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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2968 of 1998

Judgment Reserved on : 2.3.2017

Judgment Delivered on : 10.5.2017

1. Harprasad, son of Nandlal Kewat, aged about 37 years,
 2. Johan, son of Ramjhul Yadav, aged about 32 years (**HIS APPEAL ABATED**)
 3. Chutuwa @ Mukunda, son of Ramjhul Yadav, aged about 22 years,
- All are residents of Village Daganiya, Police Station Seepat, District Bilaspur (M.P.) (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh) through Station House Officer, Seepat, District Bilaspur

--- Respondent

For Appellants	:	Shri Sourabh Sharma, Advocate
For State/Respondent	:	Shri Vivek Sharma, Government Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C.A.V. JUDGMENT

1. Being aggrieved by the judgment dated 30.11.1998 passed in Special Criminal Case No.278 of 1996 by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act'), Bilaspur, the accused/Appellants have preferred the instant appeal under Section 374(2) of the Code of Criminal Procedure. By the impugned judgment, the learned Special Judge has convicted and sentenced each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989	Rigorous Imprisonment for 6 months and fine of Rs.100/-, in default of payment of fine, to further undergo rigorous imprisonment for 2 months
Under Section 323 read with Section 34 of the Indian Penal Code	Rigorous Imprisonment for 6 months Both the jail sentences are directed to run concurrently

2. During pendency of the instant appeal, Appellant No.2, Johan died and, therefore, by order of this Court dated 1.4.2016, the instant appeal, so far as it relates to him, has abated. The appeal now relates to and is to be adjudicated in respect of Appellants Harprasad and Chutuwa only.
3. Case of the prosecution, in brief, is that Complainant Ramadhar (PW-1) was a resident of Village Khaira and the Appellants were residents of Village Daganiya. Both the villages were situated adjacent to each other. The occurrence took place on 5.1.1996, which was the day of *Chherchhera* festival. Chhatram Suryavanshi, who was also a resident of Village Khaira, was running a small distillery (शराब भट्टी) in his house. The Complainant had gone to the house of Chhatram Suryavanshi to celebrate the *Chherchhera* festival on the fateful day and was sitting at the door of the house. Amolilal (PW-3) was sitting inside the house of Chhatram Suryavanshi. At that time, accused/Appellants came together to the house of Chhatram Suryavanshi and drank alcohol there. After taking drink, the Appellants raised a dispute. The Complainant

asked Appellant No.2, Johan to make payment and go back because that was the day of *Chherchhera* festival. On this, Appellant No.2, Johan saying *Sale Chamra* to the Complainant abused him, dragged him out, assaulted him with the *lathi* kept in his hands and threatened him of life. The other two Appellants, who had come with Appellant No.2, Johan, also committed *marpeet* with the Complainant with their hands, fists and kicks. Amolilal (PW-3) and one Bihari intervened in the *marpeet* and pacified the Appellants. Amolilal (PW-3) has stated the names of two persons who accompanied Appellant No.2, Johan to be Harprasad and Chutuwa. The Complainant, due to being abused to him by caste and committing *marpeet* with him by the Appellants, lodged First Information Report (Ex.P-1) in Police Station Seepat, District Bilaspur on the date of incident itself, i.e., 5.1.1996, at 7.00 pm. The police registered offence against the Appellants under Sections 294, 506, 323, 34 IPC and Section 3(1)(x) of the Act and made investigation into the offence. Statements of witnesses were recorded by the police. Spot map (Ex.P-4) was also prepared. The Complainant was sent for medical examination. Dr. G. Venkatesh (PW-2) examined the Complainant. His report is Ex.P-2.

4. After completion of the investigation, a charge sheet was filed against the Appellants for the offence punishable under Sections 294, 506, 323, 34 IPC and Section 3(1)(x) of the Act. Charges were framed by the Special Judge against the Appellants for the offence punishable under Sections 294, 506-B, 323 read with Section 34 IPC and Section 3(1)(x) of the Act. The Appellants denied the guilt and claimed trial. After hearing both the parties and appreciation of the evidence available on record, the Special Judge convicted and

sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants argued that the prosecution has not proved its case beyond reasonable doubt. The prosecution has also not been able to prove that the Appellants intentionally insulted the Complainant by his caste. The prosecution has also not proved that at the time of incident the Appellants were aware that the Complainant was a member of the Scheduled Caste. Learned Counsel submitted that the impugned judgment of conviction and sentence is not sustainable in the eyes of law. He prayed that the Appellants, therefore, may be acquitted of the charges framed against them.
6. Learned Counsel appearing for the State has urged that the impugned judgment of conviction and sentence is impeccable and, therefore, the appeal preferred by the Appellants deserves to be set aside.
7. Following questions arise for consideration in this appeal:
 - (1) Whether the Appellants knowing that the Complainant is a member of the Scheduled Caste with an intention to insult him publicly abused him in public using words *Chamar Sale Madarchod*?
 - (2) Whether the Appellants intentionally caused injuries to the Complainant?
8. The prosecution has examined Complainant Ramadhar (PW-1), Dr. G. Venkatesh (PW-2), Amolilal (PW-3), Bhagwat (PW-4),

Ramnihor (PW-5) and Investigating Officer Sub-Inspector R.L. Singh (PW-6). The Appellants did not examine any witness in their defence.

9. Complainant Ramadhar (PW-1) has deposed that he was acquainted with the Appellants. Appellants Johan and Chutuwa belong to Raut Caste and Appellant Harprasad belong to Kenwat Caste. Ramadhar (PW-1) has further deposed that he belongs to Suryavanshi Caste and is, therefore, a member of the Scheduled Caste. But, no caste certificate has been produced before the Court to prove that he is a member of the Scheduled Caste. The witness has further deposed that on the fateful day, i.e., on the day of *Chherchhera* festival, he was sitting in his house which was situated near a small distillery. The Appellants, having drunk, were abusing. On this, he asked the Appellants that why were they abusing. In response to his question, the Appellants saying him *Chamra* asked him what was to be done by him and pushed him away. Appellant Harprasad caught his legs and caused him to fall down and Appellants Johan and Chutuwa climbed upon him and beat him. Appellant Johan assaulted him on the back of his head with a *lathi* due to which he became unconscious. Sarpanch Amolilal (PW-3), who was present at the place of occurrence, had intervened. Complainant Ramadhar (PW-1) has admitted lodging of First Information Report (Ex.P-1). Evidence of this witness regarding abusing him using word *Chamra* and committing *marpeet* with him has not been rebutted in cross-examination, but Amolilal (PW-3) has not supported the statement of this witness.
10. Amolilal (PW-3) has deposed that the incident took place on the day of *Chherchhera* festival. Complainant Ramadhar (PW-1) was

already drunk and was sitting at the door of the distillery (शराब भट्टी). The Appellants after taking drink inside the distillery while coming out of the distillery asked Complainant Ramadhar (PW-1) to get aside from the door so that they could come out of the door of the distillery. Ramadhar (PW-1) refused to stand up and get aside from the door. He was heavily drunk. Appellants were repeatedly asking him to stand up and let them go out of the door. On this issue, hot talks started between Complainant Ramadhar (PW-1) and the Appellants. Appellant Johan caught legs of Complainant Ramadhar (PW-1) and Ramadhar (PW-1) caught legs of Appellant Johan. In the meanwhile, owner of the distillery asked all of them to go out of the distillery so that his other customers may not be disturbed. On this, the Appellants came out of the distillery. Amolilal (PW-3) was taking drink inside the distillery. After taking drink, when he came out of the distillery, he saw that Ramadhar (PW-1) was lying down near the distillery and the Appellants were not there. Amolilal (PW-3) has been declared hostile by the prosecution.

11. Bhagwat (PW-4) has deposed that when he reached the place of occurrence he saw injury on the head of Ramadhar (PW-1). On being asked, Ramadhar (PW-1) told him that village women were going for taking water and after taking water they were coming back. At that time, the Appellants, who were drunk, abusing using filthy words. He (Ramadhar) prevented the Appellants from abusing. On this, the Appellants saying him *Chamar Bhosadi Ke* asked him what was to be done by him and they also assaulted him. From his evidence, it appears that Bhagwat (PW-4) has not witnessed the incident.

12. Ramnihor (PW-5) has also deposed that he had reached the place of occurrence after the occurrence had taken place. On his being asked from Ramadhar (PW-1) about the injury on his head, he replied that Appellant Johan and one other person who had accompanied Appellant Johan had committed *marpeet* with him.
13. From the above evidence of the prosecution, it is evident that eyewitness Amolilal (PW-3) has not supported the evidence of Complainant Ramadhar (PW-1). It is also evident that Bhagwat (PW-4) and Ramnihor (PW-5) are not eyewitnesses to the occurrence.
14. The offence in question was investigated by the then Sub-Inspector R.L. Singh (PW-6), but, according to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, which is effective from 31.3.1995, the offence was to be investigated by an officer of the rank of Deputy Superintendent of Police.
15. Since the offence in question was not investigated by a competent police officer, in the light of judgments in **D. Ramalinga Reddy alias D. Babu v. State of A.P., 1999 Cri.L.J. 2918**, **Chandra Sekhar Pani and others v. State of Orissa, 2004 Cri.L.J. 2626** and **Dhanraj Singh and etc. v. State of M.P., 2005 Cri.L.J. 3782**, the Appellants deserve to be acquitted of the charge framed under Section 3(1)(x) of the Act.
16. As far as the offence under Section 323 read with Section 34 IPC is concerned, the evidence of Complainant Ramadhar (PW-1) has not been supported by eyewitness Amolilal (PW-3) and Amolilal (PW-3) has deposed that Complainant Ramadhar (PW-1) was

heavily drunk at the time of occurrence and the dispute had taken place between the Complainant and the Appellants in their drunk condition. Therefore, in these circumstances, it cannot be said that the Appellants voluntarily caused injuries to the Complainant.

17. Dr. G. Venkatesh (PW-2) has deposed that the injuries, which were present on the head of the Complainant, could occur due to falling down on a rugged place. His report is Ex.P-2.
18. Therefore, from the evidence available on record, offence under Section 323 read with Section 34 IPC is not made out against the Appellants and they deserve to be acquitted of the charge framed thereunder.
19. Consequently, the criminal appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Section 323 read with Section 34 of the Indian Penal Code.
20. It is reported that the Appellants are on bail. Their bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.

Sd/-

(Anil Kumar Shukla)
JUDGE