

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 3046 of 1999

1. Gautam Prasad aged about 28 ears s/o. Bhagguram Sahu
2. Bhagguram aged about 57 years s/o. Suklal Sahu.
3. Atrikumar, aged about 24 years, s/o. Bhagguram Sahu
4. Kaushal Prasad, aged about 37 years s/o. Bhagguram Sahu.

All residents of village Hardi Police Station Sakti District Janjgir Champa (CG).

---- Appellants.

Versus

- The State Of MOP (Now State of CG), through Sho, PS Sakti, District Janjgir-Champa

---- Respondent

For revisioner	:	Mr. Aman Tamboli Advocate.
For respondent	:	Mr. Vivek Singhal, Panel Lawyer

(Single Bench : Hon'ble Shri Justice Ram Prasanna Sharma)
Judgment on Board

15-11-2017

1. This appeal is directed against the judgment of conviction and order of sentence dated 4-11-1999 passed by the Sessions judge (Atrocity), Bilaspur in Special Criminal Case No. 1 of 1998 wherein the said Court convicted all the four accused/appellants under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989") and Section 324 of the IPC and sentenced them to undergo RI for six months and fine of Rs.500/- and RI for one

years with default stipulations.

2. As per prosecution case, complainant Gitaram is Satnami by caste and is a member of Scheduled Caste. All the accused/appellants uttered filthy language against him stating his caste and assaulted him by some pointed object namely Kharda. The persons who were present on the spot intervened in the matter snatched the weapon from the appellants.
3. The matter was reported to Police authorities and after registration of first information report, investigation was conducted. After completion of investigation charge sheet was filed before the said court against all the accused/appellants. All the accused/appellants did not plead guilty and, therefore, trial was conducted. After completion of trial, the trial Court convicted all the accused/appellants as mentioned above.
4. Learned counsel for the applicants submits as under:
 - i) that it is not established from the evidence of the prosecution witnesses that the complainant Gitaram is a member of Scheduled Caste and, therefore, no offence is made out as per Special Act.
 - ii) that there is material contradiction and omission in the statements of the prosecution witnesses and the same is not reliable.
 - iii) that from the evidence of the prosecution witnesses, it is not established that injury was caused by all the appellants because only one injury was found on the body of the complainant and that too was superficial in nature.

5. On the other hand, learned State counsel submits that the finding arrived at by the trial Court is strictly in accordance with law and same is not liable to be interfered with invoking jurisdiction of this appeal.
6. I have heard learned counsel for the parties and perused the record of the court below.
7. To substantiate the charge, prosecution has examined as many as ten witnesses i.e., PW/1 Gita Ram, PW/2 Tirath Ram, PW/3 Dr. P.R. Dewangan, PW/4 Mohan Lal, Kotwar, PW/5 Prabhu Ram, PW/6 Jayendra Singh, Sub Inspector, PW/7 Amarnath, PW/8 Mohit Ram, PW/9 Manish Sharma City Superintendent of Police, PW/10 Tilak Singh, Dy.S.P. No one is examined to examine the caste of the complainant.
8. Provision of Special Act attracts only that one is a member of either Scheduled Caste or Scheduled Tribe and accused/appellants are not members of the said category. Mere assertion by complainant Gitaram (PW/1) that they have been abused on the basis of caste is not sufficient to establish that complainant Gitaram is a member of scheduled caste. For establishing the same, caste is mentioned in prescribed Act and one authority must substantiate by proving the caste certificate that complainant is a member of scheduled caste and that is not the case here. When caste of the complainant Gitaram (PW/1) is not established, offence under Section 3 (1)(x) of the Act, 1989 is

not proved.

9. As per version of complainant Gitaram (PW/1) & PW/3 Dr. P.R. Dewangan, accused appellants came there for forming the company and assaulted Gitaram by some pointed object namely Kharda. Doctor opined that one incised wound was there over right fore arm of the complainant Gita Ram which was simple in nature and in cross examination he admitted that this injury may be caused by nails also. As the injury is simple and same is caused by some pointed object and there is nothing in cross examination of any of the witnesses that they are roping the appellants with false charge, the finding of the court below is correct regarding commission of the offence under Section 324 of the IPC.
10. Heard on sentence part.
11. All the accused/appellants suffered jail sentence from 22-12-1997 to 26-12-1997 and 12-10-1998 to 29-10-1998 i.e., in all 23 days. Section 324 of the IPC provides either for corporeal punishment or fine. Imposition of fine is not compulsory. The trial Court awarded corporeal punishment only.
12. Considering all the facts and circumstances of the case and the evidence adduced by the prosecution, I am of the opinion that as the injury is simple in nature, the case falls under Section 324 of the IPC for which the trial Court has rightly convicted the appellants and this court has no reason to interfere with the same. So far as offence under Section 3(1)(x) of the Act, 1989 is

concerned, the same is not made out against the appellants.

13. So far as the quantum of sentence is concerned keeping in view the nature of offence and the nature of weapon used in commission of offence and further taking into consideration the fact that the incident took place in the year 1999 i.e., 20 years ago and also considering the fact that the appellants already remained in jail for 23 days, I am of the considered opinion that no useful purpose would be served in sending the appellants back to jail and it would be in the interest of justice that if the sentence imposed on them is reduced to the period already undergone by him while maintaining conviction under Section 324 of the IPC.
14. Consequently, the appeal is partly allowed. Conviction imposed by the trial Court against the appellants under Section 3 (1)(x) of the Act, 1989 is set aside. The appellants are acquitted of the charge under Section 3(1)(x) of the Act, 1989, Conviction of the appellant imposed on the appellant by the trial Court under Section 324 of the of the IPC is hereby affirmed and but the sentence imposed on the appellants by the trial Court is modified and instead of RI for one year, they are sentenced to undergo imprisonment for the period already undergone by them.
15. It is stated that the appellants are on bail. Their bail bonds stand discharged.

Sd/-

(Ram Prasanna Sharma)
Judge

