

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 452 of 2006**

Radheshyam S/o. Baishakhu Yadav, Aged about 45 years, R/o. Village Meubhata, P.S. Pamgarh, District Janjgir Champa (C.G.)

-----Appellant

Versus

State of Chhattisgarh, through Police Station Pamgarh, District Janjgir Champa (C.G.)

-----Respondent

 For Appellant : Mr. Indrasen Sahu, Advocate
 For Respondent : Mr. Vivek Singhal, Penal Lawyer

S.B. Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on board

07. 11. 2017

- 1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 31.05.2006 passed by Special Judge, Scheduled Caste and Scheduled Tribe(Prevention of Atrocities Act) 1989, Bilaspur District Bilaspur (C.G.) in Special Criminal Case No. 21/2005, wherein the trial Court convicted the accused/appellant under Sections 294 and 323 of the IPC and section 3 (1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act) 1989 and sentencing him to undergo R.I. for 3 months, rigorous imprisonment for 6 months and to pay fine of Rs. 500/- and rigorous imprisonment for 6 months and to pay fine of Rs. 500/- with default stipulations with a direction to run all the sentences concurrently.
- 2) As per prosecution case, Dhanbai (PW-1) is a member of Scheduled Caste while the accused/appellant is not a member of Scheduled Caste and Scheduled Tribe. On 14-11-2004 in the evening, the complainant abusing

to some unknown persons who gave poison to her hen and on the next date when the complainant was sitting in her house, the accused/appellant came there and abused her and assaulted her with club. Again, the accused/appellant assaulted Amrika Bai (PW-2) and Giteshwar (PW-3) who came there for rescue Dhanbai (PW-1). A report was lodged in Police Station Pamgarh and after registration of First Information Report (Ex.P-1), the police authorities conducted the investigation and after investigation filed the charge sheet against the appellant before the trial Court to which the appellant did not plead guilty. The Special Judge conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., were recorded and after completion of trial, the Special Judge considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.

- 3) Learned counsel appearing for the accused/appellant submit that no offence is committed on the basis of caste and as the complainant herself using abusive language and the incident did not take place on initiation of the accused/appellant. He submits that it is admitted that the incident took place in the house of the complainant and the same is not a public place or not place within public view, therefore, offence under Section 294 of the IPC and the offence under the Special Act is not made out against him. Learned counsel for the appellant further submits that the complainant and the other witnesses are not reliable witness and their statements are contradictory in nature, therefore, no criminal liability can be fastened on the accused/appellant.
- 4) *Per contra*, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance

with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of appeal.

- 5) I have heard counsel for the parties and perused the material on record.
- 6) To substantiate the charge prosecution has examined as many as 8 witnesses in their support. The appellant examined only one witness in his defence.
- 7) Dhanbai (PW-1) deposed that someone gave poison to her hen that is why she was abusing but not indicated anyone while abusing and on the next date when she was working in her house, the accused/ appellant came there and used obscene words and assaulted her with club. At that time Amrika Bai (PW-2) and Giteshwar (PW-3) came there to rescue her again. Version of this witness is supported by the version of Amrika Bai (PW-2) Giteshwar (PW-3) and Parasram (PW-4). Version of this witness is again supported by the version of Dr. Dulichand Choudhary (PW-5) who examined Dhanbai (PW-1) on 15-11-2004 at Primary Health Centre, Pamgarh and noticed lacerated wound over left supra orbital region in the size 1cmx1/4cm, lacerated wound over left maxillary area in the size $\frac{3}{4}$ cm x $\frac{1}{4}$ cm. The doctor examined Amrika Bai (PW-2) and noticed abrasion over the left forearm and she was complaining pain on back side. Again, he examined Giteshwar (PW-3) and noticed lacerated wound over frontal head in the size 1x1/2 cm. As per opinion of the doctor all the injuries were simple in nature and could be cured within 7 days. The other witnesses assisted the investigation.
- 8) From the evidence of complainant it is established that the incident took place in her house and the same is not a place within the public view or

public place or near the public place. Again from the statement of complainant Dhanbai (PW-1) it is not established that the offence committed on the basis of caste. She herself admitted that she used abusive language against someone who gave poison to her hen and the same is not an incident based on the caste. In totality of the fact, it cannot be said that the offence committed by the appellant was on the basis of caste. Again, the word uttered by the accused/appellant in the house of the complainant and the same is not a public place or a place of public view, the offence under Section 3(1)(x) of the Special Act and section 294 of the IPC can be established only when offence is committed in public place. In the present case, it is admitted that offence is not committed in any public place or nearby public place, therefore, offence as mentioned above is not established against the appellant. It is established from the evidence that the accused/appellant assaulted Dhanbai (PW-1), Amrika Bai(PW-2) and Giteshwar (PW-3) and the injuries sustained by them were simple in nature, case of the accused/appellant does not fall under any exception as mentioned between section 76 to 106 of the IPC and it was within the knowledge of the accused/appellant that his assault will give pain to the persons concerned. The accused/appellant caused simple injuries to the persons concerned as mentioned and the same is offence under Section 323 of the IPC for which the trial Court convicted the accused/appellant and the same is not liable to be interfered by this Court and hereby affirmed.

- 9) The accused/appellant is acquitted of the charges under Section 3(1)(x) of the Special Act and Section 294 of the IPC, judgment of conviction and order of sentence regarding these two offence is set aside.

10) Heard on sentence part for the offence under Section 323 of the IPC, the accused/appellant has in custody from 15.11.2004 to 29.11.2004 i.e. for 15 days. The incident happened on 15.11.2004 i.e. 13 years ago, it would not be proper to send him back jail again. The appellant is sentenced to the period already undergone by him for the offence under Sections 323 of the IPC, fine amount will remain intact.

11) Accordingly, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE