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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2098 of 2000

Judgment Reserved on : 28.8.2017

Judgment Delivered on : 21.9.2017

Sujeet Kumar @ Pappu, S/o Umenddas Manikpuri, aged 20 years, R/o Bandhavapara, Sarkanda, P.S. Sarkanda, District Bilaspur

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh) through Station House Officer, P.S. Sarkanda, District Bilaspur

--- Respondent

For Appellant : Shri Gagan Tiwari, Advocate appears under the
authority of Shri Rajeev Shrivastava, Advocate
For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 31.7.2000 passed in Special Criminal Case No.23 of 2000 by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Bilaspur convicting the accused/Appellant under Section 506B of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989 and sentencing him to undergo rigorous imprisonment for 2½ years and to pay fine of Rs.500/- and rigorous imprisonment for 6 months and to pay fine of Rs.500/-, respectively, with default stipulations.
2. Case of the prosecution, in brief, is that on 13.3.2000, at about 11:30 a.m., Complainant Ku. Shweta (PW2) had gone to her

school. On the way, the accused/Appellant, chasing the Complainant, stopped her near the gate of SECL Colony and abused her using filthy words against her caste. He threatened her that if she discloses the incident to anyone, he will kill her. She somehow avoided him and raised speed of her bicycle. When she was locking her bicycle near the gate of her school, the accused again reached there, pushed her away and snatched the key of the lock of her bicycle. On this, she screamed. Having heard her scream, one teacher, namely, Navin Kumar (PW1) came there. Having seen that the teacher has reached near the Complainant, the accused, threatening her, fled from there. A written report (Ex.P2) was submitted by the Complainant on the basis of which First Information Report (Ex.P3) was registered against the accused in Police Station Sarkanda. Crime under Sections 294, 506B and 354 of the Indian Penal Code and Section 3(1)(x) of the Act of 1989 was registered. After completion of the investigation, a charge-sheet was filed against the accused/Appellant for offence under Sections 294, 506B and 354 of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989. Charges were framed against the accused under Sections 294, 506B and 354 of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989.

3. So as to hold the accused guilty, the prosecution examined as many as 6 witnesses in support of its case. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After trial, the Trial Court convicted and sentenced the

accused/Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant argued that independent witnesses Navin Kumar (PW1) and Imran Khan (PW6) have not supported the prosecution story. Previously also, the same report was lodged against the Appellant by the Complainant in which the Appellant has been acquitted. It was further argued that the Investigating Officer in the present case was not of the rank of Deputy Superintendent of Police or above, which is mandatory as per the relevant law for investigation of such cases. Therefore, in the light of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the whole trial is vitiated.
6. On the other hand, Learned Counsel appearing for the State submitted that the impugned judgment is in accordance with law and there is no infirmity in the same.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. In this case, it is undisputed that Complainant Ku. Shweta (PW2) is "Gond" by caste and the accused/Appellant belongs to caste "Panika". The caste certificate (Ex.P4) of the Complainant, which was proved by S.D.M. D.R. Mandlavi (PW4) reveals that the caste "Gond" falls within the Scheduled Tribe.
9. As per the Court statement of Ku. Shweta (PW2), at the time of

incident, at about 11:30 a.m., she was going towards her school, namely, Guardians and Guide School, Sarkanda on her bicycle. Near the SECL Gate, the accused/Appellant, following her, came there and stopped her bicycle and saying “how many times will you lodge a case against me, you cannot harm me in any way” threatened her. Thereafter, he abused her by using derogatory remarks on her caste. He also abused her with the name of her mother. She further deposed that the accused threatened her that if she narrates the incident to police or her parents, he will commit her murder. She further deposed that in the state of fear, she quietly went to her school on her bicycle. When she was locking her bicycle in the bicycle-stand, the accused again came there and snatched the key of her bicycle and thereafter pulled her towards a corner. When she shouted, teachers rushed there. On this, the accused ran away from there saying “today, you got saved, but I will not leave you later”. Thereafter, she informed the teachers about the whole incident. Later on, by 5:00 p.m., when she returned her home, she prepared an application (Ex.P2). When her parents reached home, she narrated them about the whole incident. Thereafter, they went to Police Station Sarkanda. There she lodged the FIR (Ex.P3).

10. Regarding the first incident, which took place near the SECL Gate, not a single witness has been examined by the prosecution. Relating to the second incident, the prosecution has examined Navin Kumar (PW1) and Imran Khan (PW6), who are teachers of the said Guardians and Guide School, Sarkanda. Navin Kumar (PW1) has not supported the prosecution story. He was declared hostile by the prosecution. Imran Khan (PW6) has also been

declared hostile, but he has deposed that at about 12:00 noon, he was sitting in the staff-room. Having heard shouting, the teachers sitting in the staff-room came out. At that time, other teacher, namely, Manikpuri informed that key of the bicycle of Ku. Shweta (PW2) was snatched by the accused. That teacher Manikpuri has not been examined by the prosecution.

11. It is admitted by Complainant Ku. Shweta (PW2) in her cross-examination at paragraph 9 that earlier also, she had reported against the accused that he used to tease and write letters to her. She further admitted that in the said case, the accused was acquitted. Then, next day, the present report was lodged by her. As per the statement of Ku. Shweta (PW2), she was abused by the accused with the name of her mother near the SECL Gate. In cross-examination also, she did not change her version. As per her statement, in the bicycle-stand also, when she was locking her bicycle, the accused snatched the key of her bicycle and was taking her away towards a corner. When the teachers of the school reached there, he ran away. But, the alleged act was done by the accused with the Complainant because she belongs to Scheduled Tribe is not established by the evidence on record.
12. Emil Lakda (PW5), who was, at the relevant point of time, posted as Inspector-in-Charge at Police Station Sarkanda and who investigated the offence in question, has deposed that Complainant Ku. Shweta had submitted a complaint (Ex.P2) on the basis of which he had registered the FIR (Ex.P3). The Complainant had submitted a photo copy of her caste certificate (Ex.P4). He had prepared a spot-map (Ex.P5) in presence of the witnesses. He

had arrested the accused on 14.3.2000 vide arrest memo (Ex.P6) and informed his relatives about his arrest vide Ex.P7. He had also recorded statements of Complainant Ku. Shweta and other witnesses on 14.3.2000. He had received the complaint (Ex.P2) of Ku. Shweta from the Additional Superintendent of Police with his remarks. Ku. Shweta had appeared in the police station along with the complaint (Ex.P2) on 14.3.2000. From the above, it is evident that the whole investigation was done by him.

13. Sub-rule (1) of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 says that an offence committed under the Act of 1989 shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director-General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. In **Ramnath Sadashiv Koltharkar v. State of Maharashtra, (1999) 2 Mah LJ 743**, the Bombay High Court has held that the provisions of Rule 7 of the aforesaid Rules, 1995 are mandatory in nature.
14. The aforesaid discussion clearly establishes that Inspector-in-Charge Emil Lakda (PW5) was not competent to investigate the offence in question and, therefore, the trial of the instant case is vitiated.
15. It is evident from the statement of Ku. Shweta (PW2) that when, at the SECL Gate, the accused had threatened her to assault, she did not go back to her home. Instead, she went to her school and she

did not inform about the incident to anyone nor she lodged any report regarding the incident. At the bicycle-stand also, after threatening, the accused himself walked away saying her that he will see her again. Thereafter, she attended her classes at the school till the end and at that time also, neither she asked any of the school teachers to report the matter nor she herself reported the matter. Had she really been scared of the threatening given by the accused, she would have reported the matter immediately after the incident or would have immediately come to her house and narrated the incident to her parents. From the evidence of Ku. Shweta (PW2), it is also evident that the accused himself had walked away on reaching of the teachers at the bicycle-stand.

16. To hold the accused guilty under Section 506B of the Indian Penal Code, it must be proved that the accused was really in a position to execute the threatening given by him and the Complainant was scared with that threatening. But, in the instant case, the evidence on record do not make out the offence under Section 506B of the Indian Penal Code against the accused.
17. For the reasons discussed above, the evidence available on record do not constitute the offence under Section 506B of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989. Instead, the evidence on record constitute the offence under Section 294 of the Indian Penal Code only. Therefore, the accused/Appellant is acquitted of the charges framed under Section 506B of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989, but he is convicted for the offence under Section 294 of the Indian Penal Code.

- 18.** So far as sentence for the conviction under Section 294 of the Indian Penal Code is concerned, the accused is facing the */is* since 2000. He has no criminal antecedent. He has already undergone a period of about 26 days. Taking into consideration the facts and circumstances of the case, I am of the considered opinion that the ends of justice would be served if the accused/Appellant is sentenced for the conviction under Section 294 of the Indian Penal Code to the period already undergone by him.
- 19.** In the result, the appeal is partly allowed. The conviction and sentence imposed upon the accused/Appellant under Section 506B of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989 are set aside. Instead, he is convicted under Section 294 of the Indian Penal Code and sentenced to the period already undergone by him. The amount of fine, if any paid by him shall be refunded to him.
- 20.** It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
- 21.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE