa, tahsil Kharsiya, district Raigarh (CG)

-versus-

The State of Madhya Pradesh (now Chhattisgarh) through the District Magistrate, Raigarh

For appellants	:	Mrs. Indira Tripathi, Advocate.
For Respondent/State	:	Mrs. Shobha Kashyap, Dy. Govt. Adv.

JUDGMENT ON BOARD

20/1/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 10-2-1999 passed by the Special Judge [under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989] Raigarh in Special Case No. 27/1993 whereby and whereunder learned Special Judge after holding the appellants guilty for insulting with an intention to humiliate a member of scheduled tribe in a public view and also to utter obscene words in public which annoyed the complainant P.W. 1 Bindulal and other witnesses present, convicted the appellants under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act') and Section 294 of the Indian Penal Code, 1860 (in brevity 'IPC') and sentenced to undergo RI for six months for Section 3(1)(x) of the SCST Act, and under Section 294, IPC to pay a fine of Rs. 500/-, in default of payment of fine to undergo SI for one month to all the accused appellants, further directed that period of custody be set off under the provisions of Section 428, Code of Criminal Procedure (in brevity 'Cr.P.C.')
2. Conviction is impugned on the ground that without there being an

iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 28-12-1992 at about 9.30 morning when P.W. 1 Bindulal along with his family members P.W. 2 Laxman Prasad and P.W. 3 Pitambar were carrying agricultural operation in the field, all the accused/appellants reached to the spot, uttered obscene words in public view and also gave threat to humiliate the complainant and his family members intentionally as they belong to scheduled tribe category within public view. The matter was reported by P.W. 1 Bindulal by a written report Ex. P-1. On the basis of written report Ex. P-1, police registered FIR Ex. P-2 on 7-1-1993. Police registered Crime No. 7/93 under Section 294 and 506 of IPC and investigated the matter. During investigation, spot map was prepared. Statements of witnesses were recorded under Section 161 of the Cr.P.C. The complainant was also examined on the date of incident. The doctor noticed no mark of injury over the body of the complainant. After completion of the investigation, charge sheet was filed against the accused/appellants under the relevant provisions of law on 3-8-1993. The accused/appellants were charged for the offence under Sections 294, 506-II, 323 of the IPC and Section 3(1)(v) and 3(1)(x) of the SCST Act.
4. In order to prove the guilt of the accused/ appellant, prosecution examined six witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Cr.P.C. wherein they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.
5. In their defence, the accused appellants also examined 4 defence witnesses. Defence of the accused appellants before the trial Court was that it was the accused/appellant Narayan Prasad who was beaten by the complainant and his family members and to save them, they have lodged the false report.
6. After affording opportunity of hearing to the parties, learned Special Judge acquitted the accused/appellants for the offence under Section 506-II and 323 of the IPC and also for offence under Section 3(1)(v) of the SCST Act and convicted and sentenced

them as aforementioned.

7. I have heard learned counsel for the parties and perused the impugned judgment and record of the court below.
8. Learned counsel for the appellants vehemently argued that the date of incident as mentioned in the written report Ex. P-1 and FIR Ex. P-2 is 28-12-1992, on the other hand the same was lodged on 7-1-1993. P.W. 6 Chandramani Sharma, Head Constable in para 3 admits that the written report Ex. P-1 was received at police station Kharasia on 7-1-1993. With this, FIR is delayed by 10 days and no explanation was offered on behalf of the complainant for such delay. The complainant was examined by the doctor. Said document is Ex. P-3 which goes to show that the doctor conducting MLC noticed no mark of injury on the same day i.e. 28-12-1992. the accused/appellant during trial got the Rojnamcha Sanha exhibited i.e. Ex. D-1 which is the Sanha recorded as per information given by the complainant P.W. 1 Bindulal and in the said Rojnamcha Sanha there was no any ingredients of uttering obscene words or intentional humiliation of P.W. 1 Bindulal on the ground that he belonged to scheduled tribe category. It is submitted that Ex. D-1 is the first information recorded in the matter. The accused/appellants also lodged the report Ex. D-7 recorded by the police as Rojnamcha Sanha for the assault by the complainant and his family members and on the basis of said Rojnamcha Sanha Ex. D-7, the accused/appellants was examined by the doctor D.W. 3 Dr. B.S. Chandel who had noticed one mark of contusion and one abrasion over the body of the accused/appellant Narayan Prasad which goes to show that in order to save themselves, the complainant had lodged the report after 10 days and the contents of the same are afterthought, not in conformity with Ex. D-1. The first information regarding alleged incident committed by the accused/appellants goes to show the complainant and other witnesses had improved the story and attempted to falsely implicate the accused appellant. With this, as the prosecution failed to demonstrate the guilt of the accused/appellants beyond all probable doubt hence they be acquitted.
9. Per contra, learned counsel for the State duly supported the

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judgment of conviction and sentence of the Court below and submitted that the judgment of conviction and sentence passed by the Court below is well founded and there is no scope of interference in the said judgment.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties.
11. From minute examination of entire evidence led by the parties, it appears that Ex. D-1 Rajnamcha Sanha is the first information given to the police regarding the incident allegedly committed by the accused/appellants and after perusal of said Sanha it appears that the complainant P.W. 1 Bindulal has not said anything regarding obscene words uttered or humiliation on the basis of cost intentionally. Further the written report and the FIR have been lodged after 10 days of the incident. No explanation is offered by P.W. 1 Bindulal regarding lodging of the FIR so lately and also as per Ex. P-3 no mark of injury was found on the body of the complainant. On the other hand, vide Ex-7, accused/appellant Narayan on 28-12-1992 lodged report regarding assault made by P.W. 1 Bindulal, P.W. 2 Laxman and P.W. 3 Pitambar by club, hands and fists and thereafter the said accused/appellant was medically examined by D.W. 3 Dr. B.S. Chandel who noticed one contusion and one abrasion over the body of appellant Narayan Prasad which goes to show there was an incident between the parties and in the said incident, the accused/appellant sustained two injuries and the Rajnamcha Sanha was written on the date of incident itself. As per submission of the accused, no injury was noticed on the body of the complainant P.W. 1 Bindulal by the treating doctor, on the other hand there is no explanation by the complainant P.W. 1 Bindulal as to why he gave written report Ex. P-1 after 10 days. In absence of any explanation and in presence of the incident reported by the accused/appellant Narayan Prasad and with the presence of allegation made by the accused/appellant Narayan Prasad against P.W. 1 and his family members, it appears that to nullify the effect of the report lodged by the accused and medical corroboration, complainant P.W. 1 Bindulal gave a written report after 10 days by improving many facts. When Ex. D-1 is compared with Ex. P-1, it appears the alleged

ingredients of uttering obscene words also to humiliate intentionally as the complainant is a member of scheduled tribe category is an improvement and with this the credibility of Ex. P-1 is under cloud. The Court below has already acquitted the accused/ appellants for the offence under Section 506-II, 323, IPC and Section 3(1)(v) of the SCST Act. On comparing Ex. P-1 with Ex. D-1, Ex. P-1 the written report seems to be a report written after 10 days without any explanation and after improvement. On the basis of Ex. P-1 the accused/appellant may not be convicted beyond all probable and reasonable doubts. In the considered opinion of this Court, the trial Court has committed illegality while convicting the accused/appellants under Section 294, IPC and 3(1)(x), SCST Act.

12. Consequently, instant criminal appeal succeeds. Conviction and sentence of the accused/appellants for the offence under Sections 294 of the IPC and Section 3(1)(x) of the SCST Act are hereby set aside. The fine amount if deposited by the appellants be refunded to them. The accused/appellants are on bail. They be set at liberty. Their bail bonds shall continue for a further period of six months as required under Section 437-A of the Cr.P.C.
13. Appeal allowed.

Sd/-
Chandra Bhushan Bajpai
Judge